

(B) All persons in the Construction Division are eligible for the program. All persons who are being terminated in our November RIF are selected for the program.

(C) All persons who are being offered consideration under a waiver agreement

must sign the agreement and return it to the Personnel Office within 45 days after receiving the waiver. Once the signed waiver is returned to the Personnel Office, the employee has 7 days to revoke the waiver agreement.

(D) The following is a listing of the ages and job titles of persons in the Construction Division who were and were not selected for termination and the offer of consideration for signing a waiver:

Job title	Age	Number selected	Number not selected
(1) Mechanical Engineers, I	25 26	21 11	48 73
* * * * *	63 64	4 3	18 11
(2) Mechanical Engineers, II	28 29	3 11	10 17
(3) Structural Engineers, I	(1) 21	5	8
(4) Structural Engineers, II	(1) 23	2	4
(5) Purchasing Agents	(1) 26	10	11
	(1)		

¹ etc., for all ages.

(g) *Waivers settling charges and lawsuits.* (1) Section 7(f)(2) of the ADEA provides that:

A waiver in settlement of a charge filed with the Equal Employment Opportunity Commission, or an action filed in court by the individual or the individual's representative, alleging age discrimination of a kind prohibited under section 4 or 15 may not be considered knowing and voluntary unless at a minimum—

(A) Subparagraphs (A) through (E) of paragraph (1) have been met; and

(B) The individual is given a reasonable period of time within which to consider the settlement agreement.

(2) The language in section 7(f)(2) of the ADEA, "discrimination of a kind prohibited under section 4 or 15" refers to allegations of age discrimination of the type prohibited by the ADEA.

(3) The standards set out in section (f) of these regulations for complying with the provisions of section 7(f)(1)(A)-(E) of the ADEA also will apply for purposes of complying with the provisions of section 7(f)(2)(A) of the ADEA.

(4) The term "reasonable time within which to consider the settlement agreement" means reasonable under all the circumstances, including whether the individual is represented by counsel or has the assistance of counsel.

(5) However, while the time periods under section 7(f)(1) of the ADEA do not apply to subsection 7(f)(2) of the ADEA, a waiver agreement under this subsection that provides an employee the time periods specified in section 7(f)(1) of the ADEA will be considered "reasonable" for purposes of section 7(f)(2)(B) of the ADEA.

(6) A waiver agreement in compliance with this section that is in settlement of an EEOC charge does not require the participation or supervision of EEOC.

(h) *Burden of proof.* In any dispute that may arise over whether any of the requirements, conditions, and circumstances set forth in section 7(f) of the ADEA, subparagraph (A), (B), (C), (D), (E), (F), (G), or (H) of paragraph (1), or subparagraph (A) or (B) of paragraph (2), have been met, the party asserting the validity of a waiver shall have the burden of proving in a court of competent jurisdiction that a waiver was knowing and voluntary pursuant to paragraph (1) or (2) of section 7(f) of the ADEA.

(i) *EEOC's enforcement powers.* (1) Section 7(f)(4) of the ADEA states:

No waiver agreement may affect the Commission's rights and responsibilities to enforce [the ADEA]. No waiver may be used to justify interfering with the protected right of an employee to file a charge or participate in an investigation or proceeding conducted by the Commission.

(2) No waiver agreement may include any provision prohibiting any individual from:

(i) Filing a charge or complaint, including a challenge to the validity of the waiver agreement, with EEOC, or

(ii) Participating in any investigation or proceeding conducted by EEOC.

(3) No waiver agreement may include any provision imposing any condition precedent, any penalty, or any other limitation adversely affecting any individual's right to:

(i) File a charge or complaint, including a challenge to the validity of the waiver agreement, with EEOC, or

(ii) Participate in any investigation or proceeding conducted by EEOC.

(j) *Effective date of this section.* (1) This section is effective [30 days after publication of the final rule in the Federal Register.]

(2) This section applies to waivers offered by employers on or after the effective date specified in paragraph (j)(1) of this section.

(3) No inference is to be drawn from this section regarding the validity of waivers offered prior to the effective date.

(k) *Statutory authority.* The regulations in this section are legislative regulations issued pursuant to section 9 of the ADEA and Title II of OWBPA.

[FR Doc. 97-5745 Filed 3-7-97; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 96-186; FCC 97-49]

Assessment and Collection of Regulatory Fees For Fiscal Year 1997

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Commission is proposing to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress has required it to collect for fiscal year 1997. Section 9 of the Communications Act of 1934, as amended, provides for the annual assessment and collection of

regulatory fees. For fiscal year 1997 sections 9(b) (2) and (3) provide for annual "Mandatory Adjustments" and "Permitted Amendments" to the Schedule of Regulatory Fees. These revisions will further the National Performance Review goals of reinventing Government by requiring beneficiaries of Commission services to pay for such services.

DATES: Comments are due on or before March 25, 1997 and Reply Comments are due on or before April 4, 1997.

ADDRESSES; Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Peter W. Herrick, Office of Managing Director at (202) 418-0443, or Terry D. Johnson, Office of Managing Director at (202) 418-0445.

SUPPLEMENTARY INFORMATION: Adopted: February 14, 1997; Released: March 5, 1997.

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I. Introduction	
1. By this <i>Notice of Proposed Rulemaking</i> , the Commission commences a proceeding to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress, pursuant to Section 9(a) of the Communications Act, as amended, has required it to collect for Fiscal Year (FY) 1997. <i>See</i> 47 U.S.C. § 159 (a).	
2. Congress has required that we collect \$152,523,000 through regulatory fees in order to recover the costs of our enforcement, policy and rulemaking, international and user information activities for FY 1997. Public Law 104-208 and 47 U.S.C. § 159(a)(2). This amount is \$26,123,000 or nearly 21% more than the amount that Congress designated for recovery through regulatory fees for FY 1996. <i>See Assessment and Collection of Regulatory Fees for Fiscal Year 1996</i> , FCC 96-295, released July 5, 1996, 61 FR 36629 (July 12, 1996). Thus, we are proposing to revise our fees in order to collect the increased amount that Congress has required that we collect.	

Additionally, we propose to amend the Schedule in order to assess regulatory fees upon licensees and/or regulatees of services not previously subject to payment of a fee, to simplify and streamline the Fee Schedule, and to clarify and/or revise certain payment procedures. 47 U.S.C. § 159(b)(3).

3. In proposing to revise our fees, we adjusted the payment units and revenue requirement for each service subject to a fee, consistent with Sections 159(b)(2) and (3). In addition, we have made changes to the fees pursuant to public interest considerations. The current Schedule of Regulatory Fees is set forth in sections 1.1152 through 1.1156 of the Commission's rules. 47 CFR §§ 1.1152 through 1.1156.

II. Background

4. Section 9(a) of the Communications Act of 1934, as amended, authorizes the Commission to assess and collect annual regulatory fees to recover the costs, as determined annually by Congress, that it incurs in carrying out enforcement, policy and rulemaking, international, and user information activities. 47 U.S.C. 159(a). *See* Attachment I for a description of feeable activities. In our *FY 1994 Fee Report and Order*, 59 FR 30984 (June 16, 1994), we adopted the Schedule of Regulatory Fees that Congress established and we prescribed rules to govern payment of the fees, as required by Congress. 47 U.S.C. § 159(b), (f)(1). Subsequently, in our *FY 1995 and FY 1996 Fee Reports and Orders*, 60 FR 34004 (June 29, 1995) and 61 FR 36629 (July 12, 1996), we modified the Schedule to increase by approximately 93 percent and 9 percent, respectively, the revenue generated by these fees in accordance with the amounts Congress required us to collect in FY 1995 and FY 1996. Also, in both our *FY 1995 and FY 1996 Fee Reports and Orders*, we amended certain rules governing our regulatory fee program based upon our experience administering the program in prior years. *See* 47 CFR §§ 1.1151 *et seq.*

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

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

7. Section 9(i) requires that we develop accounting systems necessary to adjust our fees pursuant to changes in the costs of regulation of the various services subject to a fee and for other purposes. 47 U.S.C. § 9(i). In this proceeding, we are proposing for the first time to rely on cost accounting data to identify our regulatory costs and to develop our FY 1997 fees based upon these costs. Also, as noted, we are proposing to limit the increase in the amount of the fee for any service in order to phase in our reliance on cost-based fees for those services whose proposed revenue requirement would be more than 25 percent above the revenue requirement which would have resulted from the "mandatory adjustments" to the FY 1996 fees without incorporation of costs. The methodology we propose enables us to develop regulatory fees which more closely reflect our costs of regulating a service and also allows us to make annual revisions to our fees based to the fullest extent possible, and consistent with the public interest, on the actual costs of regulating those services subject to a fee. Finally, Section 9(b)(4)(B) requires that we notify Congress of any permitted amendments 90 days before those amendments go into effect. 47 U.S.C. § 159(b)(4)(B).

III. Discussion

A. Summary of FY 1997 Fee Methodology

8. As noted above, Congress has required that the Commission recover \$152,523,000 for FY 1997 through the collection of regulatory fees, representing the costs applicable to our enforcement, policy and rulemaking, international, and user information activities. 47 U.S.C. § 159(a). Congress' increase does not fall equally on all payers due to revised payment units and revenue requirement allocations resulting from the cost accounting system.

9. In developing our proposed FY 1997 fee schedule, we first estimated

payment units¹ for FY 1997 in order to determine the aggregate amount of revenue we would collect without any revision to our FY 1996 fees. Next, we compared this revenue amount to the \$152,523,000 that Congress has required us to collect in FY 1997 and pro-rated the shortfall among all the existing fee categories. We then adjusted the projected revenue requirements so that they equaled the actual costs of each service, using data generated by our cost accounting system, described *infra*, to ensure that revenues equaled our regulatory costs for each fee category.

10. We next examined the impact of using actual costs to establish regulatory fees for each class of regulatees to determine whether any regulatees experienced an unduly large fee increase. We found that, in many cases, cost-based fees result in fee payments dramatically higher in FY 1997 than they were in FY 1996. Therefore, rather than proposing fully cost-based fees for FY 1997, we are proposing to phase in full reliance on cost-based fees and, for FY 1997, to establish a revenue ceiling in each service no higher than 25 percent above the revenue that payers within a fee category would have paid if FY 1997 fees had remained at FY 1996 levels adjusted only for changes in volume and the increase required by Congress. Our proposed methodology would reduce fees for services whose regulatory costs have declined while increasing fees for services experiencing higher regulatory costs in order to begin eliminating disparities disclosed by our cost accounting system between a service's current costs and fees ascribed to these services in prior fiscal years.

11. Once we established our tentative FY 1997 fees, we evaluated various proposals made by Commission staff concerning other adjustments to the Fee Schedule and to our collection procedures. The proposals are discussed in Paragraphs 20-40 and are factored into our proposed FY 1997 Schedule of Regulatory Fees, set forth in Attachment F.

12. Finally, we have incorporated, as Attachment H, proposed Guidance containing detailed descriptions of each fee category, information on the individual or entity responsible for paying a particular fee and other critical information designed to assist potential fee payers in determining the extent of their fee liability, if any, for FY 1997.²

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

² We also will incorporate a similar Attachment in the *Report and Order* concluding this

In the following paragraphs, we describe in greater detail our methodology for establishing our FY 1997 regulatory fees.

B. Development of FY 1997 Fees

1. Adjustment of Payment Units

13. As the first step in calculating individual service regulatory fees for FY 1997, we adjusted the estimated payment units for each service because payment units for many services have changed substantially since we adopted our FY 1996 fees. We obtained our estimated payment units through a variety of means, including our licensee data bases, actual prior year payment records, and industry and trade group projections. Whenever possible, we verified these estimates from multiple sources to ensure the accuracy of these estimates. Attachment B provides a summary of how revised payment units were determined for each fee category.³

2. Calculation of Revenue Requirements

14. We next multiplied the revised payment units for each service by our FY 1996 fee amounts in each fee category to determine how much revenue we would collect without any change to the existing Schedule of Regulatory Fees. The amount of revenue we would collect is approximately \$136.5 million. This amount is approximately \$16.0 million less than the amount the Commission is required to collect in FY 1997. We then adjusted these revenue requirements for each fee category on a proportional basis, consistent with Section 9(b)(2) of the Act, to obtain an estimate of revenue requirements for each fee category at the \$152,523,000 level required by Congress for FY 1997. Attachment C provides detailed calculations showing how we determined the revised revenue amount for each service.

3. Calculation of Regulatory Costs

15. On October 1, 1995, the Commission established, in accordance with 47 U.S.C. § 159(i), a cost accounting system designed, in part, to provide us with useful data, in combination with other information, to help ensure that fees closely reflected our actual costs of regulation. The Commission's cost accounting system, which is integrated with our personnel/payroll system to ensure accuracy and

rulemaking. That Attachment will contain updated information concerning any changes made to the proposed fees adopted by the *Report and Order*.

³ It is important to note also that, due to revised payment units, Congress' required revenue increase in regulatory fee payments of approximately 21 percent in FY 1997 will not fall equally on all payers.

timeliness of cost information, accumulates both personnel and non-personnel costs on a service-by-service basis.

16. In order to utilize actual costs for fee development purposes, we first had to add indirect support costs to the direct costs⁴ and then adjust the results to approximate the amount of revenue that Congress requires us to collect in FY 1997 (\$152,523,000).⁵ Thus, we adjusted the actual cost data pertaining to regulatory fee activities recorded for the period October 1, 1995 through September 30, 1996 proportionally among the fee categories so that total costs approximated \$152,523,000. For fee categories where fees are further differentiated by class or market (e.g., Markets 1–10 under the general VHF and UHF Commercial Television fee category), we distributed the costs to the class or market group by maintaining the same ratios between the classes or market groups as between the fees in the FY 1996 schedule.⁶ The results of these calculations are shown in detail in Attachment D and represent our best estimate of actual total attributable costs relative to each fee category for FY 1997.⁷

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

⁵Congress' estimate of costs to be recovered through regulatory fees is generally determined twelve months before the end of the fiscal year to which the fees actually apply. As such, year-end actual activity costs for FY 1996 do not equal exactly the amount Congress designated for collection for FY 1997.

⁶While some might argue that the Commission should further distinguish our work activities by fee category (e.g., television markets or radio classes), it would not be practical to use small, time-consuming incremental breakdowns of work time.

⁷For example, under the FM Radio fee classification, the actual costs attributable to FM radio are \$8,452,323. This amount is allocated to FM Classes C, C1, C2, B; Classes A, B1, C3; and FM Construction Permits (CP) as follows:

(1) First we determine the relationships between the three categories by dividing the smallest of the FY 1996 FM fees into each of the FY 1996 FM fees to determine the appropriate ratios for allocation of the revenue requirement.

(a) FY 1996 FM CP fee=\$690

FY 1996 FM Classes A, B1, and C3=\$830

FY 1996 FM Classes C, C1, C2, and B=\$1,250

(b) FM CP ratio is \$690 divided by \$690=1:1

FM Classes A, B1, and C3 ratio is \$830 divided by \$690=1:1.2

4. Establishment of 25% Revenue Ceiling

17. Our next step was to determine whether reliance on actual costs to develop FY 1997 regulatory fees would result in fees which are too disparate from corresponding FY 1996 fees. As a result of this analysis, we are proposing to establish a ceiling of 25 percent on the increase in the revenue requirement of any service over and above the Congressionally mandated increase in the overall revenue requirement and the difference in unit counts.⁸ Because Congress has increased our overall fee collection requirement, we are already required to collect substantially more than we collected in FY 1996. Nevertheless, capping each service's revenue requirement at no more than a 25 percent increase enables us to begin the process of reducing fees for services with lower costs and increasing fees for services with higher costs in order to close the gap between actual costs and fees designed to recover these costs. We are not suggesting that fee increases be limited to a 25 percent increase over the FY 1996 fees. The 25 percent increase is over and above the revenue which would be required after adjusting for the projected FY 1997 payment units and the proportional share of the 21 percent increase in the amount that Congress requires us to collect. Thus, FY 1997 fees may increase more than 25 percent over FY 1996 fees depending upon the number of payment units.

18. An important consideration in proposing the establishment of a revenue ceiling is the impact on other fee payers. Because the Commission is required to collect a full \$152,523,000 in FY 1997 regulatory fees, the additional revenue (\$28,024,533) that would have been collected from classes of licensees

FM Classes C, C1, C2, and B ratio is \$1,250 divided by \$690=1:1.8

(2) Next we add the three ratios and divide the sum into the total revenue requirement for FM to determine the amount corresponding to the ratio of 1.

(a) $1+1.2+1.8=4$

(b) $\$8,452,323$ divided by $4=\$2,113,081$

(3) Finally, we determine the fee for each of the three by multiplying the amount calculated in step (2)(b) by each of the ratios.

FM CP revenue requirement=1 times
 $\$2,113,081=\$2,113,081$

FM Classes A, B1, and C3 revenue requirement=1.2 times $\$2,113,081=\$2,535,697$

FM Classes C, C1, C2, and B revenue requirement=1.8 times $\$2,113,081=\$3,803,546$

⁸For example, the regulatory cost associated with the Aviation (Aircraft) service is \$933,492. If no change were made to this service's FY 1996 regulatory fee (\$3 per year), the total revenue collected from licensees in this service would be only \$117,327 in FY 1997, a shortfall of \$816,165. Application of the proposed 25 percent revenue ceiling to this service results in a capped revenue ceiling of \$146,659 ($\$117,327 \times 125\%$).

subject to the revenue ceiling had there been no ceiling, needs to be collected instead from licensees not subject to the ceiling. This results in a certain amount of subsidization between fee payer classes.⁹ We believe, however, that the public interest is best served by adopting our proposed revenue ceiling methodology. To do otherwise would subject several entities to unexpected major increases which would severely impact the economic well being of certain licensees who will not be able to adjust their business plans accordingly. Attachment E displays the step-by-step process we used to calculate adjusted revenue requirements for each fee category for FY 1997, including the reallocation of revenue requirements resulting from the application of our proposed revenue ceilings.¹⁰ We invite comments on our proposed methodology to incorporate actual costs into the computation of regulatory fees and to establish the 25% revenue ceiling.

5. Recalculation of Fees

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

6. Other Proposed Change—Consolidation of Private Microwave & Domestic Public Fixed Fee Categories

20. We examined the results of our calculations made in Paragraphs 15–19

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

¹⁰Application of the 25% ceiling was accomplished by choosing a "target" fee revenue requirement for each individual fee category. This "target" was either the actual calculated revenue requirement (for those categories at or below the 25% ceiling) or, in the case where the calculated revenue exceeded the ceiling, an amount equal to the ceiling. The shortfall created by reducing the revenue requirement of those whose revenue requirement exceeded the revenue ceiling was proportionately spread among those fee categories whose revenue requirements were below the ceiling. This computation required more than one round of adjustment because the allocation of this revenue, in a few instances, caused the new revenue requirement amount to exceed the 25% ceiling. After two iterations (rounds), all the revenue requirements were at or below the revenue ceiling. See Attachment E.

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

21. In our FY 1994, FY 1995 and FY 1996 fee schedules, Private Microwave licensees were required to pay a "small" regulatory fee, in advance, for the entire license term at the time of application. In contrast, the Domestic Public Fixed category was considered a "large" regulatory fee subject to an annual payment. The domestic public fixed category is comprised of several commercial microwave services; e.g., microwave multiple address, microwave common carrier fixed, microwave digital electronic message, and microwave local TV transmission.¹¹

22. Since inception of the regulatory fee program, many parties holding microwave licenses have expressed confusion concerning which fee they are required to pay. In order to alleviate this confusion and because operational and

technical characteristics of private microwave and commercial microwave systems are similar, we are proposing to combine these two fee categories into a single Microwave category for FY 1997.

23. Accordingly, we are proposing to adjust the anticipated number of payment units and combine the revenue requirements for the Private Microwave and Domestic Public Fixed categories and establish a "small" fee, payable in advance for the entire license term, for the new consolidated Microwave category. The annual regulatory fee for all microwave licensees would be \$10 per license. This new fee was calculated as follows:

- (a) From Attachments C and E:
 - (1) 5,350 private microwave stations (units) (Revenue requirement = \$523,083)
 - (2) 18,845 commercial microwave/public fixed stations (units) (Revenue requirement = \$118,026)
- (b) Converting from annual payment ("large fee") to license term payment ("small fee"):
 - (1) 18,845 commercial microwave units divided by 10 year license term =

1,885 commercial microwave units to be licensed each year.

(c) Calculation of new microwave fee: The sum of the two revenue requirements divided by the sum of the units to be licensed and divided by the license term as follows:

$$(1) ((\$523,083 + \$118,026) \text{ divided by } (5,350 + 1,885)) \text{ divided by } 10 \text{ years} = \$8.86$$

(d) Round fee to the nearest \$5 = \$10 (47 U.S.C § 159(b)(2)).

24. We invite comments on our proposal to combine the Private Microwave and Domestic Public Fixed (Commercial Microwave) service categories for regulatory fee purposes into a single Microwave category and to establish an appropriate "small" fee for this single category.

7. Effect of Revenue Redistributions on Major Constituencies

25. The chart below illustrates the relative percentages of the revenue requirements borne by the major constituencies since inception of regulatory fees in FY 1994.

REVENUE REQUIREMENT PERCENTAGES BY CONSTITUENCIES

	FY 1994 (Actual)	FY 1995 (Actual)	FY 1996 (Actual)	FY 1997 (Proposed)
Cable TV Operators (Inc. CARS Licenses)	41.36	24.02	28.19	23.74
Broadcast Licensees	23.84	13.76	14.77	14.96
Satellite Operators (Inc. Earth Stations)	3.32	3.62	4.28	4.28
Common Carriers	25.01	44.52	45.54	46.27
Wireless Licensees	6.47	14.07	7.23	10.75
Total	100.00	99.99	100.01	100.00

C. Other Issues

1. Commercial AM/FM Radio

26. In November 1996 the Commission released a *Notice of Inquiry* to determine if, in FY 1997, it is feasible to utilize a methodology based on market size and class of station to assess annual regulatory fees upon licensees of commercial AM and FM broadcast radio stations. We invited interested parties to comment upon a methodology proposed by the Montana Broadcasters Association (Montana), or to propose any other methodology for assessing AM and FM fees they believe would serve the public interest. See *Amendment of Part 1 of the Commission's Rules Pertaining to the Schedule of Annual Regulatory Fees for Mass Media Services*, FCC 96-422, released

November 6, 1996, 61 FR 59397 (November 22, 1996).

27. In establishing our regulatory fee program, we recognized that Congress had required the Commission to adopt the Schedule of Regulatory Fees for FY 1994 contained in Section 9(g) of the Communications Act, as amended, 47 U.S.C. § 159(g). The Schedule assessed AM and FM radio fees based upon class of station. Thus, each licensee paid a fee identical to other licensees with the same class of station, without regard to the size or population of its service area. See *Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5339 (1994), 59 FR 30984 (June 16, 1994). We declined to consider any revision to the fee schedule for FY 1994, but we invited interested parties to propose alternative methodologies for various services subject to the regulatory

fees, including AM and FM radio, for consideration in our proceeding to adopt the FY 1995 Schedule of Regulatory Fees. 9 FCC Rcd 5360. Subsequently, in our *NPRM* proposing fees for FY 1995, we recognized that "population density of a [AM or FM] station's geographic location was also a public interest factor warranting recognition in the fee schedule." Therefore, we proposed for consideration by interested parties a methodology incorporating market size in the calculation of AM and FM fees, by assessing higher fees for radio stations located in Arbitron Rating Co. (Arbitron) designated markets. We proposed a two-tiered fee schedule with stations in Arbitron rated markets paying higher fees than the same classes of stations located in smaller, non-

¹¹ Although the Multipoint Distribution Service (MDS) and the Multichannel Multipoint Distribution Service (MMDS) were originally

grouped with Domestic Public Fixed services, we have, since FY 1995, listed them separately in our Fee Schedule.

Arbitron rated markets. See *Notice of Proposed Rulemaking in the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1995*, MD Docket No. 95-3, FCC 95-14, released January 12, 1995 at Paragraph 29. In our *Report and Order* establishing our FY 1995 fees, we declined to adopt this proposed method because, after consideration of the public comments, we found that it did not provide a "sufficiently accurate and equitable methodology for determining fees." See *Assessment and Collection of Regulatory Fees for Fiscal Year 1995*, 10 FCC Rcd 13512, 13531-32 (1996), 60 FR 34004 (June 29, 1995).

28. In our *Notice of Proposed Rulemaking* to establish regulatory fees for FY 1996, we stated, with regard to the fees for AM and FM radio stations, that we "were particularly interested in a proposal which would associate population density and service area contours with license data" and we again requested interested parties to propose viable alternative methodologies for assessment of AM

and FM fees. *Assessment and Collection of Regulatory Fees for Fiscal Year 1996*, FCC 96-153, at Paragraphs 20-21 (April 9, 1996), 61 FR 16432 (April 15, 1996). In response, Montana filed comments proposing an AM and FM fee structure based on class of station and on market size. We received no comments addressing Montana's proposal. However, following our own review of the proposal, we decided not to take any action until we had an opportunity to evaluate more extensively the impact of Montana's proposal on AM and FM licensees through a *Notice of Inquiry. Assessment and Collection of Regulatory Fees for Fiscal Year 1996*, FCC 96-295, at Paragraphs 23-29, July 5, 1996, 61 FR 36629 (July 12, 1996).

29. Montana's proposed methodology utilizes broad groupings of radio markets determined by Arbitron market size, with the fee for each market grouping predicated on the ratios that Congress initially established in Section 9(g) of the Act (47 U.S.C. § 159(g)) for assessing fees for licensees of television stations serving different sized markets.

Montana proposed four specific radio market classifications: Markets 1-25; Markets 26-50; Markets 51-100; and Remaining Markets. Montana's proposal assigned stations to each market grouping based upon Arbitron television market designations and relied on an analysis of broadcast markets prepared by Dataworld MediaXpert Service ("Dataworld"), which grouped radio stations by class of station within a particular market size. It then calculated the fees for stations in different markets utilizing the ratios between the fees for television markets in Section 9(g). Montana argued that its proposal was more equitable than the groupings based on class of station relied on by the Commission because, under its proposal, stations in smaller markets would pay lower fees than stations serving more populous markets.

30. In order to collect the total aggregate fees to be recovered from AM and FM radio stations as proposed in the FY 1995 *NPRM*, Montana's proposed methodology would have allocated fees among radio stations as follows:

Markets	AM Class A	AM Class B	AM Class C	AM Class D	FM Class I ¹²	FM Class II ¹³
1-25	\$2,890	\$1,710	\$645	\$815	\$2,890	\$1,940
26-50	2,040	1,140	455	575	2,040	1,370
51-100	1,360	760	305	385	1,360	910
Remaining	850	475	190	240	850	570

¹² Class I includes FM Classes C, C1, C2 and B.

¹³ Class II includes FM Classes A, B1 and C3.

31. However, subsequent to the filing of Montana's proposal, Congress increased the aggregate amount of fees to be recovered by the Commission and amended the Commission's regulatory fee schedule for television stations to increase the fees paid by licensees in larger markets and to reduce the fees

paid by licensees located in Markets 51-100 and the Remaining Markets. Public Law 104-134. See *Assessment and Collection of Regulatory Fees for Fiscal Year 1996, supra* at Paragraph 14. This substantially changed the ratios between the fees for television stations in different sized markets used by Montana

to compute its proposed radio fees. Substituting the actual ratios between the regulatory fees for television stations in different sized markets for the old ratios utilized in Montana's proposal would have produced the following radio fees for FY 1996:¹⁴

Markets	AM Class A	AM Class B	AM Class C	AM Class D	FM Class I ¹⁵	FM Class II ¹⁶
1-25	\$11,500	\$6,325	\$2,575	\$3,150	\$4,875	\$3,250
26-50	6,675	3,675	1,500	1,850	2,850	1,900
51-100	3,550	1,975	800	980	1,525	1,000
Remaining	1,000	555	225	275	430	285

¹⁵ Class I includes FM Classes C, C1, C2 and B.

¹⁶ Class II includes FM Classes A, B1 and C3.

32. The above fees illustrate the impact of the Montana proposal when the changes mandated by Congress to the Regulatory Fee Schedule are considered. We are particularly concerned about the size of the

increases in larger markets which, in addition to having more potential listeners, have greater concentrations of stations, thereby increasing the competition for listeners in those markets. Moreover, the accuracy of both

sets of calculations are predicated on assumptions that the total aggregate amount of fees to be collected remains unchanged, that the revenue requirement allocated to all broadcast licensees remains unchanged, and that

¹⁴ By contrast, according to the FY 1996 Schedule of Regulatory Fees, AM class A stations are assessed a fee of \$1,250; Class B stations \$690; Class C

stations \$280; and Class D stations \$345. Similarly, FM Class C, C1, C2 and B stations (Montana's FM Class I) are assessed a fee of \$1,250; and FM Class

A, B1 and C3 stations (Montana's FM Class II) a fee of \$830.

there are no changes in the numbers and classes of licensees subject to broadcast fees. The calculations presented herein are illustrative only, because the fees are predicated on assumptions that will not recur in FY 1997. A change in any or all three of these factors would result in individual fees different than those illustrated in Paragraphs 30 and 31.

33. In response to the *NOI*, the National Association of Broadcasters ("NAB") submitted a proposed fee table for AM and FM radio stations relying on a database prepared by Dataworld. NAB states that Dataworld developed its database by using the engineering specifications for every operating AM and FM radio station to calculate the populations served by those stations

using 1990 census information. Under NAB's proposal, stations with more powerful signals would generally pay higher fees because they usually serve more people than stations with weaker signals. NAB maintains that a fee schedule based on the Dataworld information would equitably allocate fees among all stations.

34. In support of its proposal, NAB notes that Congress has recognized the importance of service classes in the fee schedule it enacted in Section 9(g) of the Act, and that there are significant differences in the value and revenue potential of stations in different classes. 47 U.S.C. § 159(g). Thus, NAB contends that radio station fees should not be calculated on the basis of predicted

audience alone. Moreover, NAB recognizes that Dataworld's data does not reflect population changes since 1990 and that, in certain instances, there will be discrepancies between the Dataworld calculations and some stations' actual engineering characteristics. Thus, NAB proposes fees based on the estimate of population served and the class of station rather than strictly on the basis of population served.

35. The proposed NAB fee table includes 24 fee levels for AM and 12 fee levels for FM. NAB's proposed fee table would collect \$6,104,196 from FM licensees and \$2,235,956 from AM licensees, as follows:

Population served	AM Class A	AM Class B	AM Class C	AM Class D
<= 100,000	\$325	\$260	\$125	\$165
100,001-250,000	375	325	175	225
250,001-500,000	575	450	250	325
500,001-1,500,000	975	650	325	425
1,500,001-3,000,000	1,500	950	450	575
> 3,000,000	1,800	1,300	650	750

Population served	FM classes A, B1, C3	FM Classes B, C, C1, C2
<= 40,000	\$300	\$450
40,001-100,000	450	925
100,001-250,000	925	1,350
250,001-750,000	1,150	1,750
750,001-1,750,000	1,300	2,000
> 1,750,000	1,650	2,750

36. While the NAB proposal has merit, further study and refinement of its methodology is required. First, we note that the NAB proposal increases fees based on the average increase in the amount that Congress has required us to collect for FY 1997 without taking into account our cost of regulation of AM and FM stations as measured by our cost accounting system. As a result, its proposal would fail to raise sufficient revenue to cover the pro rata share of the Commission's revenue requirements for AM and FM radio. Moreover, NAB's proposal does not disclose the number of stations in each of its payment categories so that its proposal can be modified to meet our revenue requirements, there are discrepancies between our estimate of the number of stations and the number of stations included in Dataworld's database, and it is not clear whether the Dataworld station count includes government and non-commercial stations which are exempt from regulatory fee requirements. In addition, NAB has not presented an explanation or rationale

for its specific fee classifications. Nor is there sufficient information to permit the Commission to determine how NAB's proposed fee table can be modified to cover changes in station characteristics and populations. If we were to adopt NAB's proposal, we would also be required to develop a methodology for advising each individual station of its fee based on our estimate of the population in its service area.

37. Thus, while the Montana and NAB proposals hold the promise of a more equitable fee schedule, there are problems with these proposals that must be addressed before they can be relied on to develop a revised fee schedule for AM and FM radio. Therefore, interested parties are invited to comment not only on both the NAB and Montana proposals, but also on any alternative methods for assessing radio station fees. Parties who have filed comments on the *NOI* need not duplicate them in this proceeding. Comments are also invited with respect to the revised schedule for AM and FM radio stations set forth in

Attachment F based on the general methodology for calculating FY 1997 fees.

2. Personal Communications Service (PCS)

38. Our FY 1996 *Report and Order* deferred assessing a regulatory fee upon licensees in the Personal Communications Service ("PCS") in FY 1996 because the service was in a very early start-up phase. See *FY 1996 Report and Order* at Appendix F, Paragraph 15. We now believe that there are sufficient operational PCS systems to justify their inclusion among those licensees who are assessed fees in the CMRS Mobile Services and CMRS One-Way Paging fee categories for FY 1997. We have therefore incorporated fees for PCS in Paragraphs 14 and 15 of Attachment H.

3. Commercial Mobile Radio Services (CMRS)

39. In our FY 1996 *Report and Order* at Paragraph 22, we discussed a proposal offered by Destineer, Inc., a PCS licensee, that we establish a CMRS Messaging Service fee category to

replace our CMRS One-Way Paging fee category. Destineer stated that, with the exception of two-way paging services, our CMRS Mobile Services fee category includes only broadband services which provide two-way interactive voice communications. Destineer recommended establishing a CMRS Messaging Service to include all narrowband services, including two-way paging services. We invite interested parties to file comments on Destineer's proposal or propose alternative methods to assess CMRS fees for FY 1997. We are particularly interested in the number of estimated units associated with an alternative proposal and the impact the proposed changes would have on projected revenues.

4. Intelsat & Inmarsat Signatories

40. The Commission incurs regulatory costs for satellite policy and rulemaking, enforcement and user information activities. As directed by Congress, these costs must be recovered through the collection of regulatory fees. In accordance with the provisions of Section 9, the Commission's overall goal is to recover all of the costs associated with satellite regulatory activities and to distribute these costs fairly amongst fee payers, taking into account factors reasonably related to the benefits provided by the payer, and "other factors we determine are necessary in the public interest."

41. In FY 1994 and FY 1995 the Commission recovered satellite regulatory costs by collecting fees from satellite earth station and geosynchronous space station regulatees (Part 25) only. Satellite providers using international bearer circuits to provide service were assessed a separate fee under the International Bearer Circuits category in order to recover the regulatory costs associated with international telecommunications policy and rulemaking, enforcement and user information activities. The Commission received comments during both years' regulatory fees proceedings concerning the distribution of the burden of costs. In an effort to explore alternative methods of fee collection the Commission conducted focus group sessions in FY 1995 which were attended by satellite industry representatives. One of the major issues raised was a perceived inequity in the distribution of the total satellite regulatory fee burden. Commission activities associated with Intelsat, Inmarsat and the U.S. signatory to both were identified as areas where space and earth station regulatees were

unfairly bearing the regulatory fee burden.

42. In response to distribution issues raised in the focus group sessions and comments filed in previous years, we examined satellite regulatory activities and determined that since the Commission incurs regulatory costs associated with Signatory-related activities, a regulatory fee for Signatories was the proper vehicle for recovering these costs. In its comments on the proposed FY 1996 fees, Comsat challenged the Commission's proposal regarding the Signatory fee, contending that it would be unlawful and excessive. Each of these arguments was discussed in our FY 1996 *Report and Order*, in which we adopted the Signatory fee. However, in Paragraph 47 of the FY 1996 *Report and Order*, we indicated our intent to explore alternative means of recovering these costs and to seek public comment on such alternatives. We therefore request interested parties to comment on alternative methods of collecting costs associated with Signatories. We request that comments specify whether other regulatees should be assessed a portion of the fee applicable to the signatory category, and, if so, the estimated percentage of the fee that should be assessed upon other regulatees. We are particularly interested in ways to recover our costs without unfairly burdening other regulatees. If no specific alternative is identified, we propose to retain the current Signatory fee category for FY 1997.

5. Non-Common Carrier International Bearer Circuits

43. International bearer circuit fees are currently assessed upon domestic and international common carriers only. In its comments responding to proposals contained in our FY 1996 *NPRM*, Comsat contended that payment of international bearer circuit fees should be expanded to non-common carriers providing international services. See FY 1996 *Report and Order* at Paragraph 65. In our FY 1996 *Report and Order* we declined to expand collection of international bearer circuit fees to non-common carriers. As we noted at that time, the Commission is unable, due to lack of appropriate data, to calculate a fee applicable to bearer circuits provided directly to end users over non-common carrier domestic and international facilities. The foregoing situation has not changed. We, therefore, are proposing to assess the international bearer circuit fee only on domestic and international common carriers in FY 1997. However, we invite interested parties to comment on

Comsat's proposal. We are especially interested in information concerning the number of bearer circuits provided directly to end users over non-common carrier domestic and international facilities.

D. Procedures for Payment of Regulatory Fees

44. Generally, we propose to retain the procedures that we have established for the payment of regulatory fees. Section 9(f) requires that we permit "payment by installments in the case of fees in large amounts, and in the case of small amounts, shall require the payment of the fee in advance for a number of years not to exceed the term of the license held by the payer." See 47 U.S.C. § 159(f)(1). Consistent with Section 9(f), we are again establishing three categories of fee payments, based upon the category of service for which the fee payment is due and the amount of the fee to be paid. The fee categories are (1) "standard" fees, (2) "large" fees, and (3) "small" fees.

1. Annual Payments of Standard Fees

45. Standard fees are those regulatory fees that are payable in full on an annual basis. Payers of standard fees are not required to make advance payments for their full license term and are not eligible for installment payments. All standard fees are payable in full on the date we establish for payment of fees in their regulatory fee category. The payment dates for each regulatory fee category will be announced either in the *Report and Order* in this proceeding or by public notice in the Federal Register following the termination of this proceeding.

2. Installment Payments for Large Fees

46. While we are mindful that time constraints may preclude an opportunity for installment payments, we propose that regulatees in any category of service with a liability of \$12,000 or more be eligible to make installment payments and that eligibility for installment payments be based upon the amount of either a single regulatory fee payment or combination of fee payments by the same licensee or regulatee. We propose that regulatees eligible to make installment payments may submit their required fees in two equal payments (on dates to be announced) or, in the alternative, in a single payment on the date that their final installment payment is due. Due to statutory constraints concerning notification to Congress prior to actual collection of the fees, however, it is unlikely that there will be sufficient time for installment payments, and that

regulatees eligible to make installment payments will be required to pay these fees on the last date that fee payments may be submitted. The dates for installment payments, or a single payment, will be announced either in the *Report and Order* terminating this proceeding or by public notice published pursuant to delegated authority in the Federal Register.

3. Advance Payments of Small Fees

47. As we have in the past, we are proposing to treat regulatory fee payments by certain licensees as "small" fees subject to advance payment consistent with the requirements of Section 9(f)(2). Advance payments will be required from licensees of those services that we decided would be subject to advance payments in our FY 1994 *Report and Order*, and to those additional payers set forth herein.¹⁷ Payers of advance fees will submit the entire fee due for the full term of their licenses when filing their initial, renewal, or reinstatement application. Regulatees subject to a payment of small fees shall pay the amount due for the current fiscal year multiplied by the number of years in the term of their requested license. In the event that the required fee is adjusted following their payment of the fee, the payer would not be subject to the payment of a new fee until filing an application for renewal or reinstatement of the license. Thus, payment for the full license term would be made based upon the regulatory fee applicable at the time the application is filed. The effective date for payment of small fees established in this proceeding will be announced in our *Report and Order* terminating this proceeding or by public notice published pursuant to delegated authority in the Federal Register.

4. Minimum Fee Payment Liability

48. Regulatees whose total fee liability, including all categories of fees for which payment is due by an entity, amounts to less than \$10 are exempted from fee payment in FY 1997.

5. Standard Fee Calculations and Payment Dates

49. As noted, the time for payment of standard fees and any installment payments will be published in the

¹⁷ Applicants for new, renewal and reinstatement licenses in the following services will be required to pay their regulatory fees in advance: Land Mobile Services, Microwave services, Marine (Ship) Service, Marine (Coast) Service, Private Land Mobile (Other) Services, Aviation (Aircraft) Service, Aviation (Ground) Service, General Mobile Radio Service (GMRS). In addition, applicants for Amateur Radio vanity call signs will be required to submit an advance payment.

Federal Register pursuant to delegated authority. For licensees, permittees and holders of other authorizations in the Common Carrier, Mass Media, and Cable Services whose fees are not based on a subscriber, unit, or circuit count, fees should be submitted for any authorization held as of *October 1, 1996*. October 1 is the date to be used for establishing liability for payment of standard fees since it is the first day of the federal government's fiscal year.

50. In the case of regulatees whose fees are based upon a subscriber, unit or circuit count, the number of a regulatees' subscribers, units or circuits on *December 31, 1996*, will be used to calculate the fee payment.¹⁸ We have selected the last day of the calendar year because many of these entities file reports with us as of that date. Others calculate their subscriber numbers as of that date for internal purposes. Therefore, calculation of the regulatory fee as of that date will facilitate both an entity's computation of its fee payment and our verification that the correct fee payment has been submitted.

E. Schedule of Regulatory Fees

51. The Commission's proposed Schedule of Regulatory Fees for FY 1997 is contained in Attachment F of this *NPRM*.

IV. Procedural Matters

A. Comment Period and Procedures

52. Pursuant to procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before March 25, 1997, and reply comments on or before April 4, 1997. All relevant comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments and supporting materials. If participants want each Commissioner to receive a personal copy of their comments, an original and nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Interested parties, who do not wish to formally

¹⁸ Cable system operators are to compute their subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Cable system operators may base their count on "a typical day in the last full week" of December 1996, rather than on a count as of December 31, 1996.

participate in this proceeding, may file informal comments at the same address. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20054.

B. Ex Parte Rules

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

C. Initial Regulatory Flexibility Analysis

54. As required by section 603 of the Regulatory Flexibility Act (Public Law 96-354, 94 Stat. 1165, 5 U.S.C. § 601 *et seq.* (1981)), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth in Attachment A. Written public comments are requested with respect to the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the rest of the *NPRM*, but they must have a separate and distinct heading, designating the comments as responses to the IRFA. The Secretary shall send a copy of this *NPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act.

D. Paperwork Reduction Act Compliance

55. The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected, and (d) ways to minimize the burden of the collection of information on the respondents, including the use of

automated collection techniques or other forms of information technology.

56. Written comments should be submitted on or before May 9, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

57. Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St. NW., Washington, DC 20554 or via internet to dconway@fcc.gov, and Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th St. NW., Washington, DC 20503 or via internet to fain_t@a1.eop.gov.

58. For Further Information Contact: For additional information or copies of the information collections, contact Dorothy Conway at 202-418-0217 or via internet at dconway@fcc.gov.

OMB Approval Number: (Number should be included if it is a revision to an existing collection).

Title:

Form No.:

Type of Review: (i.e. new collection, revision of existing collection)

Respondents:

Number of Respondents:

Estimated Time Per Response:

Total Annual Burden:

Needs and Uses: (Brief description of how the information will be used)

E. Authority and Further Information

59. Authority for this proceeding is contained in sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934 as amended, 47 U.S.C. §§ 154(i) and (j), 159, and 303(r).

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

List of Subjects in 47 CFR Part 1

Administrative practice and procedures, Communications common carriers, Penalties, Radio, Telecommunications, Television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Attachment A—Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA),¹⁹ as amended by the Contract with America Advancement Act (CWAAA), Public Law 104-121, 110 Stat. 847 (1996),²⁰ the

Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1997*. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided above in Paragraph 53.

I. Need for and Objectives of the Proposed Rule

2. This rulemaking proceeding is initiated to obtain comments concerning the Commission's proposed amendment of its Schedule of Regulatory Fees in order to collect regulatory fees in the amount of \$152,523,000, the amount that Congress has required the Commission to recover through regulatory fees in Fiscal Year 1997. The Commission seeks to collect the necessary amount through its proposed revised regulatory fees, as contained in the attached Schedule of Regulatory Fees, in the most efficient manner possible and without undue burden to the public.

II. Legal Basis

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

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

4. The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction" and "the same meaning as the term 'small business concern' under the Small Business Act unless the Commission has developed one or more definitions that are appropriate for its activities.²¹ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the

Small Business Administration (SBA).²² The Small Business Enforcement Fairness Act of 1996 (SBREFA) provision of the RFA also applies to nonprofit organizations and to governmental organizations such as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000.²³ There are 85,006 governmental entities in the United States.²⁴ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 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."

Cable Services or Systems

5. The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating \$11 million or less in revenue annually.²⁵ This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1,788 total cable and other pay television services and 1,423 had less than \$11 million in revenue.²⁶

6. The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company," is one serving fewer than 400,000 subscribers nationwide.²⁷ Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as

²² Small Business Act, 15 U.S.C. § 632 (1996).

²³ 5 U.S.C. § 601(5).

²⁴ United States Dept. of Commerce, Bureau of the Census, *1992 Census of Governments* (1992 Census).

²⁵ 13 CFR § 121.201, SIC 4841.

²⁶ *1992 Economic Census Industry and Enterprise Receipts Size Report*, Table 2D, SIC 4841 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

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

¹⁹ 5 U.S.C. § 603.

²⁰ Title II of the CWAAA is "The Small Business Regulatory Enforcement Fairness Act of 1996" (SBREFA), codified at 5 U.S.C. § 601 et seq.

²¹ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 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."

small cable system operators at the end of 1995.²⁸ Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators.

7. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."²⁹ The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate.³⁰ Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1,450.³¹ We do not request nor do we collect information concerning whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000,³² and thus are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act. It should be further noted that recent industry estimates project that there will be a total 65,000,000 subscribers, and we have based our fee revenue estimates on that figure.

8. Other Pay Services. Other pay television services are also classified under SIC 4841, which includes cable systems operators, closed circuit television services, direct broadcast satellite services (DBS),³³ multipoint distribution systems (MDS),³⁴ satellite

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

Common Carrier Services and Related Entities

9. According to the *Telecommunications Industry Revenue: Telecommunications Relay Service Fund Worksheet Data (TRS Worksheet)*, there are 2,847 interstate carriers. These carriers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

10. The SBA has defined a small business for Radiotelephone Communications (SIC 4812) and Telephone Communications, Except Radiotelephone (4813), to be small entities when they have fewer than 1,500 employees.³⁵ We first discuss generally the total number of small telephone companies falling within both of those SIC categories. Then, we discuss the number of small businesses within the two subcategories, and attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

11. Because the small incumbent LECs subject to these rules are either dominant in their field of operations or are not independently owned and operated, consistent with our prior practice, they are excluded from the definition of "small entity" and "small business concerns."³⁶ Accordingly, our use of the terms "small entities" and "small businesses" does not encompass small incumbent LECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will consider small incumbent LECs within this analysis and use the term "small incumbent LECs" to refer to any incumbent LECs that arguably might be defined by the SBA as "small business concerns."³⁷

12. Total Number of Telephone Companies Affected. The United States Bureau of the Census ("the Census

Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.³⁸ This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, personal communications services providers, covered specialized mobile radio providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated."³⁹ For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to tentatively conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent local exchange carriers.

13. Wireline Carriers and Service Providers. The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless) companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992.⁴⁰ According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing fewer than 1,500 persons.⁴¹ All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. We do not have information on the number of carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 2,295 small telephone

²⁸ Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for December 30, 1995).

²⁹ 47 U.S.C. § 543(m)(2).

³⁰ 47 CFR § 76.1403(b).

³¹ Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

³² We do receive such information on a case-by-case basis only if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.1403(b) of the Commission's rules. See 47 CFR § 76.1403(d).

³³ Direct Broadcast Services (DBS) are discussed in depth with the international services *infra*.

³⁴ Multipoint Distribution Services (MDS) are discussed in depth with the mass media services *infra*.

³⁵ 13 CFR § 121.201.

³⁶ See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, 11 FCC Rcd 15499 (1996), 61 FR 45476 (August 29, 1996), *motion for stay of the FCC's rules pending judicial review denied, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Order*, 11 FCC Rcd 11754 (1996), 61 FR 54099 (October 17, 1996), *partial stay granted, Iowa Utilities Board v. FCC*, No. 96-3321, 1996 WL 589204 (8th Cir. 1996) at paragraphs 1328-1330 and 1342.

³⁷ See *id.*

³⁸ United States Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, at Firm Size 1-123 (1995) (1992 Census).

³⁹ 15 U.S.C. § 632(a)(1).

⁴⁰ 1992 Census, *supra*, at Firm Size 1-123.

⁴¹ 13 CFR § 121.201, SIC Code 4812.

communications companies other than radiotelephone companies.

14. Local Exchange Carriers. Neither the Commission nor the SBA has developed a definition for small providers of local exchange services (LECs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.⁴² The most reliable source of information regarding the number of LECs nationwide is the data that we collect annually in connection with the *TRS Worksheet*. According to our most recent data, 1,347 companies reported that they were engaged in the provision of local exchange services.⁴³ We do not have information on the number of carriers that are not independently owned and operated, nor what carriers have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,347 small incumbent LECs.

15. Interexchange Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for telephone communications companies except radiotelephone (wireless) companies.⁴⁴ The most reliable source of information regarding the number of IXCs nationwide is the data that we collect annually in connection with the *TRS Worksheet*. According to our most recent data, 130 companies reported that they were engaged in the provision of interexchange services.⁴⁵ We do not have information on the number of carriers that are not independently owned and operated, nor have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 130 small entity IXCs.

16. Competitive Access Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to

providers of competitive access services (CAPs). The closest applicable definition under the SBA rules is for telephone communications companies except radiotelephone (wireless) companies.⁴⁶ The most reliable source of information regarding the number of CAPs nationwide is the data that we collect annually in connection with the *TRS Worksheet*. According to our most recent data, 57 companies reported that they were engaged in the provision of competitive access services.⁴⁷ We do not have information on the number of carriers that are not independently owned and operated, nor have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 57 small CAPs.

17. Operator Service Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under the SBA rules is for telephone communications companies except radiotelephone (wireless) companies.⁴⁸ The most reliable source of information regarding the number of operator service providers nationwide is the data that we collect annually in connection with the *TRS Worksheet*. According to our most recent data, 25 companies reported that they were engaged in the provision of operator services.⁴⁹ We do not have information on the number of carriers that are not independently owned and operated, nor have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 25 small operator service providers.

18. Pay Telephone Operators. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies except radiotelephone (wireless) companies.⁵⁰ The most reliable source of information regarding the number of pay telephone operators nationwide is the data that we collect annually in

connection with the *TRS Worksheet*. According to our most recent data, 271 companies reported that they were engaged in the provision of pay telephone services.⁵¹ We do not have information on the number of carriers that are not independently owned and operated, nor have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 271 small pay telephone operators.

19. Resellers (including debit card providers). Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company except radiotelephone (wireless) companies.⁵² However, the most reliable source of information regarding the number of resellers nationwide is the data that the Commission collects annually in connection with the *TRS Worksheet*. According to our most recent data, 260 companies reported that they were engaged in the resale of telephone service.⁵³ We do not have information on the number of carriers that are not independently owned and operated, nor have more than 1,500 employees, and thus we are unable at this time to estimate with greater precision the number of resellers that would qualify as small entities or small incumbent LEC concerns under the SBA's definition. Consequently, we estimate that there are fewer than 260 small entity resellers.

20. 800 Subscribers.⁵⁴ Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to 800 subscribers. The most reliable source of information regarding the number of 800 subscribers is data we collect on the number of 800 numbers in use.⁵⁵ According to our most recent data, at the end of 1995, the number of 800 numbers in use was 6,987,063. We do not have information on the number of carriers not independently owned and operated, nor have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of 800 subscribers that would qualify as

⁴² 13 CFR § 121.201, SIC Code 4813.

⁴³ Federal Communications Commission, CCB, Industry Analysis Division, *Telecommunications Industry Revenue: TRS Fund Worksheet Data*, Tbl. 1 (Average Total Telecommunications Revenue Reported by Class of Carrier) (December 1996) (*TRS Worksheet*).

⁴⁴ 13 CFR § 121.201, SIC 4813.

⁴⁵ *TRS Worksheet*.

⁴⁶ 13 CFR § 121.201, SIC 4813.

⁴⁷ *TRS Worksheet*.

⁴⁸ 13 CFR § 121.201, SIC 4813.

⁴⁹ *Id.*

⁵⁰ 13 CFR § 121.201, SIC 4813.

⁵¹ *TRS Worksheet*.

⁵² 13 CFR § 121.201, SIC 4813.

⁵³ *TRS Worksheet*.

⁵⁴ We include all toll-free number subscribers in this category, including 888 numbers.

⁵⁵ Federal Communications Commission, CCB, Industry Analysis Division, *FCC Releases, Study on Telephone Trends*, Tbl. 20 (May 16, 1996).

small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 6,987,063 small entity 800 subscribers.

International Services

21. The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC). This definition provides that a small entity is expressed as one with \$11.0 million or less in annual receipts.⁵⁶ According to the Census Bureau, there were a total of 848 communications services, NEC in operation in 1992, and a total of 775 had annual receipts of less than \$9,999 million.⁵⁷ The Census report does not provide more precise data.

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

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

There are 15 licensees in this service. We do not request nor collect annual revenue information, and thus are unable to estimate the number of international broadcast licensees that would constitute a small business under the SBA definition.

24. Fixed Satellite Transmit/Receive Earth Stations. There are approximately 4200 earth station authorizations, a portion of which are Fixed Satellite Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and thus are unable to estimate the number of the earth stations that would constitute a small business under the SBA definition.

25. Fixed Satellite Small Transmit/Receive Earth Stations. There are 4200 earth station authorizations, a portion of which are Fixed Satellite Small Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and thus are unable to estimate the number of fixed satellite transmit/receive earth stations may

constitute a small business under the SBA definition.

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

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

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

29. Space Stations (Geostationary). Commission records reveal that there are 37 space station licensees. We do not request nor collect annual revenue information, and thus are unable to estimate of the number of geostationary space stations that would constitute a small business under the SBA definition.

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

31. Direct Broadcast Satellites. Because DBS provides subscription services, DBS falls within the SBA definition of Cable and Other Pay Television Services (SIC 4841). This definition provides that a small entity is expressed as one with \$11.0 million or less in annual receipts.⁵⁸ As of December 1996, there were eight DBS licensees. However, the Commission does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. Although DBS

service requires a great investment of capital for operation, we acknowledge that there are several new entrants in this field that may not yet have generated \$11 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

Mass Media Services

32. Commercial Radio and Television Services. The proposed rules and policies will apply to television broadcasting licensees and radio broadcasting licensees.⁵⁹ The SBA defines a television broadcasting station that has \$10.5 million or less in annual receipts as a small business.⁶⁰ Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.⁶¹ Included in this industry are

⁵⁹ We tentatively conclude that the SBA's definition of "small business" greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small television and radio stations. However, for purposes of this *Policy Statement*, we utilize the SBA's definition in determining the number of small businesses to which the proposed rules would apply, but we reserve the right to adopt a more suitable definition of "small business" as applied to radio and television broadcast stations or other entities subject to this *Policy Statement* and to consider further the issue of the number of small entities that are radio and television broadcasters or other small media entities in the future. See *Report and Order in MM Docket No. 93-48 (Children's Television Programming)*, 11 FCC Rcd 10660, 10737-38 (1996), 61 FR 43981 (August 27, 1996), citing 5 U.S.C. 601(3). We have pending proceedings seeking comment on the definition of and data relating to small businesses. In our *Notice of Inquiry in GN Docket No. 96-113 (Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses)*, FCC 96-216, released May 21, 1996, we requested commenters to provide profile data about small telecommunications businesses in particular services, including television, and the market entry barriers they encounter, and we also sought comment as to how to define small businesses for purposes of implementing Section 257 of the Telecommunications Act of 1996, which requires us to identify market entry barriers and to prescribe regulations to eliminate those barriers. Additionally, in our *Order and Notice of Proposed Rule Making in MM Docket No. 96-16 (In the Matter of Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines)*, 11 FCC Rcd 5154 (1996), 61 FR 9964 (March 12, 1996), we invited comment as to whether relief should be afforded to stations: (1) based on small staff and what size staff would be considered sufficient for relief, e.g., 10 or fewer full-time employees; (2) based on operation in a small market; or (3) based on operation in a market with a small minority work force.

⁶⁰ 13 CFR 121.201, SIC 4833.

⁶¹ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92-S-1, Appendix A-9 (1995)*.

⁵⁶ 13 CFR § 120.121, SIC Code 4899.

⁵⁷ *1992 Economic Census Industry and Enterprise Receipts Size Report*, Table 2D, SIC 4899 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

⁵⁸ 13 CFR 121.201, SIC 4841.

commercial, religious, educational, and other television stations.⁶² Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.⁶³ Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.⁶⁴ There were 1,509 television stations operating in the nation in 1992.⁶⁵ That number has remained fairly constant as indicated by the approximately 1,550 operating television broadcasting stations in the nation as of August, 1996.⁶⁶ For 1992,⁶⁷ the number of television stations that produced less than \$10.0 million in revenue was 1,155 establishments.⁶⁸ Only commercial stations are subject to regulatory fees.

33. Additionally, the Small Business Administration defines a radio broadcasting station that has \$5 million or less in annual receipts as a small business.⁶⁹ A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.⁷⁰ Included in this industry are commercial, religious, educational, and other radio stations.⁷¹ Radio broadcasting stations which primarily are engaged in radio broadcasting and

⁶²Id. See *Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987)*, at 283, which describes "Television Broadcasting Stations" (SIC Code 4833) as:

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

⁶³Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *1992 Census of Transportation, Communications And Utilities, Establishment and Firm Size, Series UC92-S-1, Appendix A-9 (1995)*.

⁶⁴Id. SIC 7812 (Motion Picture and Video Tape Production); SIC 7922 (Theatrical Producers and Miscellaneous Theatrical Services) (producers of live radio and television programs).

⁶⁵FCC News Release No. 31327, January 13, 1993; Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce.

⁶⁶FCC News Release No. 64958, September 6, 1996.

⁶⁷Census for Communications' establishments are performed every five years ending with a "2" or "7". See Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce.

⁶⁸The amount of \$10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at \$9,999,999 and began at \$10,000,000. No category for \$10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

⁶⁹13 CFR 121.201, SIC 4832.

⁷⁰Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce.

⁷¹Id.

which produce radio program materials are similarly included.⁷² However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number.⁷³ The 1992 Census indicates that 96 percent (5,861 of 6,127) radio station establishments produced less than \$5 million in revenue in 1992.⁷⁴ Official Commission records indicate that 11,334 individual radio stations were operating in 1992.⁷⁵ As of August 1996, official Commission records indicate that 12,088 radio stations were operating.⁷⁶ Only commercial stations are subject to regulatory fees.

34. Thus, the NPRM adopted today will affect approximately 1,550 full power television stations; approximately 1,194 of those stations are considered small businesses,⁷⁷ and 12,088 full power radio stations, approximately 11,605 of which are small businesses.⁷⁸ These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television or non-radio affiliated companies. There are also 1,954 low power television stations (LPTV).⁷⁹ Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA definition.

Alternative Classification of Small Stations

35. An alternative way to classify small radio and television stations is the number of employees. The Commission currently applies a standard based on the number of employees in administering its Equal Employment Opportunity Rule (EEO) for broadcasting.⁸⁰ Thus, radio or television

⁷²Id.

⁷³Id.

⁷⁴The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.

⁷⁵FCC News Release No. 31327, January 13, 1993.

⁷⁶FCC News Release No. 64958, September 6, 1996.

⁷⁷We use the 77 percent figure of TV stations operating at less than \$10 million for 1992 and apply it to the 1996 total of 1550 TV stations to arrive at 1,194 stations categorized as small businesses.

⁷⁸We use the 96% figure of radio station establishments with less than \$5 million revenue from the Census data and apply it to the 12,088 individual station count to arrive at 11,605 individual stations as small businesses.

⁷⁹FCC News Release, *Broadcast Station Totals as of December 31, 1996*, No. 71831, January 21, 1997.

⁸⁰The Commission's definition of a small broadcast station for purposes of applying its EEO rules was adopted prior to the requirement of approval by the SBA pursuant to Section 3(a) of the

stations with fewer than five full-time employees are exempted from certain EEO reporting and record keeping requirements.⁸¹ We estimate that the total number of broadcast stations with 4 or fewer employees is approximately 4,239.⁸²

Auxiliary, Special Broadcast and Other Program Distribution Services

36. This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radio broadcasting stations (SIC 4832) and television broadcasting stations (SIC 4833).

37. There are currently 2,720 FM translators and boosters, 4,952 TV translators.⁸³ The FCC does not collect financial information on any broadcast facility and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe, however, that most, if not all, of these auxiliary facilities could be classified as small

Small Business Act, 15 U.S.C. § 632 (a), as amended by Section 222 of the Small Business Credit and Business Opportunity Enhancement Act of 1992, Public Law 102-366, § 222(b)(1), 106 Stat. 999 (1992), as further amended by the Small Business Administration Reauthorization and Amendments Act of 1994, Public Law 103-403, § 301, 108 Stat. 4187 (1994). However, this definition was adopted after the public notice and the opportunity for comment. See *Report and Order* in Docket No. 18244, 23 FCC 2d 430 (1970), 35 FR 8925 (June 6, 1970).

⁸¹See, e.g., 47 CFR § 73.3612 (Requirement to file annual employment reports on Form 395 applies to licensees with five or more full-time employees); First Report and Order in Docket No. 21474 (*Amendment of Broadcast Equal Employment Opportunity Rules and FCC Form 395*), 70 FCC 2d 1466 (1979), 50 FR 50329 (December 10, 1985). The Commission is currently considering how to decrease the administrative burdens imposed by the EEO rule on small stations while maintaining the effectiveness of our broadcast EEO enforcement. *Order and Notice of Proposed Rule Making in MM Docket No. 96-16 (Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines)*, 11 FCC Rcd 5154 (1996), 61 FR 9964 (March 12, 1996). One option under consideration is whether to define a small station for purposes of affording such relief as one with ten or fewer full-time employees.

⁸²Compilation of 1994 Broadcast Station Annual Employment Reports (FCC Form 395B), Equal Opportunity Employment Branch, Mass Media Bureau, FCC.

⁸³FCC News Release, *Broadcast Station Totals as of December 31, 1996*, No. 71831, January 21, 1997.

businesses by themselves. We also recognize that most translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (either \$5 million for a radio station or \$10.5 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a "small business concern" because they are not independently owned and operated.⁸⁴

38. Multipoint Distribution Service (MDS). This service involves a variety of transmitters, which are used to relay programming to the home or office, similar to that provided by cable television systems.⁸⁵ In connection with the 1996 MDS auction the Commission defined small businesses as entities who had annual average gross revenues for the three preceding years not in excess of \$40 million.⁸⁶ This definition of a small entity in the context of MDS auctions has been approved by the SBA.⁸⁷ These stations were licensed prior to implementation of Section 309(j) of the Act. Licenses for new MDS facilities are now awarded to auction winners in Basic Trading Areas (BTAs) and BTA-like areas.⁸⁸ The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 BTAs. Of the 67 auction winners, 61 meet the definition of a small business. There are 1,573 previously authorized and proposed MDS stations currently licensed. Thus, we conclude that there are 1,634 MDS providers that are small businesses as deemed by the SBA and the Commission's auction rules. It is estimated, however, that only 1,145 MDS licensees are subject to regulatory fees and the number which are small businesses is unknown.

⁸⁴ 15 U.S.C. § 632.

⁸⁵ For purposes of this item, MDS also includes single channel Multipoint Distribution Service (MDS) and Multipoint Distribution Service (MMDS) application and authorizations collectively.

⁸⁶ See 47 CFR § 1.2110 (a)(1).

⁸⁷ *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, 10 FCC Rcd 9589 (1995), 60 FR 36524 (July 17, 1995).

⁸⁸ Id. A Basic Trading Area (BTA) is the geographic area by which the Multipoint Distribution Service is licensed. See Rand McNally 1992 *Commercial Atlas and Marketing Guide*, 123rd Edition, pp. 36–39.

Wireless and Commercial Mobile Services

39. Cellular Licensees. Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. The closest applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies (SIC 4812). The most reliable source of information regarding the number of cellular services carriers nationwide of which we are aware appears to be the data that the Commission collects annually in connection with the *TRS Worksheet*.⁸⁹ According to the most recent data, 792 companies reported that they were engaged in the provision of cellular services.⁹⁰ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of cellular services carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 792 small cellular service carriers.

40. 220 MHz Radio Services. Since the Commission has not yet defined a small business with respect to 220 MHz radio services, we will utilize the SBA's definition applicable to radiotelephone companies—i.e., an entity employing less than 1,500 persons.⁹¹ With respect to the 220 MHz services, the Commission has proposed a two-tiered definition of small business for purposes of auctions: (1) For Economic Area (EA) licensees,⁹² a firm with average annual gross revenues of not more than \$6 million for the preceding three years; and (2) for regional and nationwide licensees, a firm with average annual gross revenues of not more than \$15 million for the preceding three years.⁹³ Since this definition has not yet been approved by the SBA, we will utilize the SBA's definition applicable to radiotelephone companies.

⁸⁹ Federal Communications Commission. CCB industry Analysis Division, *Telecommunication Industry Revenue: TRS Worksheet Data*, Tbl. 1 (Average Total Telecommunication Revenue Reported by Class of Carrier) (December 1996) (TRS Worksheet).

⁹⁰ Id.

⁹¹ 13 CFR § 121.201, SIC 4812.

⁹² Economic Area (EA) licenses refer to the 60 channels in the 172 geographic areas as defined by the Bureau of Economic Analysis, Department of Commerce. See *Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service, Second Memorandum Opinion and Order and Third Notice of Proposed Rule Making*, GN Docket 93–252, 10 FCC Rcd 6880 (1995), 60 FR 26861 (May 19, 1995).

⁹³ Id.

Given the fact that nearly all radiotelephone companies employ fewer than 1,500 employees,⁹⁴ with respect to the approximately 3,800 incumbent licensees in this service, we will consider them as small businesses under the SBA definition.

41. Private and Common Carrier Paging. The Commission has proposed a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. Under the proposal, a small business will be defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than \$3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than \$15 million. Since the SBA has not yet approved this definition for paging services, we will utilize the SBA's definition applicable to radiotelephone companies, i.e., an entity employing fewer than 1,500 persons.⁹⁵ At present, there are approximately 24,000 Private Paging licensees and 74,000 Common Carrier Paging licensees. We estimate that the majority of private and common carrier paging providers would qualify as small businesses under the SBA definition.

42. Mobile Service Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. The closest applicable definition under the SBA rules is for radiotelephone (wireless) companies. The most reliable source of information regarding the number of mobile service carriers nationwide of which we are aware appears to be the data that the Commission collects annually in connection with the *TRS Worksheet*. According to the most recent data, 117 companies reported that they were engaged in the provision of mobile services.⁹⁶ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of mobile service carriers that would qualify under the SBA's definition.

⁹⁴ See U.S. Bureau of the Census, U.S. Department of Commerce, 1992 *Census of Transportation, Communications, and Utilities, UC92–S–1*, Subject Series, Establishment and Firm Size, Tbl. 5, Employment Size of Firms; 1992, SIC 4812 (issued May 1995).

⁹⁵ 13 CFR § 121.201, SIC 4812.

⁹⁶ Id.

Consequently, we estimate that there are fewer than 117 small entity mobile service carriers.

43. Broadband Personal Communications Service (PCS). The broadband PCS spectrum is divided into six frequency blocks designated A through F and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.⁹⁷ For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.⁹⁸ These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F.⁹⁹ However, licenses for blocks C through F have not been awarded fully, therefore there are few, if any, small businesses currently providing PCS services. Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small PCS providers as defined by the SBA and the Commission's auction rules.

44. Narrowband PCS. The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA)

narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded in the auctions. Those auctions, however, have not yet been scheduled. Given the facts that nearly all radiotelephone companies have fewer than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

45. Rural Radiotelephone Service. The Commission has not adopted a definition of small business specific to the Rural Radiotelephone Service, which is defined in Section 22.99 of the Commission's Rules.¹⁰⁰ A significant subset of the Rural Radiotelephone Service is BETRS, or Basic Exchange Telephone Radio Systems (the parameters of which are defined in Sections 22.757 and 22.759 of the Commission's Rules). Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing fewer than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA's definition of a small business.¹⁰¹

46. Air-Ground Radiotelephone Service. The Commission has not adopted a definition of small business specific to the Air-Ground Radiotelephone Service, which is defined in Section 22.99 of the Commission's Rules.¹⁰² Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing fewer than 1,500 persons.¹⁰³ There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

47. Specialized Mobile Radio Licensees (SMR). Pursuant to 47 CFR § 90.814(b)(1), the Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz Specialized Mobile Radio (SMR) licenses to firms that had revenues of less than \$15 million in each of the three previous calendar years. This regulation defining "small entity" in the context of 800 MHz and 900 MHz SMR has been approved by the SBA.¹⁰⁴

48. The proposed fees in the NPRM applies to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than \$15 million. We do know that one of these firms has over \$15 million in revenues. We assume that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA.

49. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected includes these 60 small entities.

50. Private Land Mobile Radio Licensees (PLMR). These radios are used by companies of all sizes operating in all U.S. business categories. Because of the vast array of PLMR users, the Commission has not developed nor would it be possible to develop a definition of small entities specifically applicable to PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area.

51. The Commission is unable at this time to estimate the number of small businesses which could be impacted by the rules. However, the Commission's 1994 Annual Report on PLMRs¹⁰⁵ indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Further, because any entity engaged in a commercial activity is eligible to hold a PLMR license, these rules could potentially impact every small business in the U.S.

Allotted to the Specialized Mobile Radio Pool, PR Docket No. 89-583, Second Order on Reconsideration and Seventh Report and Order, 11 FCC Rcd 2639, 2693-702 (1995), 60 FR 48913 (September 21, 1995); Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making, 11 FCC Rcd 1463 (1995), 61 FR 6212 (February 16, 1996).

¹⁰⁵ Federal Communications Commission, *60th Annual Report, Fiscal Year 1994* at 116.

⁹⁷ See *Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order, FCC 96-278, WT Docket No. 96-59, paras. 57-60 (released June 24, 1996), 61 FR 33859 (July 1, 1996); see also 47 CFR § 24.720(b).*

⁹⁸ See *Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order, FCC 96-278, WT Docket No. 96-59, para. 60 (1996), 61 FR 33859 (July 1, 1996).*

⁹⁹ FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (released January 14, 1997).

¹⁰⁰ 47 CFR § 22.9.

¹⁰¹ 13 CFR § 121.201, SIC 4812.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ See *Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands*

52. Amateur Radio Service. We estimate that 10,000 applicants will apply for vanity call signs in FY 1997. All are presumed to be individuals. All other amateur licensees are exempt from payment of regulatory fees.

53. Aviation and Marine Radio Service. Small businesses in the aviation and marine radio services use a marine very high frequency (VHF) radio, any type of emergency position indicating radio beacon (EPIRB), and/or radar, a VHF aircraft radio, and/or any type of emergency locator transmitter (ELT). The Commission has not developed a definition of small entities specifically applicable to these small businesses. Therefore, the applicable definition of small entity is the definition under the Small Business Administration rules applicable to water transportation and transportation by air. This definition provides that a small entity is any entity employing less than 500 persons for water transportation, and 1,500 for transportation by air.¹⁰⁶ The Commission is unable at this time to make a meaningful estimate of the number of potential small businesses.

54. Most applicants for individual recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. Therefore, for purposes of our evaluations and conclusions in this FRFA, we estimate that there may be at least 712,000 potential licensees which are small businesses, as that term is defined by the SBA. We estimate, however, that only 22,250 will be subject to FY 1997 regulatory fees.

55. Microwave Video Services. Microwave services includes common carrier,¹⁰⁷ private operational fixed,¹⁰⁸ and broadcast auxiliary radio services.¹⁰⁹ At present, there are 22,015

common carrier licensees, approximately 61,670 private operational fixed licensees and broadcast auxiliary radio licensees in the microwave services. Inasmuch as the Commission has not yet defined a small business with respect to microwave services, we will utilize the SBA's definition applicable to radiotelephone companies—i.e., an entity with less than 1,500 persons.¹¹⁰ As for estimates regarding small businesses within the broadcast service, we rely on our estimates as discussed under mass media services. Although some of these companies may have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of microwave service providers other than broadcast licensees that would qualify under the SBA's definition.

56. Public Safety Radio Services. Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.¹¹¹ There are a total of approximately 127,540 licensees within these services. Governmental entities as well as private businesses comprise the licensees for these services. As we indicated in the introductory paragraph, all governmental entities with populations of less than 50,000 fall within the

services also include mobile TV pickups which relay signals from a remote location back to the studio.

¹¹⁰ 13 CFR § 121.201, SIC 4812.

¹¹¹ With the exception of the special emergency service, these services are governed by subpart B of Part 90 of the Commission's rules. 47 CFR §§ 90.15 through 90.27. The police service includes 26,608 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes 22,677 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of 40,512 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are 7,325 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The 9,480 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The 1,460 licensees in the Emergency Medical Radio Service (EMRS) use the 39 channels allocated to this service for emergency medical service communication related to the actual delivery of emergency medical treatment. 47 CFR § 90.15 through 90.27. The 19,478 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 CFR §§ 90.33 through 90.55.

definition of a small business.¹¹² There are approximately 37,566 governmental entities with populations of less than 50,000.¹¹³ All of these licensees are exempt from payment of regulatory fees.

57. Personal Radio Services. Personal radio services provide short-range, low power radio for personal communications, radio signalling and business communications not provided for in other services. These services include citizen band (CB) radio service, general mobile radio service (GMRS), radio control radio service, and family radio service (FRS).¹¹⁴ Inasmuch as the CB, GMRS, and FRS licensees are individuals, no small business definition applies for these services. We are unable at this time to estimate the number of licensees that would qualify as small under the SBA's definition, however, only GMRS licensees are subject to regulatory fees.

58. Offshore Radiotelephone Service. This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico.¹¹⁵ At present, there are approximately 55 licensees in this service. We are unable at this time to estimate the number of licensees that would qualify as small under the SBA's definition.

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

59. With certain exceptions, the Commission's Schedule of Regulatory Fees applies to all Commission licensees and regulatees. Most licensees will be required to count the number of licenses or call signs authorized, complete and submit an FCC Form 159, "FCC Remittance Advice," and pay a regulatory fee based on the number of licenses or call signs.¹¹⁶ Interstate

¹¹² 5 U.S.C. § 601(5).

¹¹³ United States Dept. of Commerce, Bureau of the Census, *1992 Census of Governments* (1992 Census).

¹¹⁴ Licensees in the Citizens Band (CB) Radio Service, General Mobile Radio Service (GMRS), Radio Control (R/C) Radio Service and Family Radio Service (FRS) are governed by subpart D, subpart A, subpart C, and subpart B, respectively, of Part 95 of the Commission's rules. 47 CFR §§ 95.401 through 95.428; §§ 95.1 through 95.181; §§ 95.201 through 95.225; 47 CFR §§ 95.191 through 95.194.

¹¹⁵ These licensees are governed by subpart I of part 22 of the Commission's rules. 47 CFR § 22.1001 through 22.1037.

¹¹⁶ 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)

¹⁰⁶ See 13 CFR § 121.201, SIC Major Group Code 44—Water Transportation (4491, 4492, 4493, 4499) and 45—Transportation by Air (4522, 4581).

¹⁰⁷ 47 CFR § 101 *et seq* (formerly part 21 of the Commission's rules).

¹⁰⁸ Persons eligible under Parts 80 and 90 of the Commission's rules can use private Operational Fixed Microwave services. See 47 CFR §§ 80 *et seq*, 90 *et seq*. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use an operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

¹⁰⁹ Broadcast Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's rules. See 47 CFR § 74 *et seq*. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points, such as a main studio and an auxiliary studio. The broadcast auxiliary microwave

telephone service providers must compute their annual regulatory fee based on their adjusted gross interstate revenue using information they already supply to the Commission in compliance with the TRS Fund, and they must complete and submit the FCC Form 159. Compliance with the fee schedule will require some licensees to tabulate the number of units (e.g., cellular telephones, pagers, cable TV subscribers) they have in service, 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.

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

61. Licensees and regulatees are advised that failure to submit the required regulatory fee in a timely manner will subject the licensee or regulatee to a late payment fee of an additional 25% in addition to the required fee.¹¹⁷ Until payment is received, no new or pending applications will be processed, and

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

¹¹⁷ 47 U.S.C. § 1.1164(a).

existing authorizations may be subject to rescission.¹¹⁸ Further, in accordance with the Debt Collection Improvement Act of 1996, federal agencies may bar a person or entity from obtaining a federal loan or loan insurance guarantees if that person or entity fails to pay a delinquent debt owed to any federal agency.¹¹⁹ Thus, debts owed to the Commission may result in a person or entity being denied a federal loan or loan guarantee pending before another federal agency until such obligations are paid.¹²⁰

62. The Commission's rules currently make provision for relief in exceptional circumstances. Persons or entities that believe they have been placed in the wrong regulatory fee category or are experiencing extraordinary and compelling financial hardship, upon a showing that such circumstances override the public interest in reimbursing the Commission for its regulatory costs, may request a waiver, reduction or deferment of payment of the regulatory fee.¹²¹ However, timely submission of the required regulatory fee must accompany requests for waivers or reductions. This will avoid any late payment penalty if the request is denied. The fee will be refunded if the request is granted. In exceptional and compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in reduction of service to a community or other financial hardship to the licensee), the Commission will accept a petition to defer payment along with a waiver or reduction request.

V. Significant Alternatives To Proposed Rule Which Minimize Significant Economic Impact on Small Entities and Accomplish Stated Objectives

63. *The Omnibus Consolidated Appropriation Act, Public Law 104-208*, requires the Commission to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress, pursuant to Section 9(a) of the Communications Act, as amended, has required it to collect for Fiscal Year (FY) 1997. *See! 47 U.S.C. § 159 (a). We seek comment on the proposed methodology for implementing these statutory requirements and any other potential impact of these proposals on small business entities.*

64. With the introduction of actual cost accounting data for computation of regulatory fees, we found that some fees which were very small in previous years

would have increased dramatically. The methodology proposed in this *NPRM* minimizes this impact by limiting the amount of increase and shifting costs to other services which, for the most part, are larger entities. We seek comment on this proposal.

65. Conversely, we have found that our costs for regulating commercial microwave (domestic public fixed) services are significantly lower than previously thought. We are, therefore, proposing to eliminate the annual "large" regulatory fee for domestic public fixed services and combining this fee category with the private microwave service with a single "microwave" designation. The impact on domestic public fixed licensees will be a reduction of the fee to a "small" up front payment for the entire license term applied only to new, modification and renewal applicants. Current domestic public fixed licensees would be exempt from payment of a regulatory fee until such time as they apply for a modification or renewal of their license.

66. This item also solicits alternative methodologies for assessing fees to recover the regulatory costs attributable to AM and FM radio stations. The radio industry has requested relief for small stations, and we currently have received two alternative proposals which are being evaluated. One would segment licensees by Arbitron radio markets in addition to station class.¹²² The other proposal would segment licensees by service area population in addition to station class.¹²³ The impact of adoption of either alternative proposal is unknown at this time, although either proposal could be expected to result in lower fees for smaller, less powerful stations relative to larger, more powerful stations in the same radio market; or stations potentially serving a larger population. We seek comment on these alternative proposals and the impact they may have on small entities.

67. Several categories of licensees and regulatees are exempt from payment of regulatory fees. See Footnote 3 *supra*.

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

68. None.

Attachment B—Sources of Payment Unit Estimates for FY 1997

In order to calculate individual service fees for FY 1997, we adjusted FY 1996 payment units for each service to

¹²² See discussion of Montana Broadcasters Association Comments at *NPRM* paragraphs 29-32 *supra*.

¹²³ See discussion of NAB Comments at *NPRM* paragraphs 33-36 *supra*.

¹¹⁸ 47 U.S.C. § 1.1164(c).

¹¹⁹ Public Law 104-134, 110 Stat. 1321 (1996).

¹²⁰ 31 U.S.C. § 7701(c)(2)(B).

¹²¹ 47 U.S.C. § 1.1166.

more accurately reflect expected FY 1997 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections when available. We tried to obtain verification for these estimates from multiple sources and, in all cases, we compared FY 1997 estimates with actual FY 1996 payment units to ensure that our revised

estimates were reasonable. Where it made sense, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated exactly. These include an unknown number of waivers and/or exemptions that may occur in FY 1997 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to

economic, technical or other reasons. Therefore, when we note, for example, that our estimated FY 1997 payment units are based on FY 1996 actual payment units, it does not necessarily mean that our FY 1997 projection is *exactly* the same number as FY 1996. It means that we have either rounded the FY 1997 number or adjusted it slightly to account for these variables.

Fee category	Sources of payment unit estimates
Land Mobile (All), Microwave, IVDS ¹²⁴ , 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 proposals to license portions of these services on a voluntary basis.
CMRS Mobile Services (incl. Cellular/Public Mobile Radio Services and Two Way Paging Services) ¹²⁵ .	Based on actual FY 1996 payment units adjusted to take into consideration industry estimates of growth between FY 1996 and FY 1997 and Wireless Telecommunications Bureau projections of new applications and average number of mobile units associated with each application.
CMRS One Way Paging Services	Based on industry estimates of the number of pager units in operation.
AM/FM Radio Stations	Based on actual FY 1996 payment units.
UHF/VHF Television Stations	Based on actual FY 1996 payment units.
AM/FM/TV Construction Permits	Based on actual FY 1996 payment units.
LPTV, Translators and Boosters	Based on actual FY 1996 payment units.
Auxiliaries	Based on actual FY 1996 payment units.
MDS/MMDS	Based on actual FY 1996 payment units.
Cable Antenna Relay Service (CARS)	Based on actual FY 1996 payment units.
Cable Television System Subscribers	Based on Cable Services Bureau and industry estimates of subscribership.
IXCs/LECs,CAPs, Other Service Providers	Based on actual FY 1996 interstate revenues associated with contributions to the Telecommunications Relay System (TRS) Fund, adjusted to take into consideration FY 1997 revenue growth in this industry as estimated by the Common Carrier Bureau.
Earth Stations	Based on actual FY 1996 payment units.
Space Stations & LEOs	Based on International Bureau licensee data bases.
International Bearer Circuits	Based on International Bureau estimate.
International HF Broadcast Stations, International Public Fixed Radio Service.	Based on actual FY 1996 payment units.

¹²⁴ The Wireless Telecommunications Bureau's staff advises that they do not anticipate receiving any applications for IVDS in FY 1997. Therefore, since there is no volume, there will be no regulatory fee in the IVDS category for FY 1997.

¹²⁵ Licensees in the PMRS were given until August of 1996 to decide whether to convert to CMRS. For FY 1997, we anticipate a substantial increase in the volume of licensees in the CMRS categories and a corresponding decrease in the number of licensees remaining in the PMRS category.

2:01 PM 2/27/97						Attachment C
CALCULATION OF REVENUE REQUIREMENTS						
Fee Category	FY 1997		(times)		(equals) Computed	Pro-Rated
	Payment Units	FY 1996 Fee	Payment Years	FY 1997 Revenue Requirement	Requirement	Requirement
LM (220 MHz, >470 MHz-Base, SMRS)	14,175	7	5	496,125		554,370
Private Microwave	5,350	7	10	374,500		418,466
IVDS	0	7	5	0		0
Marine (Ship)	18,750	3	10	562,500		628,538
GMRS/Other LM	81,500	3	5	1,222,500		1,366,022
Aviation (Aircraft)	3,500	3	10	105,000		117,327
Marine (Coast)	1,340	3	5	20,100		22,460
Aviation (Ground)	1,610	3	5	24,150		26,985
Amateur Vanity Call Signs	10,000	3	10	300,000		335,220
AM Class A	110	1,250	1	137,500		153,643
AM Class B	1,353	690	1	933,570		1,043,171
AM Class C	1,128	280	1	315,840		352,920
AM Class D	1,375	345	1	474,375		530,067
AM Construction Permits	38	140	1	5,320		5,945
FM Classes C,C1,C2,B	2,404	1,250	1	3,005,000		3,357,787
FM Classes A,B1,C3	3,140	830	1	2,606,200		2,912,168
FM Construction Permits	307	690	1	211,830		236,699
Satellite TV	101	690	1	69,690		77,872
Satellite TV Construction Permit	7	250	1	1,750		1,955
VHF Markets 1-10	43	32,000	1	1,376,000		1,537,542
VHF Markets 11-25	64	26,000	1	1,664,000		1,859,354
VHF Markets 26-50	78	17,000	1	1,326,000		1,481,672
VHF Markets 51-100	137	9,000	1	1,233,000		1,377,754
VHF Remaining Markets	225	2,500	1	562,500		628,538
VHF Construction Permits	5	5,550	1	27,750		31,008
UHF Markets 1-10	89	25,000	1	2,225,000		2,486,215
UHF Markets 11-25	86	20,000	1	1,720,000		1,921,928
UHF Markets 26-50	106	13,000	1	1,378,000		1,539,777
UHF Markets 51-100	163	7,000	1	1,141,000		1,274,953
UHF Remaining Markets	165	2,000	1	330,000		368,742
UHF Construction Permits	50	4,425	1	221,250		247,225
Auxiliaries	20,000	35	1	700,000		782,180
International HF Broadcast	6	280	1	1,680		1,877
LPTV/Translators/Boosters	2,200	190	1	418,000		467,073
CARS	1,640	325	1	533,000		595,574
Cable Systems	65,000,000	0.55	1	35,750,000		39,947,050
KC, LECs, CAPS, Others	59,685,000,000	0.00098	1	58,491,300		65,358,179
CMRS Mobile Services (Cellular/Public Mobile)	46,000,000	0.17	1	7,820,000		8,738,068
CMRS - One Way Paging	28,800,000	0.02	1	576,000		643,622
Domestic Public Fixed/Commercial Microwave	18,845	155	1	2,920,975		3,263,897
MDS/MMDS	1,144	155	1	177,320		198,137
International Circuits	164,000	4	1	656,000		733,014
International Public Fixed	15	225	1	3,375		3,771
Earth Stations	2,500	370	1	925,000		1,033,595
Space Stations (Geosynchronous)	41	70,575	1	2,893,575		3,233,281
Space Stations (Low Earth Orbit)	1	97,725	1	97,725		109,198
INTELSAT/INMARSAT Signatory	2	233,425	1	466,850		521,658
***** Total Estimated Revenue Collected				136,501,250		152,526,497
***** Total Revenue Requirement				152,523,000		152,523,000
Difference				(16,021,750)		3,497

201 PRR/2171					
CALCULATION OF REGULATORY COSTS					
Attachment D					
Fee Category	Actual FY 1996	Overhead & Other	Total Costs With Overhead	Total Costs Pro-Rated	Adjusted
	Regulatory Costs	Indirect Pro Rated	& Other Indirect Pro Rated	To \$162 Million**	Pro-Rated Costs***
LM (220 MHz, >470 MHz-Band, SMRS)	536,985	209,929	746,914	791,520	791,520
Private Microwave	897,318	350,797	1,248,116	1,322,653	1,322,653
TVDS	325,842	127,385	453,227	480,294	480,294
Marine (Ship)	4,010,683	1,567,935	5,578,618	5,911,773	5,911,773
GMRS/Other LM	4,534,058	1,772,543	6,306,601	6,663,231	6,663,231
Aviation (Aircraft)	633,302	247,583	880,885	933,492	933,492
Marine (Coast)	495,912	193,872	689,784	730,978	730,978
Aviation (Ground)	323,995	128,271	452,266	476,097	476,097
Amateur Vanity Call Signs	166,171	64,963	231,134	244,937	244,937
AM Radio	3,107,681	1,214,916	4,322,597	4,580,742	4,580,742
AM Class A					2,117,100
AM Class B					1,167,729
AM Class C					474,688
AM Class D					688,864
AM Construction Permits					237,343
FM Radio	5,734,251	2,241,746	7,975,997	8,482,323	8,482,323
FM Classes C,C1,C2,B					3,808,545
FM Classes A,B1,C3					2,535,697
FM Construction Permits					2,113,081
Satellite TV					75,870
Satellite TV Construction Permits					27,489
VHF Television	3,660,252	1,430,938	5,091,190	5,395,236	5,395,236
VHF Markets 1-10					1,886,640
VHF Markets 11-25					1,508,820
VHF Markets 26-50					966,340
VHF Markets 51-100					532,188
VHF Remaining Markets					145,056
VHF Construction Permits					322,011
UHF Television	2,549,806	996,820	3,546,627	3,758,431	3,758,431
UHF Markets 1-10					1,298,400
UHF Markets 11-25					1,038,720
UHF Markets 26-50					675,168
UHF Markets 51-100					349,522
UHF Remaining Markets					189,872
UHF Construction Permits					229,817
Auxiliaries	242,897	94,858	337,755	358,032	358,032
International HF Broadcast	211,016	82,495	293,511	311,039	311,039
LPTV/Translators/Boosters	258,297	100,978	359,275	380,731	380,731
CARS	56,147	21,960	78,098	83,762	83,762
Cable Systems	18,871,818	7,377,741	26,249,559	27,817,163	27,817,163
DC, LECs, CAPS, Others	37,116,528	14,511,102	51,627,630	54,712,953	54,712,953
CMRS Mobile Services (Cellular/Public Mobile)	8,656,765	3,384,272	12,041,038	12,760,129	12,760,129
CMRS - One Way Paging	649,651	253,974	903,625	957,590	957,590
Domestic Public Fixed/Commercial Microwave	61,900	24,199	86,099	91,241	91,241
MDS/MDS	798,729	312,355	1,111,084	1,177,332	1,177,332
International Circuits	4,766,610	1,863,456	6,630,066	7,026,013	7,026,013
International Public Fixed	22,621	8,844	31,465	33,344	33,344
Earth Stations	176,173	68,873	245,046	258,681	258,681
Space Stations (Geosynchronous)	4,596,437	1,796,929	6,393,367	6,775,179	6,775,179
Space Stations (Low Earth Orbit)	4,461	1,740	6,201	6,561	6,561
INTELSAT/INMARSAT Signatory	7,441	2,908	10,351	10,969	10,969
Overhead & Other Indirect Costs	40,452,376				1,096,127
**** Total	143,927,117	40,462,374	143,927,115	152,522,443	152,522,289
***** Total Revenue Requirement	152,523,000			152,523,000	152,523,000
Difference	(8,595,883)		(8,595,883)	(557)	(711)
** 1.0597 factor applied					(711)
*** The pro-rated costs shown in the previous column needed to be adjusted to accurately reflect full-year costs attributable to each international fee category. This was necessary because certain cost accounting fees associated with international activities were utilized for only a small portion of FY 1996. This resulted in a skewed allocation of costs. Actual activity FTEs were utilized to make this adjustment. In making these adjustments to international fee costs, overall costs attributable to international activities did not change. Additionally, adjustments were made in this column to sub-allocate actual TV and radio costs to markets and station class, respectively. This was accomplished on a proportional basis by the same ratios between the markets and classes as those which existed in the FY 1996 regulatory fees.					
Note: Columns may not add due to rounding.					

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Fee Category	Pre-Rated Revenue Requirement	Adjusted Activity Costs	Costs vs. Revenue Requirement Difference	CALCULATION OF FY 1997 REGULATORY FEES										Attachment E		
				Round 1 Target Revenue	Round 1 Adjustable Target Revenue	Round 1 Pro-Rated Target Revenue**	Round 2 Target Revenue	Round 2 Adjustable Target Revenue	Round 2 Pro-Rated Target Revenue**	Round 3 Target Revenue***	Computed New FY 1997 Regulatory Fee	Rounded New FY 1997 Regulatory Fee	Expected Revenue FY 1997			
LM (220 MHz, >40 MHz-Band, SMRS)	554,370	791,520	42.76%	692,963	692,963	692,963	692,963	692,963	692,963	692,963	692,963	692,963	692,963	692,963	692,963	708,750
Private Microwave	418,466	1,322,653	216.07%	523,083	523,083	523,083	523,083	523,083	523,083	523,083	523,083	523,083	523,083	523,083	523,083	535,000
IVDS	0	480,294		0	0	0	0	0	0	0	0	0	0	0	0	0
Marine (Ship)	628,538	5,911,773	840.56%	785,673	785,673	785,673	785,673	785,673	785,673	785,673	785,673	785,673	785,673	785,673	785,673	937,600
GMRS/Other LM	1,886,022	6,683,231	389.26%	1,707,528	1,707,528	1,707,528	1,707,528	1,707,528	1,707,528	1,707,528	1,707,528	1,707,528	1,707,528	1,707,528	1,707,528	2,037,600
Aviation (Aircraft)	117,927	933,492	695.63%	146,659	146,659	146,659	146,659	146,659	146,659	146,659	146,659	146,659	146,659	146,659	146,659	176,000
Marine (Coast)	25,460	730,978	3104.66%	28,076	28,076	28,076	28,076	28,076	28,076	28,076	28,076	28,076	28,076	28,076	28,076	33,600
Aviation (Ground)	28,985	476,097	1664.30%	33,731	33,731	33,731	33,731	33,731	33,731	33,731	33,731	33,731	33,731	33,731	33,731	40,250
Amateur Vanity Call Signs	335,220	244,937	-26.93%	244,937	244,937	244,937	244,937	244,937	244,937	244,937	244,937	244,937	244,937	244,937	244,937	600,000
AM Class A	153,643	2,117,100	1277.95%	192,054	192,054	192,054	192,054	192,054	192,054	192,054	192,054	192,054	192,054	192,054	192,054	192,600
AM Class B	1,043,171	1,167,728	11.94%	1,167,728	1,167,728	1,167,728	1,167,728	1,167,728	1,167,728	1,167,728	1,167,728	1,167,728	1,167,728	1,167,728	1,167,728	1,319,155
AM Class C	552,920	474,686	-34.50%	441,150	441,150	441,150	441,150	441,150	441,150	441,150	441,150	441,150	441,150	441,150	441,150	439,920
AM Class D	530,067	583,864	10.15%	583,864	583,864	583,864	583,864	583,864	583,864	583,864	583,864	583,864	583,864	583,864	583,864	749,375
AM Construction Permits	6,946	237,343	3892.31%	7,431	7,431	7,431	7,431	7,431	7,431	7,431	7,431	7,431	7,431	7,431	7,431	7,410
FM Classes G, I, C2, B	3,857,787	3,803,545	-13.28%	4,197,234	4,197,234	4,197,234	4,197,234	4,197,234	4,197,234	4,197,234	4,197,234	4,197,234	4,197,234	4,197,234	4,197,234	4,207,000
FM Classes A, B1, C3	2,912,168	2,535,697	-12.93%	3,242,142	3,242,142	3,242,142	3,242,142	3,242,142	3,242,142	3,242,142	3,242,142	3,242,142	3,242,142	3,242,142	3,242,142	3,611,000
FM Construction Permits	236,699	2,113,081	792.75%	295,874	295,874	295,874	295,874	295,874	295,874	295,874	295,874	295,874	295,874	295,874	295,874	313,625
Satellite TV	77,872	76,870	-2.57%	76,870	76,870	76,870	76,870	76,870	76,870	76,870	76,870	76,870	76,870	76,870	76,870	98,475
Satellite TV Construction Permit	1,955	27,489	1306.05%	2,444	2,444	2,444	2,444	2,444	2,444	2,444	2,444	2,444	2,444	2,444	2,444	2,450
VHF Markets 1-10	1,537,642	1,866,640	20.76%	1,821,928	1,866,640	1,866,640	1,866,640	1,866,640	1,866,640	1,866,640	1,866,640	1,866,640	1,866,640	1,866,640	1,866,640	1,922,100
VHF Markets 11-25	1,659,354	1,508,620	-18.87%	1,928,794	1,928,794	1,928,794	1,928,794	1,928,794	1,928,794	1,928,794	1,928,794	1,928,794	1,928,794	1,928,794	1,928,794	1,944,000
VHF Markets 26-50	1,481,673	986,340	-33.45%	1,852,090	986,340	986,340	986,340	986,340	986,340	986,340	986,340	986,340	986,340	986,340	986,340	1,271,400
VHF Markets 51-100	1,377,754	522,180	-62.10%	1,722,193	522,180	522,180	522,180	522,180	522,180	522,180	522,180	522,180	522,180	522,180	522,180	671,300
VHF Remaining Markets	628,538	145,050	-76.97%	785,673	145,050	145,050	145,050	145,050	145,050	145,050	145,050	145,050	145,050	145,050	145,050	186,750
VHF Construction Permits	31,008	322,011	938.46%	38,760	38,760	38,760	38,760	38,760	38,760	38,760	38,760	38,760	38,760	38,760	38,760	38,750
UHF Markets 1-10	2,186,218	1,298,400	-47.76%	3,107,169	1,298,400	1,298,400	1,298,400	1,298,400	1,298,400	1,298,400	1,298,400	1,298,400	1,298,400	1,298,400	1,298,400	1,673,300
UHF Markets 11-25	1,921,928	1,038,720	-46.96%	2,402,410	1,038,720	1,038,720	1,038,720	1,038,720	1,038,720	1,038,720	1,038,720	1,038,720	1,038,720	1,038,720	1,038,720	1,337,300
UHF Markets 26-50	1,539,777	675,168	-56.16%	1,924,721	675,168	675,168	675,168	675,168	675,168	675,168	675,168	675,168	675,168	675,168	675,168	869,200
UHF Remaining Markets	1,374,953	363,522	-71.49%	1,693,691	363,522	363,522	363,522	363,522	363,522	363,522	363,522	363,522	363,522	363,522	363,522	468,625
UHF Construction Permits	368,742	103,872	-71.89%	480,928	103,872	103,872	103,872	103,872	103,872	103,872	103,872	103,872	103,872	103,872	103,872	133,650
Auxiliaries	247,225	229,817	-7.04%	309,031	229,817	229,817	229,817	229,817	229,817	229,817	229,817	229,817	229,817	229,817	229,817	295,250
International HF Broadcast	782,180	358,032	-44.23%	977,725	358,032	358,032	358,032	358,032	358,032	358,032	358,032	358,032	358,032	358,032	358,032	600,000
LPTV/Translator/Boosters	1,677	432,682	22961.79%	2,346	2,346	2,346	2,346	2,346	2,346	2,346	2,346	2,346	2,346	2,346	2,346	2,340
CARS	595,574	82,761	-86.10%	744,469	82,761	82,761	82,761	82,761	82,761	82,761	82,761	82,761	82,761	82,761	82,761	106,600
Cable Systems	39,547,050	27,817,183	-30.36%	49,933,813	27,817,183	27,817,183	27,817,183	27,817,183	27,817,183	27,817,183	27,817,183	27,817,183	27,817,183	27,817,183	27,817,183	35,750,000
DC, LECs, CAPS, Others	65,859,179	54,712,952	-16.29%	81,697,724	54,712,952	54,712,952	54,712,952	54,712,952	54,712,952	54,712,952	54,712,952	54,712,952	54,712,952	54,712,952	54,712,952	70,423,300
CMRS Mobile Services (Cellular/Public M	8,738,068	12,760,129	46.03%	10,922,585	12,760,129	12,760,129	12,760,129	12,760,129	12,760,129	12,760,129	12,760,129	12,760,129	12,760,129	12,760,129	12,760,129	11,040,000
CMRS - One Way Paging	645,622	957,690	48.78%	804,528	957,690	957,690	957,690	957,690	957,690	957,690	957,690	957,690	957,690	957,690	957,690	864,000
Domestic Public Fixed/Commercial Micro	3,263,897	91,241	-97.20%	4,079,671	91,241	91,241	91,241	91,241	91,241	91,241	91,241	91,241	91,241	91,241	91,241	864,000
MDS/AMDS	198,137	1,177,332	494.20%	247,671	1,177,332	1,177,332	1,177,332	1,177,332	1,177,332	1,177,332	1,177,332	1,177,332	1,177,332	1,177,332	1,177,332	94,225
International Circuits	733,014	3,922,980	435.15%	916,268	3,922,980	3,922,980	3,922,980	3,922,980	3,922,980	3,922,980	3,922,980	3,922,980	3,922,980	3,922,980	3,922,980	245,960
International Public Fixed	3,771	100,959	2577.25%	4,714	100,959	100,959	100,959	100,959	100,959	100,959	100,959	100,959	100,959	100,959	100,959	820,000
Earth Stations	1,033,596	1,413,427	36.76%	1,291,994	1,413,427	1,413,427	1,413,427	1,413,427	1,413,427	1,413,427	1,413,427	1,413,427	1,413,427	1,413,427	1,413,427	1,287,500
Space Stations (Geosynchronous)	3,933,281	5,047,853	56.12%	4,041,601	5,047,853	5,047,853	5,047,853	5,047,853	5,047,853	5,047,853	5,047,853	5,047,853	5,047,853	5,047,853	5,047,853	4,041,575
Space Stations (Low Earth Orbit)	109,198	2,408,695	2105.71%	136,498	2,408,695	2,408,695	2,408,695	2,408,695	2,408,695	2,408,695	2,408,695	2,408,695	2,408,695	2,408,695	2,408,695	136,600
INTELSAT/INMARSAT Signatory	631,666	1,096,127	110.19%	652,073	1,096,127	1,096,127	1,096,127	1,096,127	1,096,127	1,096,127	1,096,127	1,096,127	1,096,127	1,096,127	1,096,127	652,050
***** Total Estimated Revenue Collected	152,526,497	152,522,290		190,658,121	124,498,467	100,582,768	152,520,826	151,129,837	119,128,429	152,523,639	152,523,639	152,523,639	152,523,639	152,523,639	152,523,639	163,189,710
***** Total Revenue Requirement	152,523,000	153,523,000		152,523,000	152,523,000	152,523,000	152,523,000	152,523,000	152,523,000	152,523,000	152,523,000	152,523,000	152,523,000	152,523,000	152,523,000	163,189,710
Difference	3,497	(710)		38,136,121	(28,024,533)		(2,174)	(1,383,163)	639							666,710

** 1.2766 factor applied
*** 1.0117 factor applied

Attachment F—FY 1997 Schedule of
Regulatory Fees

Fee category	Annual regulatory fee
PMRS (per license) (Formerly Land Mobile—Exclusive Use at 220–222 MHz, above 470 MHz, Base Station and SMRS) (47 CFR Part 90)	10
Microwave (per license) (47 CFR Part 101)	10
Interactive Video Data Service (per license) (47 CFR Part 95)	(1)
Marine (Ship) (per station) (47 CFR Part 80)	5
Marine (Coast) (per license) (47 CFR Part 80)	5
General Mobile Radio Service (per license) (47 CFR Part 95)	5
Land Mobile (per license) (all stations not covered by PMRS and CMRS)	5
Aviation (Aircraft) (per station) (47 CFR Part 87)	5
Aviation (Ground) (per license) (47 CFR Part 87)	5
Amateur Vanity Call Signs (per call sign) (47 CFR Part 97)	5
CMRS Mobile Services (per unit) (47 CFR Parts 20, 22, 24, 80 and 90) .....	.24
CMRS One-Way Paging (per unit) (47 CFR Parts 20, 22 and 90) .....	.03
Multipoint Distribution Services (per call sign) (47 CFR Part 21)	215
AM Radio (47 CFR Part 73):	
Class A	1,750
Class B	965
Class C	390
Class D	480
Construction Permits	195
FM Radio (47 CFR Part 73):	
Classes C, C1, C2, B	1,750
Classes A, B1, C3	1,050
Construction Permits	965
TV (47 CFR Part 73) VHF Commercial:	
Markets 1–10	44,700
Markets 11–25	30,500
Markets 26–50	16,350
Markets 51–100	4,925
Remaining Markets	835
Construction Permits	7,750
TV (47 CFR Part 73) UHF Commercial:	
Markets 1–10	18,875
Markets 11–25	15,625
Markets 26–50	8,250
Markets 51–100	2,875
Remaining Markets	815
Construction Permits	5,950
Satellite Television Stations (All Markets)	975
Construction Permits—Satellite Television Stations	350
Low Power TV, TV/FM Translators & Boosters (47 CFR Part 74)	225
Broadcast Auxiliary (47 CFR Part 74)	25
Cable Antenna Relay Service (47 CFR Part 78)	65
Cable Television Systems (per subscriber) (47 CFR Part 76) .....	.55
Interstate Telephone Service Providers (per revenue dollar) .....	.00119
Earth Stations (47 CFR Part 25)	515
Space Stations (per operational station in geosynchronous orbit) (47 CFR Part 25) also includes Direct Broadcast Satellite Service (per operational station) (47 CFR Part 100)	98,575
Low Earth Orbit Satellite (per operational system) (47 CFR Part 25)	136,500
INMARSAT/INTELSAT Signatory (per signatory)	326,025
International Circuits (per active 64KB circuit)	5
International Public Fixed (per call sign) (47 CFR Part 23)	315
International (HF) Broadcast (47 CFR Part 73)	390

¹ No fee.Attachment G—Comparison Between
FY 1996 and FY 1997 Proposed
Regulatory Fees

Fee category	Annual regulatory fee FY 1996	NPRM proposed fee FY 1997
PMRS (per license) (Formerly Land Mobile-Exclusive Use at 220–222 Mhz, above 470 Mhz, Base Station and SMRS) (47 CFR Part 90)	7	10
Microwave (per license) (47 CFR Part 101)	7	10
Interactive Video Data Service (per license) (47 CFR Part 95)	7	(1)

Fee category	Annual regulatory fee FY 1996	NPRM proposed fee FY 1997
Marine (Ship) (per station) (47 CFR Part 80)	3	5
Marine (Coast) (per license) (47 CFR Part 80)	3	5
General Mobile Radio Service (per license) (47 CFR Part 95)	3	5
Land Mobile (per license) (all stations not covered by PMRS and CMRS)	3	5
Aviation (Aircraft) (per station) (47 CFR Part 87)	3	5
Aviation (Ground) (per license) (47 CFR Part 87)	3	5
Amateur Vanity Call Signs (per call sign) (47 CFR Part 97)	3	5
CMRS Mobile Services (per unit) (47 CFR Parts 20, 22, 24, 80 and 90) .....	.17	.24
CMRS One-Way Paging (per unit) (47 CFR Parts 20, 22, and 90) .....	.02	.03
Domestic Public Fixed Radio	155	(²)
Multipoint Distribution Services (per call sign) (47 CFR Part 21)	155	215
AM Radio (47 CFR Part 73):		
Class A	1,250	1,750
Class B	690	965
Class C	280	390
Class D	345	480
Construction Permits	140	195
FM Radio (47 CFR Part 73):		
Classes C, C1, C2, B	1,250	1,750
Classes A, B1, C3	830	1,050
Construction Permits	690	965
TV (47 CFR Part 73) VHF Commercial:		
Markets 1-10	32,000	44,700
Markets 11-25	26,000	30,500
Markets 26-50	17,000	16,350
Markets 51-100	9,000	4,925
Remaining Markets	2,500	835
Construction Permits	5,550	7,750
TV (47 CFR Part 73) UHF Commercial:		
Markets 1-10	25,000	18,875
Markets 11-25	20,000	15,625
Markets 26-50	13,000	8,250
Markets 51-100	7,000	2,875
Remaining Markets	2,000	815
Construction Permits	4,425	5,950
Satellite Television Stations (All Markets)	690	975
Construction Permits—Satellite Television Stations	250	350
Low Power TV, TV/FM Translators & Boosters (47 CFR Part 74)	190	225
Broadcast Auxiliary (47 CFR Part 74)	35	25
Cable Antenna Relay Service (47 CFR Part 78)	35	65
Earth Stations (47 CFR Part 25)	370	515
Cable Television Systems (per subscriber) (47 CFR Part 76) .....	.55	.55
Interstate Telephone Service Providers (per revenue dollar) .....	.00098	.00119
Space Stations (per operational station in geosynchronous orbit) (47 CFR Part 25) also includes Direct Broadcast Satellite Service (per operational station) (47 CFR Part 100)	70,575	98,575
Low Earth Orbit Satellite (per operational system) (47 CFR Part 25)	97,725	136,500
INMARSAT/INTELSAT Signatory (per signatory)	233,425	326,025
International Circuits (per active 64KB circuit)	4	5
International Public Fixed (per call sign) (47 CFR Part 23)	225	315
International (HF) Broadcast (47 CFR Part 73)	280	390

¹ No fee.

² See microwave.

Attachment H—Detailed Guidance on Who Must Pay Regulatory Fees

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

to the fee schedule, and the comments of the parties in our proceeding to adopt fees for FY 1995. The categories and amounts set out in the schedule have been modified to reflect changes in the number of payment units, additions and changes in the services subject to the fee requirement and the benefits derived from the Commission's regulatory activities, and to simplify the structure of the schedule. The schedule may be similarly modified or adjusted in future years to reflect changes in the Commission's budget and in the

services regulated by the Commission. See 47 U.S.C. § 159(b)(2), (3).

2. *Exemptions.* Governments and nonprofit entities are exempt from paying regulatory fees and should not submit payment. A nonprofit entity may be asked to submit a current IRS Determination Letter documenting that it is exempt from taxes under Section 501 of the Internal Revenue Code or the certification of a governmental authority attesting to its nonprofit status. The governmental exemption applies even where the government-owned or community-owned facility is in

competition with a commercial operation. Other specific exemptions are discussed below in the descriptions of other particular service categories.

1. Private Wireless Radio Services

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

a. Exclusive Use Services

4. *Private Mobile Radio Services (PMRS) (Formerly Land Mobile Services)*: Regulatees in this category include those authorized under Part 90 of the Commission's Rules to provide limited access Wireless Radio service that allows high quality voice or digital communications between vehicles or to fixed stations to further the business activities of the licensee. These services, using the 220–222 MHz band and frequencies at 470 MHz and above, may be offered on a private carrier basis in the Specialized Mobile Radio Services (SMRS).¹²⁶ For FY 1997, we are proposing that PMRS licensees will pay a \$10 annual regulatory fee per license, payable for an entire five or ten year license term at the time of application for a new, renewal, or reinstatement license.¹²⁷ The total regulatory fee due

¹²⁶This category only applies to licensees of shared-use private 220–222 MHz and 470 MHz and above in the Specialized Mobile Radio (SMR) service who have elected not to change to the Commercial Mobile Radio Service (CMRS). Those who have elected to change to the CMRS are referred to paragraph 14 of this Attachment.

¹²⁷Although this fee category includes licenses with ten-year terms, the estimated volume of ten-year license applications in FY 1997 is less than

is either \$50 for a license with a five year term or \$100 for a license with a 10 year term.

5. *Microwave Services*: These services include private and commercial microwave systems and private and commercial carrier systems authorized under Part 101 of the Commission's Rules to provide telecommunications services between fixed points on a high quality channel of communications. Microwave systems are often used to relay data and to control railroad, pipeline, and utility equipment. Commercial systems typically are used for video or data transmission or distribution. For FY 1997, we are proposing that Microwave licensees will pay a \$10 annual regulatory fee per license, payable for an entire ten year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is \$100 for the ten year license term.

6. *Interactive Video Data Service (IVDS)*: The IVDS is a two-way, point-to-multi-point radio service allocated high quality channels of communications and authorized under Part 95 of the Commission's Rules. The IVDS provides information, products, and services, and also the capability to obtain responses from subscribers in a specific service area. The IVDS is offered on a private carrier basis. The Commission does not anticipate receiving any applications in the IVDS during FY 1997. Therefore, for FY 1997, we are proposing that there be no regulatory fee established for IVDS licensees.

b. Shared Use Services

7. *Marine (Ship) Service*: This service is a shipboard radio service authorized under Part 80 of the Commission's Rules to provide telecommunications between watercraft or between watercraft and shore-based stations. Radio installations are required by domestic and international law for large passenger or cargo vessels. Radio equipment may be voluntarily installed on smaller vessels, such as recreational boats. The Telecommunications Act of 1996 gave the Commission the authority to license certain ship stations by rule rather than by individual license. Private boat operators sailing entirely within domestic U.S. waters and who are not otherwise required by treaty or agreement to carry a radio, are no longer required to hold a marine license, and they will not be required to pay a regulatory fee. For FY 1997, we are proposing that parties required to be

one-tenth of one percent and, therefore, is statistically insignificant.

licensed and those choosing to be licensed for Marine (Ship) Stations will pay a \$5 annual regulatory fee per station, payable for an entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is \$50 for the ten year license term.

8. *Marine (Coast) Service*: This service includes land-based stations in the maritime services, authorized under Part 80 of the Commission's Rules, to provide communications services to ships and other watercraft in coastal and inland waterways. For FY 1997, we are proposing that licensees of Marine (Coast) Stations will pay a \$5 annual regulatory fee per call sign, payable for the entire five-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is \$25 per call sign for the five-year license term.

9. *Private Land Mobile (Other) Services*: These services include Land Mobile Radio Services operating under Parts 90 and 95 of the Commission's Rules. Services in this category provide one- or two-way communications between vehicles, persons or fixed stations on a shared basis and include radiolocation services, industrial radio services, and land transportation radio services. For FY 1997, we are proposing that licensees of services in this category will pay a \$5 annual regulatory fee per call sign, payable for an entire five-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is \$25 for the five-year license term.

10. *Aviation (Aircraft) Service*: These services include stations authorized to provide communications between aircraft and between aircraft and ground stations and include frequencies used to communicate with air traffic control facilities pursuant to Part 87 of the Commission's Rules. The Telecommunications Act of 1996 gave the Commission the authority to license certain aircraft radio stations by rule rather than by individual license. Private aircraft operators flying entirely within domestic U.S. airspace and who are not otherwise required by treaty or agreement to carry a radio are no longer required to hold an aircraft license, and they will not be required to pay a regulatory fee. For FY 1997, we are proposing that parties required to be licensed and those choosing to be licensed for Aviation (Aircraft) Stations will pay a \$5 annual regulatory fee per station, payable for the entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is

\$50 per station for the ten-year license term.

11. *Aviation (Ground) Service*: This service includes stations authorized to provide ground-based communications to aircraft for weather or landing information, or for logistical support pursuant to Part 87 of the Commission's Rules. Certain ground-based stations which only serve itinerant traffic, i.e., possess no actual units on which to assess a fee, are exempt from payment of regulatory fees. For FY 1997, we are proposing that licensees of Aviation (Ground) Stations will pay a \$5 annual regulatory fee per license, payable for the entire five-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee is \$25 per call sign for the five-year license term.

12. *General Mobile Radio Service (GMRS)*: These services include Land Mobile Radio licensees providing personal and limited business communications between vehicles or to fixed stations for short-range, two-way communications pursuant to Part 95 of the Commission's Rules. For FY 1997, we are proposing that GMRS licensees will pay a \$5 annual regulatory fee per license, payable for an entire five-year license term at the time of application for a new, renewal or reinstatement license. The total regulatory fee due is \$25 per license for the five-year license term.

c. Amateur Radio Vanity Call Signs

13. *Amateur Vanity Call Signs*: This fee covers voluntary requests for specific call signs in the Amateur Radio Service authorized under part 97 of the Commission's Rules. For FY 1997, we are proposing that applicants for Amateur Vanity Call-Signs will pay a \$5 annual regulatory fee per call sign, payable for an entire ten-year license term at the time of application for a vanity call sign. The total regulatory fee due would be \$50 per license for the ten-year license term.¹²⁸

d. Commercial Wireless Radio Services

14. *Commercial Mobile Radio Services (CMRS) Mobile Services*: The Commercial Mobile Radio Service (CMRS) is an "umbrella" descriptive term attributed to various existing services authorized to provide interconnected mobile radio services for profit to the public, or to such classes of eligible users as to be effectively

¹²⁸ Section 9(h) exempts "amateur radio operator licenses under Part 97 of the Commission's rules (47 CFR Part 97)" from the requirement. However, Section 9(g)'s fee schedule explicitly includes "Amateur vanity call signs" as a category subject to the payment of a regulatory fee.

available to a substantial portion of the public. CMRS Mobile Services include certain licensees which formerly were licensed as part of the Private Radio Services (e.g., Specialized Mobile Radio Services) and others formerly licensed as part of the Common Carrier Radio Services (e.g., Public Mobile Services and Cellular Radio Service). While specific rules pertaining to each covered service remain in separate Parts 22, 24, 80 and 90, general rules for CMRS are contained in Part 20. CMRS Mobile Services will include: qualifying Business Radio Services, 220-222 MHz Land Mobile Systems, Specialized Mobile Radio Services (Part 90);¹²⁹ Personal Communications Services (Part 24), Public Coast Stations (Part 80); Public Mobile Radio (Cellular, 800 MHz Air-Ground Radiotelephone, and Offshore Radio Services) (Part 22). Each licensee in this group will pay an annual regulatory fee for each mobile or cellular unit (mobile or cellular call sign or telephone number), including two-way paging units, assigned to its customers, including resellers of its services. For FY 1997, we are proposing that the regulatory fee be \$.24 per unit.

15. *Commercial Mobile Radio Services (CMRS) One-Way Paging Services*: The Commercial Mobile Radio Service (CMRS) is an "umbrella" descriptive term attributed to various existing services authorized to provide interconnected mobile radio services for profit to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public. CMRS One-Way Paging Services include certain licensees which formerly were licensed as part of the Private Radio Services (e.g., Private Paging), licensees formerly licensed as part of the Common Carrier Radio Services (e.g., Public Mobile One-Way Paging), and licensees of Personal Communications Service (PCS) one-way paging. While specific rules pertaining to each covered service remain in separate Parts 22, 24 and 90, general rules for CMRS are contained in Part 20. We have replaced the Public Mobile One-Way Paging regulatory fee category with a CMRS One-Way Paging Services

¹²⁹ This category does not include licensees of private shared-use 220 MHz and 470 MHz and above in the Specialized Mobile Radio (SMR) service who have elected to remain non-commercial. Those who have elected not to change to the Commercial Mobile Radio Service (CMRS) are referred to paragraph 4 of this Attachment. Further, Congress provided for a three year transition period until August 10, 1996, for conversion to CMRS. See Omnibus Budget Reconciliation Act of 1993, Public Law 103-66, Title VI § 6002(b), 107 Stat. 312,392. Therefore, licensees who had not converted to CMRS prior to December 31, 1995, are not subject to the CMRS Mobile Services fee for FY 1996.

category for regulatory fee collection purposes. Each licensee in the CMRS One-Way Paging Services will pay an annual regulatory fee for each paging unit assigned to its customers, including resellers of its services. For FY 1997, we are proposing that the regulatory fee be \$.03 per unit.

2. *Mass Media Services*

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

a. Commercial AM and FM Radio

17. These categories include licensed Commercial AM (Classes A, B, C, and D) and FM (Classes A, B, B1, C, C1, C2, and C3) Radio Stations operating under Part 73 of the Commission's Rules.¹³⁰ We are proposing that the regulatory fees for AM and FM Stations for FY 1997 are as follows:

AM Radio

Class A.....	\$1,750
Class B.....	965
Class C.....	390
Class D.....	480

FM Radio

Classes C, C1, C2, B.....	\$1,750
Classes A, B1, C3.....	1,050

b. Construction Permits—Commercial AM Radio

18. This category includes holders of permits to construct new Commercial AM Stations. For FY 1997, we are proposing that permittees will pay a fee of \$195 for each permit held. Upon issuance of an operating license, this fee would no longer be applicable and licensees would be required to pay the applicable fee for the designated class of the station.

c. Construction Permits—Commercial FM Radio

19. This category includes holders of permits to construct new Commercial FM Stations. For FY 1997, we are proposing that permittees will pay a fee of \$965 for each permit held. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a regulatory fee based upon the designated class of the station.

¹³⁰ The Commission acknowledges that certain stations operating in Puerto Rico and Guam have been assigned a higher level station class than would be expected if the station were located on the mainland. Although this results in a higher regulatory fee, we believe that the increased interference protection associated with the higher station class is necessary and justifies the fee.

d. Commercial Television Stations

20. This category includes licensed Commercial VHF and UHF Television Stations covered under Part 73 of the Commission's Rules, except commonly owned Television Satellite Stations, addressed separately below. Markets are Nielsen Designated Market Areas (DMA) as listed in the *Television & Cable Factbook*, Stations Volume No. 64, 1996 Edition, Warren Publishing, Inc. We are proposing that the fees for each category of station are as follows:

VHF Markets 1-10	\$44,700
VHF Markets 11-25	30,500
VHF Markets 26-50	16,350
VHF Markets 51-100	4,925
VHF Remaining Markets.....	835
UHF Markets 1-10	18,875
UHF Markets 11-25	15,625
UHF Markets 26-50	8,250
UHF Markets 51-100.....	2,875
UHF Remaining Markets	815

e. Commercial Television Satellite Stations

21. We are proposing that commonly owned Television Satellite Stations in any market (authorized pursuant to Note 5 of Section 73.3555 of the Commission's Rules) that retransmit programming of the primary station be assessed a fee of \$975 annually. Those stations designated as Television Satellite Stations in the 1996 Edition of the *Television and Cable Factbook* are subject to the fee applicable to Television Satellite Stations. All other television licensees are subject to the regulatory fee payment required for their class of station and market.

f. Construction Permits—Commercial VHF Television Stations

22. This category includes holders of permits to construct new Commercial VHF Television Stations. For FY 1997, we are proposing that VHF permittees will pay an annual regulatory fee of \$7,750. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a fee based upon the designated market of the station.

g. Construction Permits—Commercial UHF Television Stations

23. This category includes holders of permits to construct new UHF Television Stations. For FY 1997, we are proposing that UHF Television permittees will pay an annual regulatory fee of \$5,950. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a fee based upon the designated market of the station.

h. Construction Permits—Satellite Television Stations

24. We are proposing that the fee for UHF and VHF Television Satellite Station construction permits for FY 1997 be \$350. An individual regulatory fee payment is to be made for each Television Satellite Station construction permit held.

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

25. This category includes Low Power UHF/VHF Television stations operating under Part 74 of the Commission's Rules with a transmitter power output limited to 1 kW for a UHF facility and, generally, 0.01 kW for a VHF facility. Low Power Television (LPTV) stations may retransmit the programs and signals of a TV Broadcast Station, originate programming, and/or operate as a subscription service. This category also includes translators and boosters operating under Part 74 which rebroadcast the signals of full service stations on a frequency different from the parent station (translators) or on the same frequency (boosters). The stations in this category are secondary to full service stations in terms of frequency priority. We have also received requests for waivers of the regulatory fees from operators of community based Translators. These Translators are generally not affiliated with commercial broadcasters, are nonprofit, non-profitable, or only marginally profitable, serve small rural communities, and are supported financially by the residents of the communities served. We are aware of the difficulties these Translators have in paying even minimal regulatory fees, and we have addressed those concerns in the ruling on reconsideration of the FY 1994 *Report and Order*. Community based Translators are exempt from regulatory fees. For FY 1997, we are proposing that licensees in low power television, FM translator and booster, and TV translator and booster category will pay a regulatory fee of \$225 for each license held.

j. Broadcast Auxiliary Stations

26. This category includes licensees of remote pickup stations (either base or mobile) and associated accessory equipment authorized pursuant to a single license, Aural Broadcast Auxiliary Stations (Studio Transmitter Link and Inter-City Relay) and Television Broadcast Auxiliary Stations (TV Pickup, TV Studio Transmitter Link, TV Relay) authorized under Part 74 of the Commission's Rules. Auxiliary

Stations are generally associated with a particular television or radio broadcast station or cable television system. This category does not include translators and boosters (see paragraph 26). For FY 1997, we are proposing that licensees of Commercial Auxiliary Stations will pay a \$25 annual regulatory fee on a per call sign basis.

k. Multipoint Distribution Service

27. This category includes Multipoint Distribution Service (MDS), and Multichannel Multipoint Distribution Service (MMDS), authorized under Part 21 of the Commission's Rules to use microwave frequencies for video and data distribution within the United States. For FY 1997, we are proposing that MDS and MMDS stations will pay an annual regulatory fee of \$215 per call sign.

3. Cable Services

a. Cable Television Systems

28. This category includes operators of Cable Television Systems, providing or distributing programming or other services to subscribers under Part 76 of the Commission's Rules. For FY 1997, we are proposing that Cable Systems will pay a regulatory fee of \$.55 per subscriber.¹³¹ Payments for Cable Systems are to be made on a per subscriber basis as of December 31, 1995. Cable Systems should determine their subscriber numbers by calculating the number of single family dwellings, the number of individual households in multiple dwelling units, e.g., apartments, condominiums, mobile home parks, etc., paying at the basic subscriber rate, the number of bulk rate customers and the number of courtesy or fee customers. In order to determine the number of bulk rate subscribers, a system should divide its bulk rate charge by the annual subscription rate for individual households. See FY 1994 *Report and Order*, Appendix B at Paragraph 31.

b. Cable Antenna Relay Service

29. This category includes Cable Antenna Relay Service (CARS) stations used to transmit television and related audio signals, signals of AM and FM Broadcast Stations, and cablecasting from the point of reception to a terminal point from where the signals are distributed to the public by a Cable Television System. For FY 1997, we are proposing that licensees will pay an

¹³¹ Cable systems are to pay their regulatory fees on a per subscriber basis rather than per 1,000 subscribers as set forth in the statutory fee schedule. See FY 1994 *Report and Order* at Paragraph 100.

annual regulatory fee of \$65 per CARS license.

4. Common Carrier Services

a. Domestic Public Fixed Radio Service

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

b. Interstate Telephone Service Providers

31. This category includes Inter-Exchange Carriers (IXCs), Local Exchange Carriers (LECs), Competitive Access Providers (CAPs), domestic and international carriers that provide operator services, Wide Area Telephone

Service (WATS), 800, 900, telex, telegraph, video, other switched, interstate access, special access, and alternative access services either by using their own facilities or by reselling facilities and services of other carriers or telephone carrier holding companies, and companies other than traditional local telephone companies that provide interstate access services to long distance carriers and other customers. This category also includes pre-paid calling card providers. These common carriers, including resellers, must submit fee payments based upon their proportionate share of gross interstate revenues using the methodology that we have adopted for calculating contributions to the TRS fund. See *Telecommunications Relay Services*, 8 FCC Rcd 5300 (1993), 58 FR 39671 (July 26, 1993). In order to avoid imposing any double payment burden on resellers, we will permit carriers to subtract from their gross interstate

revenues, as reported to NECA in connection with their TRS contribution, any payments made to underlying common carriers for telecommunications facilities and services, including payments for interstate access service, that are sold in the form of interstate service. For this purpose, resold telecommunications facilities and services are only intended to include payments that correspond to revenues that will be included by another carrier reporting interstate revenue. For FY 1997, we are proposing that carriers multiply their adjusted gross revenue figure (gross revenue reduced by the total amount of their payments to underlying common carriers for telecommunications facilities or services) by the factor 0.00119 to determine the appropriate fee for this category of service. Regulatees may want to use the following worksheet to determine their fee payment:

	Total	Interstate
(1) Revenue reported in TRS Fund worksheets
(2) Less: Access charges paid
(3) Less: Other telecommunications facilities and services taken for resale
(4) Adjusted revenues (1)minus(2)minus(3)
(5) Fee factor	0.00119
(6) Fee due (4)times(5)

5. International Services

a. Earth Stations

32. Very Small Aperture Terminal (VSAT) Earth Stations, equivalent C-Band Earth Stations and antennas, and earth station systems comprised of very small aperture terminals operate in the 12 and 14 GHz bands and provide a variety of communications services to other stations in the network. VSAT systems consist of a network of technically-identical small Fixed-Satellite Earth Stations which often include a larger hub station. VSAT Earth Stations and C-Band Equivalent Earth Stations are authorized pursuant to Part 25 of the Commission's Rules. *Mobile Satellite Earth Stations*, operating pursuant to Part 25 of the Commission's Rules under blanket licenses for mobile antennas (transceivers), are smaller than one meter and provide voice or data communications, including position location information for mobile platforms such as cars, buses, or trucks.¹³² *Fixed-Satellite Transmit/*

Receive and Transmit-Only Earth Station antennas, authorized or registered under Part 25 of the Commission's Rules, are operated by private and public carriers to provide telephone, television, data, and other forms of communications. Included in this category are telemetry, tracking and control (TT&C) earth stations, and earth station uplinks. For FY 1997, we are proposing that licensees of VSATs, Mobile Satellite Earth Stations, and Fixed-Satellite Transmit/Receive and Transmit-Only Earth Stations will pay a fee of \$515 per authorization or registration *as well as a separate fee of \$515 for each associated Hub Station.*

33. *Receive-only earth stations.* For FY 1997, we are proposing that there be no regulatory fee for receive-only earth stations.

b. Space Stations (Geosynchronous)

34. Geosynchronous Space Stations are domestic and international satellites positioned in orbit to remain approximately fixed relative to the earth. Most are authorized under Part 25 of the Commission's Rules to provide communications between satellites and earth stations on a common carrier and/or private carrier basis. In addition, this category includes Direct Broadcast

Satellite (DBS) Service which includes space stations authorized under Part 100 of the Commission's rules to transmit or re-transmit signals for direct reception by the general public encompassing both individual and community reception. For FY 1997, we are proposing that entities authorized to operate geosynchronous space stations (including DBS satellites) will be assessed an annual regulatory fee of \$98,575 per operational station in orbit. Payment is required for any geosynchronous satellite that has been launched and tested and is authorized to provide service.

c. Low Earth Orbit Satellites (LEOs)

35. Low Earth Orbit Satellite Systems are space stations that orbit the earth in non-geosynchronous orbit. They are authorized under Part 25 of the Commission's rules to provide communications between satellites and earth stations on a common carrier and/or private carrier basis. For FY 1997, we are proposing that entities authorized to operate Low Earth Orbit Satellite Systems will be assessed an annual regulatory fee of \$136,500 per operational system in orbit. Payment is required for any LEO System that has one or more operational satellites.

¹³² Mobile earth stations are hand-held or vehicle-based units capable of operation while the operator or vehicle is in motion. In contrast, transportable units are moved to a fixed location and operate in a stationary (fixed) mode. Both are assessed the same regulatory fee for FY 1997.

d. Signatories

36. A *Signatory to INMARSAT* is an Administration or government, or the telecommunications entity designated as sole operating entity by an Administration or government, which participates in the International Mobile Satellite Organization (INMARSAT) in order to develop and operate a global maritime satellite telecommunication system which serves maritime commercial and safety needs of the United States and foreign countries. A *Signatory to INTELSAT* is an Administration or government, or the telecommunications entity designated as sole operating entity by an Administration or government, which participates in the International Telecommunications Satellite Organization (INTELSAT) in order to develop, construct, operate, and maintain the space segment of the global commercial telecommunications satellite system established under the Interim Agreement and Special Agreement signed by Governments on August 20, 1964. For FY 1997, we are proposing that Signatories to INMARSAT and INTELSAT will be assessed an annual regulatory fee of \$326,025 in order to recover the cost of the Commission's regulatory activities associated with such entities.

e. International Bearer Circuits

37. Regulatory fees for International Bearer Circuits are to be paid by the facilities-based common carriers (either domestic or international) activating the circuit in any transmission facility for the provision of service to an end user or resale carrier. Payment of the fee for bearer circuits by private submarine cable operators is required for circuits sold on an indefeasible right of use (IRU) basis or leased to any customer other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. *Compare* FY 1994 *Report and Order* at 5367. The fee is based upon active 64 Kbps circuits, or their equivalent circuits. Under this formulation, 64 Kbps circuits or their equivalent will be assessed a fee. Equivalent circuits include the 64 Kbps circuit equivalent of larger bit stream circuits. For example, the 64 Kbps circuit equivalent of a 2.048 Mbps circuit is 30 64 Kbps circuits. Analog circuits such as 3 and 4 KHz circuits used for international service are also included as 64 Kbps circuits. However, circuits derived from 64 Kbps circuits by the use of digital circuit multiplication systems are not equivalent 64 Kbps circuits. Such

circuits are not subject to fees. Only the 64 Kbps circuit from which they have been derived will be subject to payment of a fee. For FY 1997, we are proposing that the regulatory fee be \$5.00 for each active 64 Kbps circuit or equivalent. For analog television channels we will assess fees as follows:

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

f. International Public Fixed

38. This fee category includes common carriers authorized under Part 23 of the Commission's Rules to provide radio communications between the United States and a foreign point via microwave or HF troposcatter systems, other than satellites and satellite earth stations, but not including service between the United States and Mexico and the United States and Canada using frequencies above 72 MHz. For FY 1997, we are proposing that International Public Fixed Radio Service licensees will pay a \$315 annual regulatory fee per call sign.

g. International (HF) Broadcast

39. This category covers International Broadcast Stations licensed under Part 73 of the Commission's Rules to operate on frequencies in the 5,950 KHz to 26,100 KHz range to provide service to the general public in foreign countries. For FY 1997, we are proposing that International HF Broadcast Stations will pay an annual regulatory fee of \$390 per station license.

Attachment I—Description of FCC Activities

Authorization of Service: The authorization or licensing of radio stations, telecommunications equipment, and radio operators, as well as the authorization of common carrier and other services and facilities. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with authorization activities.¹³³

Policy and Rulemaking: Formal inquiries, rulemaking proceedings to establish or amend the Commission's rules and regulations, action on

¹³³ Although Authorization of Service is described in this exhibit, it is *not* one of the activities included as a feeable activity for regulatory fee purposes pursuant to Section 9(a)(1) of the Act. 47 U.S.C. § 159(a)(1).

petitions for rulemaking, and requests for rule interpretations or waivers; economic studies and analyses; spectrum planning, modeling, propagation-interference analyses, and allocation; and development of equipment standards. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with policy and rulemaking activities.

Enforcement: Enforcement of the Commission's rules, regulations and authorizations, including investigations, inspections, compliance monitoring, and sanctions of all types. Also includes the receipt and disposition of formal and informal complaints regarding common carrier rates and services, the review and acceptance/rejection of carrier tariffs, and the review, prescription and audit of carrier accounting practices. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with enforcement activities.

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 630 and 678

[I.D. 022897G]

Atlantic Swordfish Fishery; Atlantic Shark Fishery; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public hearings; request for comments.

SUMMARY: The Highly Migratory Species Division (HMS Division) will convene 12 hearings to obtain comments from the public on Draft Amendment 1 to the