under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 22, 2010.

Ervin J. Barchenger,

Regional Director, Mid-Continent Region.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 10–87; FCC 10–51]

Assessment and Collection of Regulatory Fees for Fiscal Year 2010

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission will revise its Schedule of Regulatory Fees in order to recover an amount of $335,794,000 that Congress has required the Commission to collect for fiscal year 2010. Section 9 of the Communications Act of 1934, as amended, provides for the annual assessment and collection of regulatory fees under sections 9(b)(2) and 9(b)(3), respectively, for annual "Mandatory Adjustments" and "Permitted Amendments" to the Schedule of Regulatory Fees.

DATES: Comments are due May 4, 2010, and reply comments are due May 11, 2010.

ADDRESSES: You may submit comments, identified by MD Docket No. 10–87, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://www.fcc.gov/cgb/ecfs.* Follow the instructions for submitting comments.
- *E-mail: ecfs@fcc.gov.* Include MD Docket No. 10–87 in the subject line of the message.
- *Mail:* Commercial overnight mail (other than U.S. Postal Service Express Mail, and Priority Mail, must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

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

SUPPLEMENTARY INFORMATION:

Adopted: April 12, 2010.

Released: April 13, 2010.

By the Commission.

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I. Introduction

1. In this *Notice of Proposed Rulemaking,* we propose to collect $335,794,000 in regulatory fees for Fiscal Year ("FY") 2010, pursuant to section 9 of the Communications Act of 1934, as amended (the "Act"). Section 9 regulatory fees are mandated by Congress and are collected to recover the regulatory costs associated with the Commission's enforcement, policy and rulemaking, user information, and international activities.[1] The annual regulatory fee amount to be collected is established each year in the Commission's Annual Appropriations Act which is adopted by Congress and signed by the President and which funds the Commission.[2] In this annual regulatory fee proceeding, we retain many of the established methods, policies, and procedures for collecting section 9 regulatory fees adopted by the Commission in prior years. Consistent with our established practice, we intend to collect these regulatory fees during an August 2010 filing window in order to collect the required amount by the end of our fiscal year.

A. FY 2010 Regulatory Fee Assessment Methodology

2. In our FY 2010 regulatory fee assessment, we will use the same section 9 regulatory fee assessment methodology adopted in FY 2009. Each fiscal year, the Commission proportionally allocates the total amount that must be collected via section 9 regulatory fees. The results of our FY 2010 regulatory fee assessment methodology (including a comparison to the prior year's results) are contained in Appendix A. To collect the $335,794,000 required by Congress, we adjust the FY 2009 amount downward by 1.8 percent and allocate this amount across the various fee categories. Consistent with past practice, we then divide the FY 2010 amount by the number of estimated payment units in each fee category to determine the unit fee.[3] As in prior years, for cases involving small fees, *e.g.*, licenses that are renewed over a multiyear term, we divide the resulting unit fee by the term of the license and then rounded these unit fees consistent with the requirements of section 9(b)(2) of the Act.

3. In calculating the FY 2010 regulatory fees listed in Appendix B, we further adjusted the FY 2009 list of payment units (*see* Appendix C) based upon licensee databases, industry and trade group projections, as well as prior year payment information. In some instances, Commission licensee databases were used; in other instances, actual prior year payment records and/or industry and trade association projections were used in determining the payment unit counts.[4] Where appropriate, we adjusted and rounded our final estimates to take into consideration events that may impact the number of units for which regulatees submit payment, such as waivers and exemptions that may be filed in FY 2010, and fluctuations in the number of licenses or station operators due to economic, technical, or other reasons. Our estimated FY 2010 payment units, therefore, are based on several variable factors that are relevant to each fee category. The fee rate also may be rounded or adjusted slightly to account for these variables.

1. AM and FM Radio Stations

4. As in previous years, we consider the additional factors of facility attributes and the population served by each radio station in determining regulatory fees for AM and FM radio stations. The calculation of the population served is determined by coupling current U.S. Census Bureau data with technical and engineering data, as detailed in Appendix D. Consequently, the population served, as well as the class and type of service (AM or FM), will continue to determine the amount of regulatory fee to be paid.[5]

2. Submarine Cable Methodology

5. In its *Second Report and Order* ("*Submarine Cable Order*") released on March 24, 2009, the Commission adopted a new submarine cable bearer circuit methodology that assessed regulatory fees on a per cable landing license basis, with higher fees for larger submarine cable systems and lower fees for smaller systems, without distinguishing between common

[1] 47 U.S.C. 159(a).

[2] *See* Consolidated Appropriations Act, 2010, Public Law 111–117 for the FY 2010 appropriations act language for the Commission establishing the amount of $335,794,000 of offsetting collections to be assessed and collected by the Commission pursuant to section 9 of the Communications Act.

[3] In many instances, the regulatory fee amount is a flat fee per licensee or regulatee. In some instances, the fee amount represents a per-unit fee (such as for International Bearer Circuits), a per-unit subscriber fee (such as for Cable, Commercial Mobile Radio Service ("CMRS") Cellular/Mobile and CMRS Messaging), or a fee factor per revenue dollar (Interstate Telecommunications Service Provider ("ITSP") fee). The payment unit is the measure upon which the fee is based, such as a licensee, regulatee, or subscriber fee.

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

[5] In addition, beginning in FY 2005, we established a procedure by which we set regulatory fees for AM and FM radio and VHF and UHF television Construction Permits each year at an amount no higher than the lowest regulatory fee for a licensed station in that respective service category. For example, in FY 2009 the regulatory fee for an AM radio station Construction Permit was no higher than the regulatory fee for an AM Class C radio station serving a population of less than 25,000.

carriers and non-common carriers.[6] For all other categories of international bearer circuits—common carrier and non-common carrier satellite facilities and common carrier terrestrial facilities—the *Submarine Cable Order* retained the existing regulatory fee methodology of assessing fees on a per 64 kbps circuit basis.

6. In the *Submarine Cable Order* and in the *FY 2009 Regulatory Fees Report and Order*,[7] the Commission allocated the total FY 2009 bearer circuit expected revenue into two revenue components: A submarine cable revenue component (87.6 percent) and a satellite/terrestrial revenue component (12.4 percent) using the Consensus Proposal allocation adopted by the Commission in the *Submarine Cable Order*.[8] According to the Consensus Proposal, this allocation of 87.6 percent (submarine cable) and 12.4 percent (satellite/terrestrial) was calculated by determining the revenue obligations of submarine cable systems with the revenue obligations of the satellite and terrestrial facilities using the FY 2008 revenue requirement as its basis.[9] Since we do not have any additional information that would lead us to change this allocation percentage for FY 2010, we propose to continue to use the allocation percentages of 87.6 percent (submarine cable) and 12.4 percent (satellite and terrestrial) for calculating FY 2010 submarine cable regulatory fees. Consistent with the Commission's annual process of updating its schedule of regulatory fees with recent data, however, we reserve the right to re-examine the allocation percentages described above on an annual basis.

B. Regulatory Fee Obligations for Digital Full Service Television Broadcasters

7. In our *FY 2009 Report and Order*, we stated that, beginning in FY 2010, we plan to collect regulatory fees from digital broadcasters, and we sought comment on this plan to collect regulatory fees on full-power digital broadcast stations beginning with FY 2010, *i.e.,* the fiscal year after the nation-wide transition date on June 12, 2009.[10] Since the digital transition on June 12, 2009 has eliminated the distinction between digital and analog full-service television stations, the digital-only exemption will no longer apply beginning in FY 2010. Beginning in FY 2010, we will collect annual regulatory fees from all digital full-service television stations, and the "digital-only" exemption will no longer be applicable. Also, because this is the first year following the Commission's transition to digital full service television, it is possible that some facilities may be operating under a Special Temporary Authority (STA) beginning on October 1, 2009 until the digital license is issued. For FY 2010 regulatory fee purposes, these facilities operating under an STA will be considered to be fully operational licensed facilities and will be obligated to pay the same regulatory fee as a licensed full-service television station.

C. Regulatory Fee Obligations for Digital Low Power, Class A, and TV Translators/Boosters

8. Although the digital transition of full-service television stations was completed on June 12, 2009, the digital transition for Low Power, Class A, and TV Translators/Boosters is still voluntary, and there is currently no set date for the completion of this transition. Historically, the discussion of digital transition conversion with respect to regulatory fees has applied only to full-service television stations, and therefore, the elimination of the "digital only" exemption described in the above paragraph has no impact on this class of regulatees. Because the digital transition in the Low Power, Class A, and TV Translators/Booster facilities is voluntary and the transition will occur over a period time, it is possible that some facilities will convert from analog to digital more quickly than others. During this interim transition period, licensees of Low Power, Class A, and TV Translator/Booster facilities could be operating in analog mode, in digital mode, or in an analog and digital simulcast mode. For regulatory fee purposes, a fee will be assessed for each facility operating either in an analog or digital mode. In instances in which a licensee is operating in both an analog and digital mode as a simulcast, a single regulatory fee will be assessed for this analog facility that has a digital companion channel. As greater numbers of facilities convert to digital mode, the Commission will provide revised instructions on how regulatory fees will be assessed.

D. Commercial Mobile Radio Service Messaging Service

9. Commercial Mobile Radio Service ("CMRS") Messaging Service, which replaced the CMRS One-Way Paging fee category in 1997, includes all narrowband services.[11] Since 1997, the number of subscribers has declined from 40.8 million to 6.5 million, and there does not appear to be any sign of recovery to the subscriber levels of 1997–1999. Maintaining the fee at the existing level of $.08 per subscriber is the minimum reasonable and appropriate action to take under the prevailing circumstances in the paging industry. We propose in FY 2010 to continue maintaining the regulatory fee rate at $0.08 per subscriber due to the declining subscriber base in this industry.[12] We seek comment on this proposal.

E. Administrative and Operational Issues

10. In FY 2009, the Commission implemented several changes in procedures which simplified the payment and reconciliation processes of FY 2009 regulatory fees. These changes proved to be very helpful to both licensees and to the Commission, and we propose in the following paragraphs to expand upon these improvements. In FY 2010, the Commission will promote greater use of technology (and less use of paper) to improve the regulatory fee notification and collection process. We seek general comment on ways to promote greater use of technology in collecting regulatory fees.

1. Mandatory Use of Fee Filer

11. In *FY 2009,* we instituted a mandatory filing requirement using the Commission's electronic filing and payment system (also known as "Fee Filer").[13] Licensees filing their annual regulatory fee payments were required to begin the process by entering the Commission's Fee Filer system with a valid FRN and password. This change was beneficial to both licensees and to the Commission. For example, for licensees, the mandatory use of Fee Filer eliminated the need to manually complete and submit a hardcopy Form 159, and for the Commission, the data in electronic format made it much easier to process payments more efficiently and effectively. Because of the success of this process change, we propose to continue to make the use of Fee Filer for filing annual regulatory fees mandatory. We seek comment on this proposal. As

[6] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2008,* Second Report and Order, 24 FCC Rcd 4208, para. 1 (March 24, 2009) ("*Submarine Cable Order*").

[7] *See FY 2009 Report and Order* at Appendix B.

[8] *See Submarine Cable Order* at paragraphs 1 and 6.

[9] *Id.* at 6.

[10] *Id.* at para. 13.

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

[12] Between FY 1997 and FY 2009, the subscriber base in the paging industry declined 84 percent from 40.8 million to 6.5 million subscribers, according to FY 2009 collections data as of September 30, 2009.

[13] *FY 2009 Report and Order* at paragraphs 20 and 21.

in FY 2009, the mandatory use of Fee Filer does not mean that licensees are expected to pay only through Fee Filer—it is only mandatory for licensees to begin the process of filing their annual regulatory fees using Fee Filer. This is one reason it is very important for licensees to have a current and valid FRN address on file in the Commission's Registration System (CORES). Going forward, only Form 159–E documents generated from Fee Filer will be permitted when sending in a regulatory fee payment to U.S. Bank. These Form 159–E's not only will reduce errors resulting from illegible handwriting on hardcopy Form 159's, but, because they are generated from Fee Filer, these forms also will create an electronic record of licensee payment attributes that are more easily tracked and searched than hardcopy Form 159's that are completed manually and mailed to the Commission.

2. Notification and Collection of Regulatory Fees

a. Pre-bills

12. In prior years, the Commission mailed pre-bills via surface mail to licensees in select regulatory fee categories: Interstate telecommunications service providers ("ITSPs"), Geostationary ("GSO") and Non-Geostationary ("NGSO") satellite space station licensees,[14] holders of Cable Television Relay Service ("CARS") licenses, and Earth Station licensees.[15] The remaining regulatees did not receive pre-bills. In our *FY 2009 Report and Order,* the Commission decided to have the attributes of these pre-bills viewed in Fee Filer, rather than mailing pre-bills out to licensees via surface mail.[16] Although the overall response to this procedural change was positive, it was apparent that a greater effort should have been made to inform licensees that they would not be receiving a hardcopy regulatory fee bill in the mail. In FY 2010, the Commission will continue to reduce its use of hardcopy documents by not mailing out annual regulatory fee bills, but the Commission is seeking to increase its efforts in notifying licensees that hardcopy regulatory fee bills will not be mailed out. We seek comment on how to most efficiently and effectively notify licensees that hardcopy regulatory fee bills will not be mailed out, but that, instead, the amount and attributes of the bills will be available in Fee Filer for review.

II. Procedural Matters

13. Included below are procedural items as well as our current payment and collection methods, which we have revised over the past several years to expedite the processing of regulatory fee payments. We include these payments and collection procedures here as a useful way of reminding regulatory fee payers and the public about these aspects of the annual regulatory fee collection process.

A. Public Notices and Fact Sheets

14. Each year we post public notices and fact sheets pertaining to regulatory fees on our Web site. These documents contain information about the payment due date and the regulatory fee payment procedures. We will continue to post this information on *http://www.fcc.gov/fees/regfees.html*, but as in previous years we will not send out public notices and fact sheets to regulatees *en masse.*

B. Assessment Notifications

1. Media Services Licensees

15. Beginning in FY 2003, we sent fee assessment notifications via surface mail to media services entities on a per-facility basis.[17] The notifications provided the assessed fee amount for the facility in question, as well as the data attributes that determined the fee amount. We have since refined this initiative with improved results.[18] Consistent with procedures used last year, we will mail out media assessment notifications to licensees in FY 2010 at their primary record of contact populated in our Consolidated Database System ("CDBS"), and to a secondary record of contact, if available.[19] However, after FY 2010, as part of the Commission's initiative to emphasize electronic filing and reduce paper usage, the Commission will stop mailing out media notification assessments to media licensees. Instead the Commission will rely more on its various Web sites, including the Commission-authorized Web site at *http://www.fccfees.com*, to notify licensees of pending annual regulatory fees and to update or correct any information regarding their facilities and their fee-exempt status.[20] We seek comment on our proposal to discontinue sending out media notification letters after the FY 2010 regulatory fee season.

16. The decision to discontinue mailing media notifications beginning in FY 2011 is consistent with the Commission's effort to become more electronic and less paper-oriented. However, the Commission understands that not all media licensees are able to access the Commission's various electronic Web sites once the hardcopy notification letters are discontinued in FY 2011. Therefore, to be receptive to the needs of these licensees, the Commission will leave the comment and reply comment period open until September 30, 2010 on the specific issue of whether the media notification letters should be discontinued in FY 2011. Because this decision does not impact FY 2010 regulatory fees, we will be addressing this issue in the Commission's FY 2011 *Notice of Proposed Rulemaking* after we have had the chance to review the various

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

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

[16] *See FY 2009 Report and Order* at paragraphs 24, 26.

[17] As stated previously at footnote 41, an assessment is a proposed statement of the amount of regulatory fees owed by an entity to the Commission (or proposed subscriber count to be ascribed for purposes of setting the entity's regulatory fee) but it is not entered into the Commission's accounting system as a current debt.

[18] Some of those refinements have been to provide licensees with a Commission-authorized Web site to update or correct any information concerning their facilities, and to amend their fee-exempt status, if need be. Also, our notifications now provide licensees with a telephone number to call in the event that they need customer assistance. The notifications themselves have been refined so that licensees of fewer than four facilities receive individual fee assessment postcards for their facilities; whereas licensees of four or more facilities now receive a single assessment letter that lists all of their facilities and the associated regulatory fee obligation for each facility.

[19] We will issue fee assessments for AM and FM Radio Stations, AM and FM Construction Permits, FM Translators/Boosters, VHF and UHF Television Stations, VHF and UHF Television Construction Permits, Satellite Television Stations, Low Power Television ("LPTV") Stations and LPTV Translators/Boosters, to the extent that applicants, permittees and licensees of such facilities do not qualify as government entities or non-profit entities. As in prior years, fee assessments will not be issued for broadcast auxiliary stations.

[20] If there is a change of address for the facility, it is the licensee's responsibility to make the address change in the Media Bureau's CDBS system, as well as in the Commission's Registration System ("CORES"). There is also a Commission-authorized Web site that media services licensees can use to view and update their exempt status (*http://www.fccfees.com*).

comments and reply comments that have been submitted. In addition to raising this issue in this document, the Commission will also remind media licensees of this proposed change in notification procedures when it sends out letters to media licensees later in the fiscal year regarding their FY 2010 regulatory fee obligations. To ensure that the comments of all potentially affected persons are properly included in the record, media licensees should submit their comments and reply comments on this issue as follows:

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/*or the Federal eRulemaking Portal: *http://www.regulations.gov*.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Effective December 28, 2009, all hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

17. Although the Commission will mail media assessment notifications to licensees in FY 2010, all licensees (including media services) will be required to use Fee Filer as the first step in paying their regulatory fee obligations. The notification assessments provide licensees with the same media data attributes found on Fee Filer; however, receiving this information in FY 2010 via mail notification does not obviate, nor should it be considered a substitute for, using Fee Filer as the first step in filing and paying annual regulatory fees. As explained previously, licensees must first log onto the Commission's Fee Filer system to begin the process of filing and paying their regulatory fees, but once in Fee Filer, licensees may pay by check or money order, credit card, or wire transfer. A Form 159–E generated from Fee Filer is required, even when mailing in the annual regulatory fee payment.

2. CMRS Cellular and Mobile Services Assessments

18. As we have done in prior years, we will mail an initial assessment letter to Commercial Mobile Radio Service (CMRS) providers using data from the Numbering Resource Utilization Forecast ("NRUF") report that is based on "assigned" number counts that have been adjusted for porting to net Type 0 ports ("in" and "out").[21] The letter will include a listing of the carrier's Operating Company Numbers ("OCNs") upon which the assessment is based.[22] The letters will not include OCNs with their respective assigned number counts, but rather, an aggregate total of assigned numbers for each carrier.

19. If the carrier does not agree with the number of subscribers listed on the initial assessment letter, providers will have an opportunity within a specific timeframe to revise their subscriber counts by submitting supporting documentation to substantiate the change. However, instead of mailing the revised figures, providers will be asked to access Fee Filer and follow the instructions provided in order to submit their revised subscriber count along with any supporting documentation.[23] The Commission will then review the revised count and supporting documentation and either approve or disapprove the submission in Fee Filer. The provider will be able to review the decision online in Fee Filer. If the submission is disapproved, the Commission will also attempt to contact the provider so that the provider will have an opportunity to discuss its revised subscriber count and/or provide additional supporting documentation. If we receive no response or correction to the initial assessment letter, or we do not reverse the disapproval of the provider's revised count submission, we will expect the fee payment to be based on the number of subscribers listed on the initial assessment. Once the timeframe for revision has passed, the subscriber counts will be finalized. These subscriber counts will then be the basis upon which CMRS regulatory fees will be expected. Providers will be able to view their final subscriber counts online in Fee Filer. A final CMRS assessment letter will not be mailed out.

20. Because some carriers do not file the NRUF report, they may not receive an initial letter of assessment. In these instances, the carriers should compute their fee payment using the standard methodology[24] that is currently in place for CMRS Wireless services (*e.g.,* compute their subscriber counts as of December 31, 2009), and submit their fee payment accordingly. Whether a carrier receives an assessment letter or not, the Commission reserves the right to audit the number of subscribers for which regulatory fees are paid. In the event that the Commission determines that the number of subscribers paid is inaccurate, the Commission will bill the carrier for the difference between what was paid and what should have been paid.

C. Streamlined Regulatory Fee Payment Process

1. Cable Television Subscribers

21. We will continue to permit cable television operators to base their regulatory fee payment on their company's aggregate year-end subscriber count, rather than requiring them to sub-report subscriber counts on a per community unit identifier ("CUID") basis.

2. CMRS Cellular and Mobile Providers

22. In FY 2006, we streamlined the CMRS payment process by eliminating the requirement for CMRS providers to identify their individual call signs when making their regulatory fee payment, instead allowing CMRS providers to pay their regulatory fees only at the aggregate subscriber level without having to identify their various call signs.[25] We will continue this practice in FY 2010. In FY 2007, we consolidated the CMRS cellular and CMRS mobile fee categories into one fee category with a single fee code, thereby eliminating the requirement for CMRS providers to separate their subscriber counts into CMRS cellular and CMRS mobile fee categories during the regulatory fee payment process. This consolidation of fee categories enabled the Commission to process payments more quickly and accurately. For FY 2010, we will continue this practice of combining the CMRS cellular and

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

[22] *Id.*

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

[24] *See, e.g.,* Federal Communications Commission, *Regulatory Fees Fact Sheet: What You Owe—Commercial Wireless Services for FY 2009* at 1 (rel. September 2009).

[25] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2006,* MD Docket No. 06–68, Report and Order, 21 FCC Rcd 8092, 8105, para. 48 (2006).

CMRS mobile fee categories into one regulatory fee category.

3. Interstate Telecommunications Service Providers ("ITSP")

23. In FY 2007, we adopted a proposal to round lines 14 (total subject revenues) and 16 (total regulatory fee owed) on FCC Form 159–W to the nearest dollar. This revision enabled the Commission to process the ITSP regulatory fee payments more quickly because rounding was performed in a consistent manner and eliminated processing issues that occurred in prior years. In FY 2010, we will continue rounding lines 14 and 16 when calculating the FY 2010 ITSP fee obligation. In addition, as in FY 2009, we will continue the practice of not mailing out Form 159–W via surface mail.

D. Payment of Regulatory Fees

1. Lock Box Bank

24. All lock box payments to the Commission for FY 2010 will be processed by U.S. Bank, St. Louis, Missouri, and payable to the FCC. During the regulatory fee season, for those licensees paying by check, money order, or by credit card using Form 159–E remittance advice, the fee payment and Form 159–E remittance advice should be mailed to the following address: Federal Communications Commission, Regulatory Fees, P.O. Box 979084, St. Louis, MO 63197–9000. Additional payment options and instructions are posted at *http://www.fcc.gov/fees/regfees.html*.

2. Receiving Bank for Wire Payments

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

3. De Minimis Regulatory Fees

26. Regulatees whose total FY 2010 regulatory fee liability, including all categories of fees for which payment is due, is less than $10 are exempted from payment of FY 2010 regulatory fees.

4. Standard Fee Calculations and Payment Dates

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

- *Media Services:* Regulatory fees must be paid for initial construction permits (including construction permits for digital television stations) that were granted on or before October 1, 2009 for AM/FM radio stations, analog VHF/UHF full service television stations, and satellite television stations. Regulatory fees must be paid for all broadcast facility licenses granted on or before October 1, 2009. In instances where a permit or license is transferred or assigned after October 1, 2009, responsibility for payment rests with the holder of the permit or license as of the fee due date.
- *Wireline (Common Carrier) Services:* Regulatory fees must be paid for authorizations that were granted on or before October 1, 2009. In instances where a permit or license is transferred or assigned after October 1, 2009, responsibility for payment rests with the holder of the permit or license as of the fee due date. We note that audio bridging service providers are included in this category.[26]
- *Wireless Services:* CMRS cellular, mobile, and messaging services (fees based on number of subscribers or telephone number count): Regulatory fees must be paid for authorizations that were granted on or before October 1, 2009. The number of subscribers, units, or telephone numbers on December 31, 2009 will be used as the basis from which to calculate the fee payment. In instances where a permit or license is transferred or assigned after October 1, 2009, responsibility for payment rests with the holder of the permit or license as of the fee due date.
- The first eleven regulatory fee categories in our Schedule of Regulatory Fees (*see* Appendix B) pay "small multi-year wireless regulatory fees." Entities pay these regulatory fees in advance for the entire amount of their five-year or ten-year term of initial license, and only pay regulatory fees again when the license is renewed or a new license is obtained. We include these fee categories in our Schedule of Regulatory Fees to publicize our estimates of the number of "small multi-year wireless" licenses that will be renewed or newly obtained in FY 2010.
- *Multichannel Video Programming Distributor Services (cable television operators and CARS licensees):* Regulatory fees must be paid for the number of basic cable television subscribers as of December 31, 2009.[27] Regulatory fees also must be paid for CARS licenses that were granted on or before October 1, 2009. In instances where a permit or license is transferred or assigned after October 1, 2009, responsibility for payment rests with the holder of the permit or license as of the fee due date.
- *International Services:* Regulatory fees must be paid for earth stations, geostationary orbit space stations and non-geostationary orbit satellite systems that were licensed and operational on or before October 1, 2009. In instances where a permit or license is transferred or assigned after October 1, 2009, responsibility for payment rests with the holder of the permit or license as of the fee due date.
- *International Services: Submarine Cable Systems:* Regulatory fees for submarine cable systems are to be paid on a per cable landing license basis based on circuit capacity as of December 31, 2009. In instances where a license is transferred or assigned after October 1, 2009, responsibility for payment rests with the holder of the license as of the fee due date.
- *International Services: Terestrial and Satellite Services:* Finally, regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers that have active (used or leased) international bearer circuits as of December 31, 2009 in any terrestrial or satellite transmission facility for the provision of service to an end user or resale carrier, which includes active circuits to themselves or to their affiliates. In addition, non-common carrier satellite operators must

[26] Audio bridging services are toll teleconferencing services, and audio bridging service providers are required to contribute directly to the universal service fund based on revenues from these services. On June 30, 2008, the Commission released the *InterCall Order,* in which the Commission stated that InterCall, Inc. and all similarly situated audio bridging service providers are required to contribute directly to the universal service fund. *See Request for Review by InterCall, Inc. of Decision of Universal Service Administrator,* CC Docket No. 96–45, Order, 23 FCC Rcd 10731 (2008) ("*InterCall Order*").

[27] Cable television system operators should compute their basic subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, *etc.*) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Operators may base their count on "a typical day in the last full week" of December 2009, rather than on a count as of December 31, 2009.

pay a fee for each circuit sold or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. "Active circuits" for these purposes include backup and redundant circuits as of December 31, 2009. Whether circuits are used specifically for voice or data is not relevant for these purposes in determining that they are active circuits. In instances where a permit or license is transferred or assigned after October 1, 2009, responsibility for payment rests with the holder of the permit or license as of the fee due date.

E. Enforcement

28. To be considered timely, regulatory fee payments must be received and stamped at the lockbox bank by the last day of the regulatory fee filing window. Section 9(c) of the Act requires us to impose an additional charge as a penalty for late payment of any regulatory fee.[28] A late payment penalty of 25 percent of the unpaid amount of the required regulatory fee will be assessed on the first day following the deadline date for filing of these fees. Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including those set forth in section 1.1910 of the Commission's rules [29] and in the Debt Collection Improvement Act of 1996 ("DCIA").[30] We also assess administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the related debt pursuant to the DCIA and section 1.1940(d) of the Commission's rules.[31] These administrative processing charges will be assessed on any delinquent regulatory fee, in addition to the 25 percent late charge penalty. In case of partial payments (underpayments) of regulatory fees, the licensee will be given credit for the amount paid, but if it is later determined that the fee paid is incorrect or not timely paid, then the 25 percent late charge penalty (and other charges and/or sanctions, as appropriate) will be assessed on the portion that is not paid in a timely manner.

29. We will withhold action on any applications or other requests for benefits filed by anyone who is delinquent in any non-tax debts owed to the Commission (including regulatory fees) and will ultimately dismiss those applications or other requests if payment of the delinquent debt or other satisfactory arrangement for payment is not made.[32] Failure to pay regulatory fees can also result in the initiation of a proceeding to revoke any and all authorizations held by the entity responsible for paying the delinquent fee(s).

F. Initial Regulatory Flexibility Analysis

30. An initial regulatory flexibility analysis ("IRFA") is contained in Appendix E. Comments to the IRFA must be identified as responses to the IRFA and filed by the deadlines for comments on the Notice. The Commission will send a copy of the Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

G. Initial Paperwork Reduction Act of 1995 Analysis

31. This Notice of Proposed Rulemaking does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995 ("PRA"), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506 (c) (4). Completion of the 159 family of forms required by the Commission's regulatory fee payment process is already approved by the Office of Management and Budget under information collections 3060–0589 and 3060–0949.

H. Congressional Review Act Analysis

32. The Commission will send a copy of this Notice of Proposed Rulemaking to Congress and the Government Accountability Office pursuant to the Congressional Review Act.[33]

I. Ex Parte Rules

33. This is as a "permit-but-disclose" proceeding subject to the requirements under section 1.1206(b) of the Commission's rules.[34] *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required.[35] Additional rules pertaining to oral and written presentations are set forth in section 1.1206(b).

J. Filing Requirements

34. *Comments and Replies.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

35. *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/or* the Federal eRulemaking Portal: *http://www.regulations.gov.*

36. *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

- Effective December 28, 2009, all hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be

[28] 47 U.S.C. 159(c).

[29] *See* 47 CFR 1.1910.

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

[31] 47 CFR 1.1940(d).

[32] *See* 47 CFR 1.1161(c), 1.1164(f)(5), and 1.1910.

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

[34] *See* 47 CFR 1.1206(b); *see also* 47 CFR 1.1202, 1.1203.

[35] *See* 47 CFR 1.1206(b)(2).

addressed to 445 12th Street, SW., Washington, DC 20554.

People With Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

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

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

III. Ordering Clauses

39. Accordingly, *it is ordered* that, pursuant to sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 159, and 303(r), this Notice of Proposed Rulemaking *is hereby adopted.*

40. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis in Appendix E, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

Marlene H. Dortch,

Secretary, Federal Communications Commission.

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APPENDIX A

Calculation of FY 2010 Revenue Requirements and Pro-Rata Fees

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

Fee Category	FY 2010 Payment Units	Years	FY 2009 Revenue Estimate	Pro-Rated FY 2010 Revenue Require-ment	Computed New FY 2010 Regulatory Fee	Rounded New FY 2010 Regula-tory Fee	Expected FY 2010 Revenue
PLMRS (Exclusive Use)	1,200	10	480,000	469,912	39	40	480,000
PLMRS (Shared use)	11,500	10	2,300,000	2,251,662	20	20	2,300,000
Microwave	9,500	10	2,250,000	2,202,713	23	25	2,375,000
218-219 MHz (Formerly IVDS)	3	10	1,950	1,909	64	65	1,950
Marine (Ship)	8,000	10	750,000	734,238	9	10	800,000
GMRS	9,700	5	275,000	269,220	6	5	242,500
Aviation (Aircraft)	4,600	10	350,000	342,644	7	5	230,000
Marine (Coast)	265	10	123,750	121,149	46	45	119,250
Aviation (Ground)	1,500	10	150,000	146,848	10	10	150,000
Amateur Vanity Call Signs	14,800	10	201,000	196,776	1.33	1.33	196,840
AM Class A[4a]	68	1	248,625	244,032	3,589	3,600	244,800
AM Class B[4b]	1,566	1	2,977,300	2,922,297	1,866	1,875	2,936,250
AM Class C[4c]	918	1	1,055,250	1,035,755	1,128	1,125	1,032,750
AM Class D[4d]	1,689	1	3,515,750	3,450,799	2,043	2,050	3,462,450
FM Classes A, B1 & C3[4e]	3,104	1	7,384,125	7,250,936	2,336	2,325	7,216,800
FM Classes B, C, C0, C1 & C2[4f]	3,129	1	9,076,725	8,912,267	2,848	2,850	8,917,650
AM Construction Permits	100	1	42,800	42,009	420	420	42,000
FM Construction Permits[1]	217	1	145,600	136,456	629	630	136,710
Satellite TV	126	1	161,925	158,934	1,261	1,250	157,500
Satellite TV Construction Permit	3	1	1,950	1,914	638	640	1,920
VHF Markets 1-10	41	1	3,258,150	3,197,929	77,998	78,000	3,198,000
VHF Markets 11-25	54	1	3,330,250	3,268,697	60,531	60,525	3,268,350
VHF Markets 26-50	68	1	2,818,125	2,766,033	40,677	40,675	2,765,900

Fee Category	FY 2010 Payment Units	Years	FY 2009 Revenue Estimate	Pro-Rated FY 2010 Revenue Require-ment	Computed New FY 2010 Regulatory Fee	Rounded New FY 2010 Regula-tory Fee	Expected FY 2010 Revenue
VHF Markets 51-100	117	1	2,708,100	2,658,053	22,718	22,725	2,658,825
VHF Remaining Markets	199	1	1,190,000	1,168,016	5,869	5,875	1,169,125
VHF Construction Permits[1]	3	1	17,850	17,625	5,875	5,875	17,625
UHF Markets 1-10	82	1	2,109,750	2,073,657	25,288	25,300	2,074,600
UHF Markets 11-25	69	1	1,743,525	1,714,198	24,843	24,850	1,714,650
UHF Markets 26-50	105	1	1,468,500	1,444,253	13,755	13,750	1,443,750
UHF Markets 51-100	149	1	1,246,400	1,225,210	8,223	8,225	1,225,525
UHF Remaining Markets	185	1	380,250	373,225	2,017	2,025	374,625
UHF Construction Permits[1]	9	1	29,250	18,225	2,025	2,025	18,225
Broadcast Auxiliaries	27,500	1	275,000	269,920	10	10	275,000
LPTV/Trans-lators/Boosters/Class A TV	3,400	1	1,380,000	1,354,506	398	400	1,360,000
CARS Stations	550	1	169,000	165,878	302	300	165,000
Cable TV Systems	64,500,000	1	56,760,000	55,711,406	0.86374	0.86	55,470,000
Interstate Tele-communication Service Providers	$44,800,000,000	1	160,056,000	157,099,099	0.00350668	0.00351	157,248,000
CMRS Mobile Services (Cellular/Public Mobile)	281,000,000	1	49,680,000	48,781,083	0.1736	0.170	47,770,000
CMRS Messag. Services	6,600,000	1	560,000	530,774	0.0804	0.080	528,000
BRS[2]	1,660	1	552,000	499,414	301	300	498,000
LMDS	510	1	107,200	153,259	301	300	153,000
Per 64 kbps Int'l Bearer Circuits Terrestrial (Common) & Satellite (Common & Non-Common)	1,648,589	1	1,111,779	1,086,841	.659	.66	1,088,069
Submarine Cable Providers (see chart in Appendix C)[3]	35.13	1	7,818,040	7,678,007	218,560	218,550	7,677,662
Earth Stations	3,600	1	850,500	834,788	232	230	828,000

Fee Category	FY 2010 Payment Units	Years	FY 2009 Revenue Estimate	Pro-Rated FY 2010 Revenue Require-ment	Computed New FY 2010 Regulatory Fee	Rounded New FY 2010 Regula-tory Fee	Expected FY 2010 Revenue
Space Stations (Geostationary)	87	1	11,064,225	10,859,823	124,826	124,825	10,859,775
Space Stations (Non-Geostationary	6	1	823,350	808,139	134,690	134,700	808,200
****** Total Estimated Revenue to be Collected			342,998,994	336,650,529			335,702,275
****** Total Revenue Requirement			341,875,000	335,794,000			335,794,000
Difference			1,123,994	856,529			(91,725)

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

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

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

[4] The fee amounts listed in the column entitled "Rounded New FY 2010 Regulatory Fee" constitute a weighted average media regulatory fee by class of service. The actual FY 2010 regulatory fees for AM/FM radio station are listed on a grid located in Appendix B.

APPENDIX B

FY 2010 Schedule of Regulatory Fees

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

Fee Category	Annual Regulatory Fee (U.S. $'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	40
Microwave (per license) (47 CFR part 101)	25
218-219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	65
Marine (Ship) (per station) (47 CFR part 80)	10
Marine (Coast) (per license) (47 CFR part 80)	45
General Mobile Radio Service (per license) (47 CFR part 95)	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	20
PLMRS (Shared Use) (per license) (47 CFR part 90)	20
Aviation (Aircraft) (per station) (47 CFR part 87)	5
Aviation (Ground) (per license) (47 CFR part 87)	10
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.33
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.17
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08
Broadband Radio Service (formerly MMDS/ MDS) (per license) (47 CFR part 21)	300
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	300
AM Radio Construction Permits	420
FM Radio Construction Permits	630
TV (47 CFR part 73) VHF Commercial	
Markets 1-10	78,000
Markets 11-25	60,525
Markets 26-50	40,675
Markets 51-100	22,725
Remaining Markets	5,875

Fee Category	Annual Regulatory Fee (U.S. $'s)
Construction Permits	5,875
TV (47 CFR part 73) UHF Commercial	
Markets 1-10	25,300
Markets 11-25	24,850
Markets 26-50	13,750
Markets 51-100	8,225
Remaining Markets	2,025
Construction Permits	2,025
Satellite Television Stations (All Markets)	1,250
Construction Permits – Satellite Television Stations	640
Low Power TV, Class A TV, TV/FM Translators & Boosters (47 CFR part 74)	400
Broadcast Auxiliaries (47 CFR part 74)	10
CARS (47 CFR part 78)	300
Cable Television Systems (per subscriber) (47 CFR part 76)	.86
Interstate Telecommunication Service Providers (per revenue dollar)	.00351
Earth Stations (47 CFR part 25)	230
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100)	124,825
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	134,700
International Bearer Circuits - Terrestrial/Satellites (per 64KB circuit)	.66
International Bearer Circuits - Submarine Cable	See Table Below

FY 2010 SCHEDULE OF REGULATORY FEES (continued)

FY 2010 RADIO STATION REGULATORY FEES						
Population Served	**AM Class A**	**AM Class B**	**AM Class C**	**AM Class D**	**FM Classes A, B1 & C3**	**FM Classes B, C, C0, C1 & C2**
<=25,000	$650	$550	$475	$575	$625	$800
25,001 – 75,000	$1,300	$1,075	$725	$875	$1,250	$1,400
75,001 – 150,000	$1,950	$1,350	$950	$1,450	$1,725	$2,600
150,001 – 500,000	$2,925	$2,300	$1,425	$1,725	$2,650	$3,400
500,001 – 1,200,000	$4,225	$3,500	$2,375	$2,875	$4,225	$5,000
1,200,001 – 3,000,00	$6,500	$5,400	$3,575	$4,600	$6,875	$8,000
>3,000,000	$7,800	$6,475	$4,525	$5,750	$8,750	$10,400

FY 2010 SCHEDULE OF REGULATORY FEES
International Bearer Circuits - Submarine Cable

Submarine Cable Systems (capacity as of December 31, 2009)	Fee amount	Address
< 2.5 Gbps	$13,650	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000
2.5 Gbps or greater, but less than 5 Gbps	$27,325	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000
5 Gbps or greater, but less than 10 Gbps	$54,650	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000
10 Gbps or greater, but less than 20 Gbps	$109,300	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000
20 Gbps or greater	$218,600	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000

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Appendix C

Sources of Payment Unit Estimates for FY 2010

In order to calculate individual service fees for FY 2010, we adjusted FY 2009 payment units for each service to more accurately reflect expected FY 2010 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections when available. The databases we consulted include our Universal Licensing System ("ULS"), International Bureau Filing System ("IBFS"), Consolidated Database System ("CDBS") and Cable Operations and Licensing System ("COALS"), as well as reports generated within the Commission such as the Wireline Competition Bureau's *Trends in Telephone Service* and the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast*.

We sought verification for these estimates from multiple sources and, in all cases we compared FY 2010 estimates with actual FY 2009 payment units to ensure that our revised estimates were reasonable. Where appropriate, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated with sufficient accuracy. These include an unknown number of waivers and/or exemptions that may occur in FY 2010 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical, or other reasons. When we note, for example, that our estimated FY 2010 payment units are based on FY 2009 actual payment units, it does not necessarily mean that our FY 2010 projection is exactly the same number as FY 2009. We have either rounded the FY 2010 number or adjusted it slightly to account for these variables.

Fee category	Sources of payment unit estimates
Land Mobile (All), Microwave, 218–219 MHz, Marine (Ship & Coast), Aviation (Aircraft & Ground), GMRS, Amateur Vanity Call Signs, Domestic Public Fixed.	Based on Wireless Telecommunications Bureau ("WTB") projections of new applications and renewals taking into consideration existing Commission licensee data bases. Aviation (Aircraft) and Marine (Ship) estimates have been adjusted to take into consideration the licensing of portions of these services on a voluntary basis.
CMRS Cellular/Mobile Services	Based on WTB projection reports, and FY 09 payment data.
CMRS Messaging Services	Based on WTB reports, and FY 09 payment data.
AM/FM Radio Stations	Based on CDBS data, adjusted for exemptions, and actual FY 2009 payment units.
UHF/VHF Television Stations	Based on CDBS data, adjusted for exemptions, and actual FY 2009 payment units.
AM/FM/TV Construction Permits	Based on CDBS data, adjusted for exemptions, and actual FY 2009 payment units.
LPTV, Translators and Boosters, Class A Television.	Based on CDBS data, adjusted for exemptions, and actual FY 2009 payment units.
Broadcast Auxiliaries	Based on actual FY 2009 payment units.
BRS (formerly MDS/MMDS)	Based on WTB reports and actual FY 2009 payment units.
LMDS	Based on WTB reports and actual FY 2009 payment units.
Cable Television Relay Service ("CARS") Stations.	Based on data from Media Bureau's COALS data base and actual FY 2009 payment units.
Cable Television System Subscribers	Based on publicly available data sources for estimated subscriber counts and actual FY 2009 payment units.
Interstate Telecommunication Service Providers	Based on FCC Form 499–Q data for the four quarters of calendar year 2009, the Wireline Competition Bureau projected the amount of calendar year 2009 revenue that will be reported on 2010 FCC Form 499–A worksheets in April 2010.
Earth Stations	Based on International Bureau ("IB") licensing data and actual FY 2009 payment units.
Space Stations (GSOs & NGSOs)	Based on IB data reports and actual FY 2009 payment units.
International Bearer Circuits	Based on IB reports and submissions by licensees.
Submarine Cable Licenses	Based on IB license information.

Appendix D

Factors, Measurements, and Calculations That Go Into Determining Station Signal Contours and Associated Population Coverages

AM Stations

For stations with nondirectional daytime antennas, the theoretical radiation was used at all azimuths. For stations with directional daytime antennas, specific information on each day tower, including field ratio, phasing, spacing and orientation was retrieved, as well as the theoretical pattern root-mean-square of the radiation in all directions in the horizontal plane ("RMS") figure milliVolt per meter (mV/m) @ 1 km) for the antenna system. The standard, or modified standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in 73.150 and 73.152 of the Commission's rules.[1] Radiation values were calculated for each of 360 radials around the transmitter site. Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure R3.[2] Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the principal community (5 mV/m) contour was predicted for each of the 360 radials. The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2,000 block centroids were contained in the polygon. (A block centroid is the center point of a small area containing population as computed by the U.S. Census Bureau.) The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

FM Stations

The greater of the horizontal or vertical effective radiated power ("ERP") (kW) and respective height above average terrain ("HAAT") (m) combination was used. Where the antenna height above mean sea level ("HAMSL") was available, it was used in lieu of the average HAAT figure to calculate specific HAAT figures for each of 360 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the Field Strength (50–50) propagation curves specified in 47 CFR 73.313 of the Commission's rules to predict the distance to the principal community (70 dBu (decibel above 1 microVolt per meter) or 3.17 mV/m) contour for each of the 360 radials.[3] The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2,000 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

[1] 47 CFR 73.150 and 73.152.

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

[3] 47 CFR 73.313.

Appendix E

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act ("RFA"),[36] the Commission prepared this Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed on or before the dates indicated on the first page of this Notice. The Commission will send a copy of the Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[37] In addition, the Notice and IRFA (or summaries thereof) will be published in the **Federal Register.**[38]

I. Need for, and Objectives of, the Notice

2. This rulemaking proceeding is initiated for the Commission to obtain comments regarding its proposed amendment to its Schedule of Regulatory Fees in the amount of $335,794,000, which is the amount that Congress has required the Commission to recover. The Commission seeks to collect the necessary amount through its revised Schedule of Regulatory Fees in the most efficient manner possible and without undue public burden.

II. Legal Basis

3. This action, including publication of proposed rules, is authorized under sections (4)(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended.[39]

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

4. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.[40] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[41] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[42] A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[43]

5. *Small Businesses.* Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.[44]

6. *Small Organizations.* Nationwide, as of 2002, there are approximately 1.6 million small organizations.[45] A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[46]

7. *Small Governmental Jurisdictions.* The term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[47] Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.[48] We estimate that, of this total, 84,377 entities were "small governmental jurisdictions."[49] Thus, we estimate that most governmental jurisdictions are small.

8. We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a "small business" under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."[50] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope.[51] We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

9. *Incumbent Local Exchange Carriers ("ILECs").* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[52] According to Commission data,[53] 1,311 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,311 carriers, an estimated 1,024 have 1,500 or fewer employees and 287 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our proposed action.

10. *Competitive Local Exchange Carriers ("CLECs"), Competitive Access Providers ("CAPs"), "Shared-Tenant Service Providers," and "Other Local Service Providers."* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[54] According to Commission data,[55] 1005 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 1005 carriers, an estimated 918 have 1,500 or fewer employees and 87 have more than 1,500 employees. In addition, 16 carriers have reported that they are "Shared-Tenant Service Providers," and all 16 are estimated to have 1,500 or fewer employees. In addition, 89 carriers have reported that they are "Other Local Service Providers." Of the 89, all have 1,500 or fewer employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities that may be affected by our proposed action.

11. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[56] According to Commission data,[57] 151 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 149 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by our proposed action.

12. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is

[36] 5 U.S.C. 603. The RFA, 5 U.S.C. 601–612 has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) ("CWAAA"). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").

[37] 5 U.S.C. 603(a).

[38] *Id.*

[39] 47 U.S.C. 154(i) and (j), 159, and 303(r).

[40] 5 U.S.C. 603(b)(3).

[41] 5 U.S.C. 601(6).

[42] 5 U.S.C. 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

[43] 15 U.S.C. 632.

[44] *See* SBA, Office of Advocacy, "Frequently Asked Questions," *http://web.sba.gov/faqs* (accessed Jan. 2009).

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

[46] 5 U.S.C. 601(4).

[47] 5 U.S.C. 601(5).

[48] U.S. Census Bureau, *Statistical Abstract of the United States:* 2006, section 8, p. 272, Table 415.

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

[50] 15 U.S.C. 632.

[51] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small-business concern," which the RFA incorporates into its own definition of "small business." *See* 15 U.S.C. 632(a) ("Small Business Act"); 5 U.S.C. 601(3) ("RFA"). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. *See* 13 CFR 121.102(b).

[52] 13 CFR 121.201, North American Industry Classification System (NAICS) code 517110.

[53] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "*Trends in Telephone Service*" at Table 5.3, Page 5–5 (Aug. 2008) ("*Trends in Telephone Service*"). This source uses data that are current as of November 1, 2006.

[54] 13 CFR 121.201, NAICS code 517110.

[55] "*Trends in Telephone Service*" at Table 5.3.

[56] 13 CFR 121.201, NAICS code 517310.

[57] "*Trends in Telephone Service*" at Table 5.3.

small if it has 1,500 or fewer employees.[58] According to Commission data,[59] 815 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 787 have 1,500 or fewer employees and 28 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our proposed action.

13. *Payphone Service Providers ("PSPs").* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[60] According to Commission data,[61] 526 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 524 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our proposed action.

14. *Interexchange Carriers ("IXCs").* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[62] According to Commission data,[63] 300 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 268 have 1,500 or fewer employees and 32 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our proposed action.

15. *Operator Service Providers ("OSPs").* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[64] According to Commission data,[65] 28 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 27 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed action.

16. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[66] According to Commission data,[67] 88 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated 85 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by our proposed action.

17. *800 and 800–Like Service Subscribers.*[68] Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service ("toll free") subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[69] The most reliable source of information regarding the number of these service subscribers appears to be data the Commission receives from Database Service Management on the 800, 866, 877, and 888 numbers in use.[70] According to our data, at the end of December 2007, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,210,184; the number of 877 numbers assigned was 4,388,682; and the number of 866 numbers assigned was 7,029,116. We do not have data specifying the number of these subscribers that are independently owned and operated or have 1,500 or fewer employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,860,000 or fewer small entity 800 subscribers; 5,210,184 or fewer small entity 888 subscribers; 4,388,682 or fewer small entity 877 subscribers, and 7,029,116 or fewer entity 866 subscribers.

18. *Satellite Telecommunications and All Other Telecommunications.* These two economic census categories address the satellite industry. The first category has a small business size standard of $15 million or less in average annual receipts, under SBA rules.[71] The second has a size standard of $25 million or less in annual receipts.[72] The most current Census Bureau data in this context, however, are from the (last) economic census of 2002, and we will use those figures to gauge the prevalence of small businesses in these categories.[73]

19. The category of Satellite Telecommunications "comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications."[74] For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year.[75] Of this total, 307 firms had annual receipts of under $10 million, and 26 firms had receipts of $10 million to $24,999,999.[76] Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

20. The second category of All Other Telecommunications comprises, *inter alia,* "establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems."[77] For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year.[78] Of this total, 303 firms had annual receipts of under $10 million and 15 firms had annual receipts of $10 million to $24,999,999.[79] Consequently, we estimate that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

21. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.[80] Prior to that time, such firms were within the now-superseded categories of "Paging" and "Cellular and Other Wireless Telecommunications."[81] Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500

[58] 13 CFR 121.201, NAICS code 517310.

[59] "*Trends in Telephone Service*" at Table 5.3.

[60] 3 CFR 121.201, NAICS code 517110.

[61] "*Trends in Telephone Service*" at Table 5.3.

[62] 13 CFR 121.201, NAICS code 517110.

[63] "*Trends in Telephone Service*" at Table 5.3.

[64] 13 CFR 121.201, NAICS code 517110.

[65] "*Trends in Telephone Service*" at Table 5.3.

[66] 13 CFR 121.201, NAICS code 517310.

[67] "*Trends in Telephone Service*" at Table 5.3.

[68] We include all toll-free number subscribers in this category.

[69] 13 CFR 121.201, NAICS code 517310.

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

[71] 13 CFR 121.201, NAICS code 517410.

[72] 13 CFR 121.201, NAICS code 517919.

[73] 13 CFR 121.201, NAICS codes 517410 and 517910 (2002).

[74] U.S. Census Bureau, 2007 NAICS Definitions, "517410 Satellite Telecommunications"; *http://www.census.gov/naics/2007/def/ND517410.HTM.*

[75] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 517410 (issued Nov. 2005).

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

[77] U.S. Census Bureau, 2007 NAICS Definitions, "517919 All Other Telecommunications"; *http://www.census.gov/naics/2007/def/ND517919.HTM#N517919.*

[78] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 517910 (issued Nov. 2005).

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

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

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

or fewer employees.[82] Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year.[83] Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.[84] For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year.[85] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[86] Thus, we estimate that the majority of wireless firms are small.

22. *Common Carrier Paging.* As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite) firms within the broad economic census categories of "Cellular and Other Wireless Telecommunications."[87] Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.[88] Prior to that time, such firms were within the now-superseded categories of "Paging" and "Cellular and Other Wireless Telecommunications."[89] Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.[90] Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year.[91] Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.[92] For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year.[93] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[94] Thus, we estimate that the majority of wireless firms are small.

23. In addition, in the *Paging Second Report and Order,* the Commission adopted a size standard for "small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[95] A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[96] The SBA has approved this definition.[97] An initial auction of Metropolitan Economic Area ("MEA") licenses was conducted in the year 2000. Of the 2,499 licenses auctioned, 985 were sold.[98] Fifty-seven companies claiming small business status won 440 licenses.[99] A subsequent auction of MEA and Economic Area ("EA") licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold.[100] One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.[101]

24. Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service,* 281 carriers reported that they were engaged in the provision of "paging and messaging" services.[102] Of these, an estimated 279 have 1,500 or fewer employees and two have more than 1,500 employees.[103] We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

25. *2.3 GHz Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services ("WCS") auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years.[104] The SBA has approved these definitions.[105] The Commission auctioned geographic area licenses in the WCS service. In the auction, which was conducted in 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

26. *1670–1675 MHz Services.* An auction for one license in the 1670–1675 MHz band was conducted in 2003. One license was awarded. The winning bidder was not a small entity.

27. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite).[106] Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.[107] According to *Trends in Telephone Service* data, 434 carriers reported that they were engaged in wireless telephony.[108] Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees.[109] We have estimated that 222 of these are small under the SBA small business size standard.

28. *Broadband Personal Communications Service.* The broadband personal

[82] 13 CFR 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 C.F.R. citations were 13 CFR 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

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

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

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

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

[87] 13 CFR 121.201, NAICS code 517212.

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

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

[90] 13 CFR 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 CFR citations were 13 CFR 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

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

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

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

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

[95] *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems,* Second Report and Order, 12 FCC Rcd 2732, 2811–2812, paras. 178–181 ("*Paging Second Report and Order*"); *see also Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems,* Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 10030, 10085–10088, paras. 98–107 (1999).

[96] *Paging Second Report and Order,* 12 FCC Rcd at 2811, para. 179.

[97] *See* Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau ("WTB"), FCC (Dec. 2, 1998) ("*Alvarez Letter 1998*").

[98] *See* "*929 and 931 MHz Paging Auction Closes,*" Public Notice, 15 FCC Rcd 4858 (WTB 2000).

[99] *See id.*

[100] *See* "*Lower and Upper Paging Band Auction Closes,*" Public Notice, 16 FCC Rcd 21821 (WTB 2002).

[101] *See* "*Lower and Upper Paging Bands Auction Closes,*" Public Notice, 18 FCC Rcd 11154 (WTB 2003). The current number of small or very small business entities that hold wireless licenses may differ significantly from the number of such entities that won in spectrum auctions due to assignments and transfers of licenses in the secondary market over time. In addition, some of the same small business entities may have won licenses in more than one auction.

[102] "*Trends in Telephone Service*" at Table 5.3.

[103] "*Trends in Telephone Service*" at Table 5.3.

[104] *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS),* Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

[105] *See Alvarez Letter 1998.*

[106] 13 CFR 121.201, NAICS code 517210.

[107] *Id.*

[108] "*Trends in Telephone Service*" at Table 5.3.

[109] "*Trends in Telephone Service*" at Table 5.3.

communications services ("PCS") spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[110] For Block F, an additional small business size standard for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[111] These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.[112] No small businesses within the SBA-approved small business size standards 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 percent of the 1,479 licenses for Blocks D, E, and F.[113] In 1999, the Commission reauctioned 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.[114]

29. In 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses.[115] Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24 winning bidders for 217 licenses.[116] Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction 71.[117] Of the 14 winning bidders, six were designated entities.[118] In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.[119]

30. *Advanced Wireless Services.* In 2008, the Commission conducted the auction of Advanced Wireless Services ("AWS") licenses.[120] This auction, which as designated as Auction 78, offered 35 licenses in the AWS 1710–1755 MHz and 2110–2155 MHz bands ("AWS–1"). The AWS–1 licenses were licenses for which there were no winning bids in Auction 66. That same year, the Commission completed Auction 78. A bidder with attributed average annual gross revenues that exceeded $15 million and did not exceed $40 million for the preceding three years ("small business") received a 15 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed $15 million for the preceding three years ("very small business") received a 25 percent discount on its winning bid. A bidder that had combined total assets of less than $500 million and combined gross revenues of less than $125 million in each of the last two years qualified for entrepreneur status.[121] Four winning bidders that identified themselves as very small businesses won 17 licenses.[122] Three of the winning bidders that identified themselves as a small business won five licenses. Additionally, one other winning bidder that qualified for entrepreneur status won 2 licenses.

31. *Narrowband Personal Communications Services.* In 1994, the Commission conducted an auction for Narrowband PCS licenses. A second auction was also conducted later in 1994. For purposes of the first two Narrowband PCS auctions, "small businesses" were entities with average gross revenues for the prior three calendar years of $40 million or less.[123] Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses.[124] To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order.[125] A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million.[126] A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million.[127] The SBA has approved these small business size standards.[128] A third auction was conducted in 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses.[129] Three of these claimed status as a small or very small entity and won 311 licenses.

32. *700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.[130] The Commission defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[131] A "very small business" is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[132] Additionally, the lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area ("MSA/RSA") licenses. The third category is "entrepreneur," which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.[133] The SBA approved these small size standards.[134] The Commission conducted an auction in 2002 of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)). Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. [135] The Commission conducted a second auction in 2003 that included 256 licenses: 5 EAG licenses and 476 Cellular Market Area

[110] *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, 11 FCC Rcd 7824, 7850–7852, paras. 57–60 (1996) ("*PCS Report and Order*"); *see also* 47 CFR 24.720(b).

[111] *See PCS Report and Order,* 11 FCC Rcd at 7852, para. 60.

[112] *See Alvarez Letter 1998.*

[113] FCC News, "Broadband PCS, D, E and F Block Auction Closes," No. 71744 (rel. Jan. 14, 1997).

[114] *See* "C, D, E, and F Block Broadband PCS Auction Closes," *public notice,* 14 FCC Rcd 6688 (WTB 1999).

[115] *See* "C and F Block Broadband PCS Auction Closes; Winning Bidders Announced," *public notice,* 16 FCC Rcd 2339 (2001).

[116] *See* "Broadband PCS Spectrum Auction Closes; Winning Bidders Announced for Auction No. 58," *public notice,* 20 FCC Rcd 3703 (2005).

[117] *See* "Auction of Broadband PCS Spectrum Licenses Closes; Winning Bidders Announced for Auction No. 71," *public notice,* 22 FCC Rcd 9247 (2007).

[118] *Id.*

[119] *See* Auction of AWS–1 and Broadband PCS Licenses Rescheduled for August 13, 2008, Notice of Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures For Auction 78, *public notice,* 23 FCC Rcd 7496 (2008) ("AWS–1 and Broadband PCS Procedures Public Notice").

[120] *See* AWS–1 and Broadband PCS Procedures Public Notice, 23 FCC Rcd 7496. Auction 78 also included an auction of Broadband PCS licenses.

[121] *Id.* at 23 FCC Rcd at 7521–22.

[122] *See* "Auction of AWS–1 and Broadband PCS Licenses Closes, Winning Bidders Announced for Auction 78, Down Payments Due September 9, 2008, FCC Forms 601 and 602 Due September 9, 2008, Final Payments Due September 23, 2008, Ten-Day Petition to Deny Period", *public notice,* 23 FCC Rcd 12749–65 (2008).

[123] *Implementation of Section 309(j) of the Communications Act—Competitive Bidding Narrowband PCS,* Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 10 FCC Rcd 175, 196, para. 46 (1994).

[124] *See* "Announcing the High Bidders in the Auction of ten Nationwide Narrowband PCS Licenses, Winning Bids Total $617,006,674," *Public Notice,* PNWL 94–004 (rel. Aug. 2, 1994); "Announcing the High Bidders in the Auction of 30 Regional Narrowband PCS Licenses; Winning Bids Total $490,901,787," *public notice,* PNWL 94–27 (rel. Nov. 9, 1994).

[125] *Amendment of the Commission's Rules to Establish New Personal Communications Services,* Narrowband PCS, Second Report and Order and Second Further Notice of Proposed Rule Making, 15 FCC Rcd 10456, 10476, para. 40 (2000) ("*Narrowband PCS Second Report and Order*").

[126] *Narrowband PCS Second Report and Order,* 15 FCC Rcd at 10476, para. 40.

[127] *Id.*

[128] *See Alvarez Letter 1998.*

[129] *See* "Narrowband PCS Auction Closes," *public notice,* 16 FCC Rcd 18663 (WTB 2001).

[130] *See Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59),* Report and Order, 17 FCC Rcd 1022 (2002) ("*Channels 52–59 Report and Order*").

[131] *See Channels 52–59 Report and Order,* 17 FCC Rcd at 1087–88, para. 172.

[132] *See id.*

[133] *See id.,* 17 FCC Rcd at 1088, para. 173.

[134] *See* Letter from Aida Alvarez, Administrator, SBA, to Thomas Sugrue, Chief, WTB, FCC (Aug. 10, 1999) ("*Alvarez Letter 1999*").

[135] *See* "Lower 700 MHz Band Auction Closes," *public notice,* 17 FCC Rcd 17272 (WTB 2002).

licenses.[136] Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.[137] In 2005, the Commission completed an auction of 5 licenses in the lower 700 MHz band (Auction 60). There were three winning bidders for five licenses. All three winning bidders claimed small business status.

33. In 2007, the Commission adopted the *700 MHz Second Report and Order.*[138] The *Order* revised the band plan for the commercial (including Guard Band) and public safety spectrum, adopted services rules, including stringent build-out requirements, an open platform requirement on the C Block, and a requirement on the D Block licensee to construct and operate a nationwide, interoperable wireless broadband network for public safety users. In 2008, the Commission commenced Auction 73 which offered all available, commercial 700 MHz Band licenses (1,099 licenses) for bidding using the Commission's standard simultaneous multiple-round ("SMR") auction format for the A, B, D, and E block licenses and an SMR auction design with hierarchical package bidding ("HPB") for the C Block licenses. Later in 2008, the Commission concluded Auction 73.[139] A bidder with attributed average annual gross revenues that did not exceed $15 million for the preceding three years (very small business) qualified for a 25 percent discount on its winning bids. A bidder with attributed average annual gross revenues that exceeded $15 million, but did not exceed $40 million for the preceding three years, qualified for a 15 percent discount on its winning bids. There were 36 winning bidders (who won 330 of the 1,090 licenses won) that identified themselves as very small businesses. There were 20 winning bidders that identified themselves as a small business that won 49 of the 1,090 licenses won.[140] The provisionally winning bids for the A, B, C, and E Block licenses exceeded the aggregate reserve prices for those blocks. However, the provisionally winning bid for the D Block license did not meet the applicable reserve price and thus did not become a winning bid.[141]

34. *700 MHz Guard Band Licenses.* In the 700 MHz Guard Band Order, the Commission adopted size standards for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[142] A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[143] Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[144] SBA approval of these definitions is not required.[145] In 2000, the Commission conducted an auction of 52 Major Economic Area ("MEA") licenses.[146] Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced and closed in 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.[147]

35. *Specialized Mobile Radio.* The Commission awards "small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years.[148] The Commission awards "very small entity" bidding credits to firms that had revenues of no more than $3 million in each of the three previous calendar years.[149] The SBA has approved these small business size standards for the 900 MHz Service.[150] The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.[151] A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.[152]

36. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard.[153] In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded.[154] Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

37. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. In addition, we do not know how many of these firms have 1,500 or fewer employees.[155] We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

38. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees.

[136] *See* "Lower 700 MHz Band Auction Closes," *public notice,* 18 FCC Rcd 11873 (WTB 2003).

[137] *See id.*

[138] Service Rules for the 698–746, 747–762 and 777–792 MHz Band, WT Docket No. 06–150, *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems,* CC Docket No. 94–102, *Section 68.4(a) of the Commission's rules Governing Hearing Aid-Compatible Telephone,* WT Docket No. 01–309, *Biennial Regulatory Review—Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services,* WT Docket No. 03–264, *Former Nextel Communications, Inc. Upper700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's rules,* WT Docket No. 06–169, *Implementing a Nationwide, Broadband Interoperable Public Safety Network in the 700 MHz Band,* PS Docket No. 06–229, *Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State, and Local Public Safety Communications Requirements Through the Year 2010,* WT Docket No. 96–86, Second Report and Order, FCC 07–132 (2007) ("700 MHz Second Report and Order"), 22 FCC Rcd 15289 (2007).

[139] Auction of 700 MHz Band Licenses Closes, Winning Bidders Announced for Auction 73, Down Payments Due April 3, 2008, FCC Forms 601 and 602 April 3, 2008, Final Payment Due April 17, 2008, Ten-Day Petition to Deny Period, *Public Notice,* 23 FCC Rcd 4572 (2008).

[140] *Id.* 23 FCC Rcd at 4572–73.

[141] *Id.*

[142] *See Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission's rules,* Second Report and Order, 15 FCC Rcd 5299 (2000) ("*746–764 MHz Band Second Report and Order*").

[143] *See 746–764 MHz Band Second Report and Order,* 15 FCC Rcd at 5343, para. 108.

[144] *See id.*

[145] *See id.,* 15 FCC Rcd 5299, 5343, para. 108 n.246 (for the 746–764 MHz and 776–794 MHz bands, the Commission is exempt from 15 U.S.C. 632, which requires Federal agencies to obtain SBA approval before adopting small business size standards).

[146] *See* "700 MHz Guard Bands Auction Closes: Winning Bidders Announced," *public notice,* 15 FCC Rcd 18026 (2000).

[147] *See* "700 MHz Guard Bands Auction Closes: Winning Bidders Announced," *public notice,* 16 FCC Rcd 4590 (WTB 2001).

[148] 47 CFR 90.814(b)(1).

[149] 47 CFR 90.814(b)(1).

[150] *See Alvarez Letter 1999.*

[151] *See* "Correction to Public Notice DA 96–586 'FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,' " *public notice,* 18 FCC Rcd 18367 (WTB 1996).

[152] *See* "Multi-Radio Service Auction Closes," *public notice,* 17 FCC Rcd 1446 (WTB 2002).

[153] *See* "800 MHz Specialized Mobile Radio (SMR) Service General Category (851–854 MHz) and Upper Band (861–865 MHz) Auction Closes; Winning Bidders Announced," *public notice,* 15 FCC Rcd 17162 (2000).

[154] *See,* "800 MHz SMR Service Lower 80 Channels Auction Closes; Winning Bidders Announced," *public notice,* 16 FCC Rcd 1736 (2000).

[155] *See generally* 13 CFR 121.201, NAICS code 517210.

To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to Wireless Telecommunications Carriers (except Satellite).[156] This category provides that a small business is a wireless company employing no more than 1,500 persons.[157] The Commission estimates that most such licensees are small businesses under the SBA's small business standard.

39. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz Third Report and Order, the Commission adopted a small business size standard for defining "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[158] This small business standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[159] A "very small business" is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years.[160] The SBA has approved these small size standards.[161] Auctions of Phase II licenses commenced on and closed in 1998.[162] In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group ("EAG") Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold.[163] Thirty-nine small businesses won 373 licenses in the first 220 MHz auction. A second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.[164] A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses.[165] In 2007, the Commission conducted a fourth auction of the 220 MHz licenses.[166] Bidding credits were offered to small businesses. A bidder with attributed average annual gross revenues that exceeded $3 million and did not exceed $15 million for the preceding three years ("small business") received a 25 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed $3 million for the preceding three years received a 35 percent discount on its winning bid ("very small business"). Auction 72, which offered 94 Phase II 220 MHz Service licenses, concluded in 2007.[167] In this auction, five winning bidders won a total of 76 licenses. Two winning bidders identified themselves as very small businesses won 56 of the 76 licenses. One of the winning bidders that identified themselves as a small business won 5 of the 76 licenses won.

40. *Cellular Radiotelephone Service.* Auction 77 was held to resolve one group of mutually exclusive applications for Cellular Radiotelephone Service licenses for unserved areas in New Mexico.[168] Bidding credits for designated entities were not available in Auction 77.[169] In 2008, the Commission completed the closed auction of one unserved service area in the Cellular Radiotelephone Service, designated as Auction 77. Auction 77 concluded with one provisionally winning bid for the unserved area totaling $25,002.[170]

41. *Private Land Mobile Radio ("PLMR").* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we use the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons.[171] The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. We note that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.[172]

42. As of March 2010, there were 424,162 PLMR licensees operating 921,909 transmitters in the PLMR bands below 512 MHz. We note that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

43. *Fixed Microwave Services.* Fixed microwave services include common carrier,[173] private operational-fixed,[174] and broadcast auxiliary radio services.[175] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees.[176] The Commission does not have data specifying the number of these licensees that have no more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are 22,015 or fewer common carrier fixed licensees and 61,670 or fewer private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies proposed herein. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

44. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years.[177] An

[156] *Id.*

[157] *Id.*

[158] *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,* Third Report and Order, 12 FCC Rcd 10943, 11068–70, paras. 291–295 (1997).

[159] *Id.* at 11068, para. 291.

[160] *Id.*

[161] *See* Letter from Aida Alvarez, Administrator, SBA, to Daniel Phythyon, Chief, WTB, FCC (Jan. 6, 1998) ("*Alvarez to Phythyon Letter 1998*").

[162] *See generally* "220 MHz Service Auction Closes," *public notice,* 14 FCC Rcd 605 (1998).

[163] *See* "FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made," *public notice,* 14 FCC Rcd 1085 (1999).

[164] *See* "Phase II 220 MHz Service Spectrum Auction Closes," *public notice,* 14 FCC Rcd 11218 (1999).

[165] *See* "Multi-Radio Service Auction Closes," *public notice,* 17 FCC Rcd 1446 (2002).

[166] *See* "Auction of Phase II 220 MHz Service Spectrum Scheduled for June 20, 2007, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction 72, *public notice,* 22 FCC Rcd 3404 (2007).

[167] *See* "Auction of Phase II 220 MHz Service Spectrum Licenses Closes, Winning Bidders Announced for Auction 72, Down Payments due July 18, 2007, FCC Forms 601 and 602 due July 18, 2007, Final Payments due August 1, 2007, Ten-Day Petition to Deny Period, *public notice,* 22 FCC Rcd 11573 (2007).

[168] *See* Closed Auction of Licenses for Cellular Unserved Service Area Scheduled for June 17, 2008, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 77, *public notice,* 23 FCC Rcd 6670 (2008).

[169] *Id.* at 6685.

[170] *See* Auction of Cellular Unserved Service Area License Closes, Winning Bidder Announced for Auction 77, Down Payment due July 2, 2008, Final Payment due July 17, 2008, *public notice,* 23 FCC Rcd 9501 (2008).

[171] *See* 13 CFR 121.201, NAICS code 517210.

[172] *See generally* 13 CFR 121.201.

[173] *See* 47 CFR 101 *et seq.* for common carrier fixed microwave services (except Multipoint Distribution Service).

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

[175] Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's rules. *See* 47 CFR part 74. This service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile television pickups, which relay signals from a remote location back to the studio.

[176] 13 CFR 121.201, NAICS code 517210.

[177] *See Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz*

additional size standard for "very small business" is: An entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[178] The SBA has approved these small business size standards.[179] The auction of the 2,173, 39 GHz licenses, began and closed in 2000. The 18 bidders who claimed small business status won 849 licenses.

45. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service ("LMDS") is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.[180] The auction of the 986 LMDS licenses began and closed in 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[181] An additional small business size standard for "very small business" was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[182] The SBA has approved these small business size standards in the context of LMDS auctions.[183] There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. In 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small businesses winning that won 119 licenses.

46. *218–219 MHz Service.* The first auction of 218–219 MHz (previously referred to as the Interactive and Video Data Service or IVDS) spectrum resulted in 178 entities winning licenses for 594 Metropolitan Statistical Areas ("MSAs").[184] Of the 594 licenses, 567 were won by 167 entities qualifying as a small business. For that auction, the Commission defined a small business as an entity that, together with its affiliates, has no more than a $6 million net worth and, after Federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years.[185] In the *218–219 MHz Report and Order and Memorandum Opinion and Order,* we defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not exceeding $15 million for the preceding three years.[186] A very small business is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not exceeding $3 million for the preceding three years.[187] The SBA has approved of these definitions.[188] A subsequent auction is not yet scheduled. Given the success of small businesses in the previous auction, and the prevalence of small businesses in the subscription television services and message communications industries, we assume for purposes of this analysis that in future auctions, many, and perhaps most, of the licenses may be awarded to small businesses.

47. *Location and Monitoring Service ("LMS").* Multilateration LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For purposes of auctioning LMS licenses, the Commission has defined "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $15 million.[189] A "very small business" is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $3 million.[190] These definitions have been approved by the SBA.[191] An auction for LMS licenses commenced and closed in 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses.

48. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.[192] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System ("BETRS").[193] In the present context, we will use the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons.[194] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

49. *Air-Ground Radiotelephone Service.*[195] The Commission has previously used the SBA's small business definition applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons.[196] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and under that definition, we estimate that almost all of them qualify as small entities under the SBA definition. For purposes of assigning Air-Ground Radiotelephone Service licenses through competitive bidding, the Commission has defined "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $40 million.[197] A "very small business" is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $15 million.[198] These definitions were approved by the SBA.[199] In 2006, the Commission completed an auction of nationwide commercial Air-Ground Radiotelephone Service licenses in the 800 MHz band (Auction 65). Later in 2006, the auction closed with two winning bidders winning two Air-Ground Radiotelephone Services licenses. Neither of the winning bidders claimed small business status.

50. *Aviation and Marine Radio Services.* There are approximately 26,162 aviation, 34,555 marine (ship), and 3,296 marine (coast) licensees.[200] The Commission has not developed a small business size standard specifically applicable to all licensees. For purposes of this analysis, we will use the SBA small business size standard for the category Wireless Telecommunications

Bands, ET Docket No. 95–183, Report and Order, 12 FCC Rcd 18600 (1997).

[178] *Id.*

[179] *See* Letter from Aida Alvarez, Administrator, SBA, to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, WTB, FCC (Feb. 4, 1998); *see* Letter from Hector Barreto, Administrator, SBA, to Margaret Wiener, Chief, Auctions and Industry Analysis Division, WTB, FCC (Jan. 18, 2002).

[180] *See Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, Reallocate the 29.5–30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services,* Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making, 12 FCC Rcd 12545, 12689–90, para. 348 (1997) ("*LMDS Second Report and Order*").

[181] *See LMDS Second Report and Order,* 12 FCC Rcd at 12689–90, para. 348.

[182] *See id.*

[183] *See Alvarez to Phythyon Letter 1998.*

[184] *See* "*Interactive Video and Data Service (IVDS) Applications Accepted for Filing,*" public notice, 9 FCC Rcd 6227 (1994).

[185] *Implementation of Section 309(j) of the Communications Act—Competitive Bidding,* Fourth Report and Order, 9 FCC Rcd 2330 (1994).

[186] *Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service,* Report and Order and Memorandum Opinion and Order, 15 FCC Rcd 1497 (1999).

[187] *Id.*

[188] *See Alvarez to Phythyon Letter 1998.*

[189] *Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems,* Second Report and Order, 13 FCC Rcd 15182, 15192, para. 20 (1998) ("*Automatic Vehicle Monitoring Systems Second Report and Order*"); *see also* 47 CFR 90.1103.

[190] *Automatic Vehicle Monitoring Systems Second Report and Order,* 13 FCC Rcd at 15192, para. 20; *see also* 47 CFR 90.1103.

[191] *See Alvarez Letter 1998.*

[192] The service is defined in section 22.99 of the Commission's rules, 47 CFR 22.99.

[193] BETRS is defined in sections 22.757 and 22.759 of the Commission's rules, 47 CFR 22.757 and 22.759.

[194] 13 CFR 121.201, NAICS code 517210.

[195] The service is defined in section 22.99 of the Commission's rules, 47 CFR 22.99.

[196] 13 CFR 121.201, NAICS codes 517210.

[197] *Amendment of Part 22 of the Commission's Rules to Benefit the Consumers of Air-Ground Telecommunications Services, Biennial Regulatory Review—Amendment of Parts 1, 22, and 90 of the Commission's Rules, Amendment of Parts 1 and 22 of the Commission's Rules to Adopt Competitive Bidding Rules for Commercial and General Aviation Air-Ground Radiotelephone Service,* WT Docket Nos. 03–103 and 05–42, Order on Reconsideration and Report and Order, 20 FCC Rcd 19663, paras. 28–42 (2005).

[198] *Id.*

[199] *See* Letter from Hector V. Barreto, Administrator, SBA, to Gary D. Michaels, Deputy Chief, Auctions and Spectrum Access Division, WTB, FCC (Sept. 19, 2005).

[200] Vessels that are not required by law to carry a radio and do not make international voyages or communications are not required to obtain an individual license. *See* Amendment of parts 80 and 87 of the Commission's rules to Permit Operation of Certain Domestic Ship and Aircraft Radio Stations Without Individual Licenses, *Report and Order,* WT Docket No. 96–82, 11 FCC Rcd 14849 (1996).

Carriers (except Satellite), which is 1,500 or fewer employees.[201] We are unable to determine how many of those licensed fall under this standard. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 62,969 licensees that are small businesses under the SBA standard.[202] In 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For this auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars.[203] Further, the Commission made available Automated Maritime Telecommunications System ("AMTS") licenses in Auctions 57 and 61.[204] Winning bidders could claim status as a very small business or a small business. A very small business for this service is defined as an entity with attributed average annual gross revenues that do not exceed $3 million for the preceding three years, and a small business is defined as an entity with attributed average annual gross revenues of more than $3 million but less than $15 million for the preceding three years.[205] Three of the winning bidders in Auction 57 qualified as small or very small businesses, while three winning entities in Auction 61 qualified as very small businesses.

51. *Offshore Radiotelephone Service.* This service operates on several ultra high frequencies ("UHF") television broadcast channels that are not used for television broadcasting in the coastal areas of States bordering the Gulf of Mexico.[206] There is presently 1 licensee in this service. We do not have information whether that licensee would qualify as small under the SBA's small business size standard for Wireless Telecommunications Carriers (except Satellite) services.[207] Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.[208]

52. *Multiple Address Systems ("MAS").* Entities using MAS spectrum, in general, fall into two categories: (1) Those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses. With respect to the first category, the Commission defines "small entity" for MAS licenses as an entity that has average gross revenues of less than $15 million in the three previous calendar years.[209] "Very small business" is defined as an entity that, together with its affiliates, has average gross revenues of not more than $3 million for the preceding three calendar years.[210] The SBA has approved of these definitions.[211] The majority of these entities will most likely be licensed in bands where the Commission has implemented a geographic area licensing approach that would require the use of competitive bidding procedures to resolve mutually exclusive applications. The Commission's licensing database indicates that, as of March 5, 2010, there were over 11,500 MAS station authorizations. In addition, an auction for 5,104 MAS licenses in 176 EAs was conducted in 2001.[212] Seven winning bidders claimed status as small or very small businesses and won 611 licenses. In 2005, the Commission completed an auction (Auction 59) of 4,226 MAS licenses in the Fixed Microwave Services from the 928/959 and 932/941 MHz bands. Twenty-six winning bidders won a total of 2,323 licenses. Of the 26 winning bidders in this auction, five claimed small business status and won 1,891 licenses.

53. With respect to the second category, which consists of entities that use, or seek to use, MAS spectrum to accommodate internal communications needs, we note that MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. For the majority of private internal users, the small business size standard developed by the SBA would be more appropriate. The applicable size standard in this instance appears to be that of Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons.[213] The Commission's licensing database indicates that, as of January 20, 1999, of the 8,670 total MAS station authorizations, 8,410 authorizations were for private radio service, and of these, 1,433 were for private land mobile radio service.

54. *1.4 GHz Band Licensees.* The Commission conducted an auction of 64 1.4 GHz band licenses[214] in 2007.[215] In that auction, the Commission defined "small business" as an entity that, together with its affiliates and controlling interests, had average gross revenues that exceed $15 million but do not exceed $40 million for the preceding three years, and a "very small business" as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding $15 million for the preceding three years.[216] Neither of the two winning bidders sought designated entity status.[217]

55. *Incumbent 24 GHz Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of Wireless Telecommunications Carriers (except Satellite). This category provides that such a company is small if it employs no more than 1,500 persons.[218] The broader census data notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent[219] and TRW, Inc. It is our understanding that Teligent and its related companies have fewer than 1,500 employees, though this may change in the future. TRW is not a small entity. There are approximately 122 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 122 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

56. *Future 24 GHz Licensees.* With respect to new applicants in the 24 GHz band, we have defined "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding $15 million.[220] "Very small business" in the 24 GHz band is defined as an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years.[221] The SBA has approved these definitions.[222] The Commission will not know how many licensees will be small or very small businesses until the auction, if required, is held.

57. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service ("MDS")

[201] 13 CFR 121.201, NAICS code 517210.

[202] A licensee may have a license in more than one category.

[203] *Amendment of the Commission's Rules Concerning Maritime Communications,* PR Docket No. 92–257, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853 (1998).

[204] *See* "*Automated Maritime Telecommunications System Spectrum Auction Scheduled for September 15, 2004, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures,*" public notice, 19 FCC Rcd 9518 (WTB 2004); "*Auction of Automated Maritime Telecommunications System Licenses Scheduled for August 3, 2005, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures for Auction No. 61,*" public notice, 20 FCC Rcd 7811 (WTB 2005).

[205] 47 CFR 80.1252.

[206] This service is governed by subpart I of part 22 of the Commission's rules. *See* 47 CFR 22.1001–22.1037.

[207] 13 CFR 121.201, NAICS code 517210.

[208] *Id.*

[209] *See Amendment of the Commission's Rules Regarding Multiple Address Systems,* Report and Order, 15 FCC Rcd 11956, 12008, para. 123 (2000).

[210] *Id.*

[211] *See Alvarez Letter 1999.*

[212] *See* "*Multiple Address Systems Spectrum Auction Closes,*" public notice, 16 FCC Rcd 21011 (2001).

[213] *See* 13 CFR 121.201, NAICS code 517210.

[214] *See* "*Auction of 1.4 GHz Bands Licenses Scheduled for February 7, 2007,*" public notice, 21 FCC Rcd 12393 (WTB 2006).

[215] *See* "*Auction of 1.4 GHz Band Licenses Closes; Winning Bidders Announced for Auction No. 69,*" public notice, 22 FCC Rcd 4714 (2007) ("*Auction No. 69 Closing PN*").

[216] *Auction No. 69 Closing PN,* Attachment C.

[217] *See Auction No. 69 Closing PN.*

[218] 13 CFR 121.201, NAICS code 517210.

[219] Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

[220] *Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules To License Fixed Services at 24 GHz,* Report and Order, 15 FCC Rcd 16934, 16967, para 77 (2000) ("*24 GHz Report and Order*"); *see also* 47 CFR 101.538(a)(2).

[221] *24 GHz Report and Order,* 15 FCC Rcd at 16967, para. 77; *see also* 47 CFR 101.538(a)(1).

[222] *See* Letter from Gary M. Jackson, Assistant Administrator, SBA, to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, WTB, FCC (July 28, 2000).

and Multichannel Multipoint Distribution Service ("MMDS") systems, and "wireless cable," transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service ("BRS") and Educational Broadband Service ("EBS") (previously referred to as the Instructional Television Fixed Service ("ITFS")).[223] In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years.[224] The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas ("BTAs"). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities.[225] After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas.[226] The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) will receive a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) will receive a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) will receive a 35 percent discount on its winning bid.[227] Auction 86 concluded in 2009 with the sale of 61 licenses.[228] Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

58. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities.[229] Thus, we estimate that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies."[230] The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having $13.5 million or less in annual receipts.[231] According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year.[232] Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million.[233] Thus, the majority of these firms can be considered small.

59. *Television Broadcasting.* This Economic Census category "comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public."[234] The SBA has created the following small business size standard for Television Broadcasting firms: those having $14 million or less in annual receipts.[235] The Commission has estimated the number of licensed commercial television stations to be 1,395.[236] In addition, according to Commission staff review of the BIA Publications, Inc., Master Access Television Analyzer Database (BIA) on March 30, 2007, about 986 of an estimated 1,395 commercial television stations (or approximately 72 percent) had revenues of $13 million or less.[237] We therefore estimate that the majority of commercial television broadcasters are small entities.

60. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations[238] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

61. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 390.[239] These stations are non-profit, and therefore considered to be small entities.[240]

62. In addition, there are also 2,386 low power television stations (LPTV).[241] Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

63. *Radio Broadcasting.* This Economic Census category "comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own

[223] *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding,* MM Docket No. 94–131 and PP Docket No. 93–253, Report and Order, 10 FCC Rcd 9589, 9593, para 7 (1995) ("*MDS Auction R&O*").

[224] 47 CFR 21.961(b)(1).

[225] 47 U.S.C. 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard.

[226] Auction of Broadband Radio Service (BRS) Licenses, Scheduled for October 27, 2009, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 86, *public notice,* 24 FCC Rcd 8277 (2009).

[227] *Id.* at 8296.

[228] Auction of Broadband Radio Service Licenses Closes, Winning Bidders Announced for Auction 86, Down Payments Due November 23, 2009, Final Payments Due December 8, 2009, Ten-Day Petition to Deny Period, *public notice,* 24 FCC Rcd 13572 (2009).

[229] The term "small entity" within SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. 601(4)–(6). We do not collect annual revenue data on EBS licensees.

[230] U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition); *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[231] 13 CFR 121.201, NAICS code 517110.

[232] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

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

[234] U.S. Census Bureau, 2007 NAICS Definitions, "515120 Television Broadcasting" (partial definition); *http://www.census.gov/naics/2007/def/ND515120.HTM#N515120.*

[235] 13 CFR 121.201, NAICS code 515120 (updated for inflation in 2008).

[236] *See FCC News Release,* "Broadcast Station Totals as of June 30, 2009," dated September 4, 2009; *http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC–280836A1.pdf.*

[237] We recognize that BIA's estimate differs slightly from the FCC total given *supra.*

[238] "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both." 13 CFR 21.103(a)(1).

[239] *See FCC News Release,* "Broadcast Station Totals as of June 30, 2009," dated September 4, 2009; *http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC-280836A1.pdf.*

[240] *See generally* 5 U.S.C. 601(4), (6).

[241] *See FCC News Release,* "Broadcast Station Totals as of June 30, 2009," dated September 4, 2009; *http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC-280836A1.pdf.*

studio, from an affiliated network, or from external sources."[242] The SBA has established a small business size standard for this category, which is: such firms having $7 million or less in annual receipts.[243] According to Commission staff review of BIA Publications, Inc.'s *Master Access Radio Analyzer Database* on March 31, 2005, about 10,840 (95%) of 11,410 commercial radio stations had revenues of $6 million or less. Therefore, the majority of such entities are small entities.

64. We note, however, that in assessing whether a business concern qualifies as small under the above size standard, business affiliations must be included.[244] In addition, to be determined to be a "small business," the entity may not be dominant in its field of operation.[245] We note that it is difficult at times to assess these criteria in the context of media entities, and our estimate of small businesses may therefore be over-inclusive.

65. *Auxiliary, Special Broadcast and Other Program Distribution Services.* This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. The applicable definitions of small entities are those, noted previously, under the SBA rules applicable to radio broadcasting stations and television broadcasting stations.[246]

66. The Commission estimates that there are approximately 5,618 FM translators and boosters.[247] The Commission does not collect financial information on any broadcast facility, and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most commercial translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business ($7.0 million for a radio station or $14.0 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a "small business concern" because they are not independently owned and operated.[248]

67. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies."[249] The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having $13.5 million or less in annual receipts.[250] According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year.[251] Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million.[252] Thus, the majority of these firms can be considered small.

68. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide.[253] Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.[254] In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[255] Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have under 10,000 subscribers, and an additional 302 systems have 10,000–19,999 subscribers.[256] Thus, under this second size standard, most cable systems are small.

69. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[257] The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[258] Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.[259] We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million,[260] and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

70. *Open Video Systems.* The open video system ("OVS") framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers.[261] The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,[262] OVS falls within the SBA small business size standard covering cable services, which is "Wired Telecommunications Carriers."[263] The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for such services we must, however, use current census data that are based on the previous category of

[242] U.S. Census Bureau, 2007 NAICS Definitions, "515112 Radio Stations"; *http://www.census.gov/naics/2007/def/ND515112.HTM#N515112.*

[243] 13 CFR 121.201, NAICS code 515112 (updated for inflation in 2008).

[244] "Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists." 13 CFR 121.103(a)(1) (an SBA regulation).

[245] 13 CFR 121.102(b) (an SBA regulation).

[246] 13 CFR 121.201, NAICS codes 515112 and 515120.

[247] *See supra* note 242.

[248] *See* 15 U.S.C. 632.

[249] U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition); *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[250] 13 CFR 121.201, NAICS code 517110.

[251] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

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

[253] 47 CFR 76.901(e). The Commission determined that this size standard equates approximately to a size standard of $100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation,* Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

[254] These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006,* "Top 25 Cable/Satellite Operators," pages A–8 & C–2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006,* "Ownership of Cable Systems in the United States," pages D–1805 to D–1857.

[255] 47 CFR 76.901(c).

[256] Warren Communications News, *Television & Cable Factbook 2008,* "U.S. Cable Systems by Subscriber Size," page F–2 (data current as of Oct. 2007). The data do not include 851 systems for which classifying data were not available.

[257] 47 U.S.C. 543(m)(2); *see* 47 CFR 76.901(f) & nn. 1–3.

[258] 47 CFR 76.901(f); *see* public notice, *FCC Announces New Subscriber Count for the Definition of Small Cable Operator,* DA 01–158 (Cable Services Bureau, Jan. 24, 2001).

[259] These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006,* "Top 25 Cable/Satellite Operators," pages A–8 & C–2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006,* "Ownership of Cable Systems in the United States," pages D–1805 to D–1857.

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

[261] 47 U.S.C. 571(a)(3)–(4). *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Thirteenth Annual Report,* 24 FCC Rcd 542, 606 para. 135 (2009) ("*Thirteenth Annual Cable Competition Report*").

[262] *See* 47 U.S.C. 573.

[263] U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers"; *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having $13.5 million or less in annual receipts.[264] According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year.[265] Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million.[266] Thus, the majority of cable firms can be considered small. In addition, we note that the Commission has certified some OVS operators, with some now providing service.[267] Broadband service providers ("BSPs") are currently the only significant holders of OVS certifications or local OVS franchises.[268] The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

71. *Cable Television Relay Service.* This service includes transmitters generally used to relay cable programming within cable television system distribution systems. This cable service is defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies." [269] The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having $13.5 million or less in annual receipts.[270] According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year.[271] Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million.[272] Thus, the majority of these firms can be considered small.

72. *Multichannel Video Distribution and Data Service.* MVDDS is a terrestrial fixed microwave service operating in the 12.2–12.7 GHz band. The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. It defined a very small business as an entity with average annual gross revenues not exceeding $3 million for the preceding three years; a small business as an entity with average annual gross revenues not exceeding $15 million for the preceding three years; and an entrepreneur as an entity with average annual gross revenues not exceeding $40 million for the preceding three years.[273] These definitions were approved by the SBA.[274] On January 27, 2004, the Commission completed an auction of 214 MVDDS licenses (Auction No. 53). In this auction, ten winning bidders won a total of 192 MVDDS licenses.[275] Eight of the ten winning bidders claimed small business status and won 144 of the licenses. The Commission also held an auction of MVDDS licenses on December 7, 2005 (Auction 63). Of the three winning bidders who won 22 licenses, two winning bidders, winning 21 of the licenses, claimed small business status.[276]

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

74. *Aviation and Marine Services.* Small businesses in the aviation and marine radio services use a very high frequency ("VHF") marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees.[277] Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars.[278] There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as "small" businesses under the above special small business size standards.

75. *Personal Radio Services.* Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The Personal Radio Services include spectrum licensed under Part 95 of our rules.[279] These services include Citizen Band Radio Service ("CB"), General Mobile Radio Service ("GMRS"), Radio Control Radio Service ("R/C"), Family Radio Service ("FRS"), Wireless Medical Telemetry Service ("WMTS"), Medical Implant Communications Service ("MICS"), Low Power Radio Service ("LPRS"), and Multi-Use Radio Service ("MURS").[280] There are a variety of methods used to license the spectrum in these rule parts, from licensing by rule, to conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. Under the RFA, the Commission is required to make a determination of which small entities are directly affected by the rules being proposed. Since all such entities are wireless, we apply the definition of Wireless Telecommunications Carriers (except Satellite), pursuant to which a small entity is defined as employing 1,500 or fewer

[264] 13 CFR 121.201, NAICS code 517110.

[265] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

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

[267] A list of OVS certifications may be found at *http://www.fcc.gov/mb/ovs/csovscer.html.*

[268] *See Thirteenth Annual Cable Competition Report,* 24 FCC Rcd at 606–07 para. 135. BSPs are newer firms that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

[269] U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition); *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[270] 13 CFR 121.201, NAICS code 517110.

[271] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

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

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

[274] *See* Letter from Hector V. Barreto, Administrator, U.S. Small Business Administration, to Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, WTB, FCC (Feb.13, 2002).

[275] *See* "*Multichannel Video Distribution and Data Service Auction Closes,*" public notice, 19 FCC Rcd 1834 (2004).

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

[277] 13 CFR 121.201, NAICS code 517210.

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

[279] 47 CFR Part 90.

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

persons.[281] Many of the licensees in these services are individuals, and thus are not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base an estimation of the number of small entities under an SBA definition that might be directly affected by the proposed rules.

76. *Public Safety Radio Services.* Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.[282] There are a total of approximately 127,540 licensees in these services. Governmental entities [283] as well as private businesses comprise the licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small entity.[284]

77. *Internet Service Providers.* The 2007 Economic Census places these firms, whose services might include voice over Internet protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider's own telecommunications connections (*e.g.* cable and DSL, ISPs), or over client-supplied telecommunications connections (*e.g.* dial-up ISPs). The former are within the category of Wired Telecommunications Carriers,[285] which has an SBA small business size standard of 1,500 or fewer employees.[286] The latter are within the category of All Other Telecommunications,[287] which has a size standard of annual receipts of $25 million or less.[288] The most current Census Bureau data for all such firms, however, are the 2002 data for the previous census category called Internet Service Providers.[289] That category had a small business size standard of $21 million or less in annual receipts, which was revised in late 2005 to $23 million. The 2002 data show that there were 2,529 such firms that operated for the entire year.[290] Of those, 2,437 firms had annual receipts of under $10 million, and an additional 47 firms had receipts of between $10 million and $24,999,999.[291] Consequently, we estimate that the majority of ISP firms are small entities.

78. The ISP industry has changed dramatically since 2002. The 2002 data cited above may therefore include entities that no longer provide Internet access service and may exclude entities that now provide such service. To ensure that this (IRFA/FRFA) describes the universe of small entities that our action might affect, we discuss in turn several different types of entities that might be providing Internet access service.

79. We note that, although we have no specific information on the number of small entities that provide Internet access service over unlicensed spectrum, we include these entities in our IRFA/FRFA.

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

80. With certain exceptions, the Commission's Schedule of Regulatory Fees applies to all Commission licensees and regulatees. Most licensees will be required to count the number of licenses or call signs authorized, complete and submit an FCC Form 159 Remittance Advice, and pay a regulatory fee based on the number of licenses or call signs.[292] Interstate telephone service providers must compute their annual regulatory fee based on their interstate and international end-user revenue using information they already supply to the Commission in compliance with the Form 499–A, Telecommunications Reporting Worksheet, and they must complete and submit the FCC Form 159. Compliance with the fee schedule will require some licensees to tabulate the number of units (*e.g.,* cellular telephones, pagers, cable TV subscribers) they have in service when they complete and submit the 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.

81. As discussed previously in this *Notice of Proposed Rulemaking,* the Commission concluded in its FY 2009 regulatory fee cycle that licensees filing their annual regulatory fee payments must begin the process by entering the Commission's Fee Filer system with a valid FRN and password. In some instances, it will be necessary to use a specific FRN and password that is linked to a particular regulatory fee bill. Going forward, the submission of hardcopy Form 159 documents will not be permitted for making a regulatory fee payment during the regulatory fee cycle. By requiring licensees to use Fee Filer to begin the regulatory fee payment process, errors resulting from illegible handwriting on hardcopy Form 159's will be reduced, and we will create an electronic record of licensee payment attributes that are more easily traced than those payments that are simply mailed in with a hardcopy Form 159.

82. Licensees and regulatees are advised that failure to submit the required regulatory fee in a timely manner will subject the licensee or regulatee to a late payment penalty of 25 percent in addition to the required fee.[293] If payment is not received, new or pending applications may be dismissed, and existing authorizations may be subject to rescission.[294] Further, in accordance with the DCIA, Federal agencies may bar a person or entity from obtaining a Federal loan or loan insurance guarantee if that person or entity fails to pay a delinquent debt owed to any Federal agency.[295] Nonpayment of regulatory fees is a debt owed to the United States pursuant to 31 U.S.C. 3711 *et seq.,* and the DCIA. Appropriate

[281] 13 CFR 121.201, NAICS Code 517210.

[282] 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 90.15–90.27. The police service includes approximately 27,000 licensees that serve State, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes approximately 23,000 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of approximately 41,000 licensees that are State, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are approximately 7,000 licensees within the forestry service which is comprised of licensees from State departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The approximately 9,000 State and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The approximately 1,000 licensees in the Emergency Medical Radio Service ("EMRS") use the 39 channels allocated to this service for emergency medical service communications related to the delivery of emergency medical treatment. 47 CFR 90.15–90.27. The approximately 20,000 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 CFR 90.33–90.55.

[283] 47 CFR 1.1162.

[284] 5 U.S.C. 601(5).

[285] U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers", *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[286] 13 CFR 121.201, NAICS code 517110 (updated for inflation in 2008).

[287] U.S. Census Bureau, 2007 NAICS Definitions, "517919 All Other Telecommunications"; *http://www.census.gov/naics/2007/def/ND517919.HTM#N517919.*

[288] 13 CFR 121.201, NAICS code 517919 (updated for inflation in 2008).

[289] U.S. Census Bureau, 2002 NAICS Definitions, "518111 Internet Service Providers"; *http://www.census.gov/eped/naics02/def/NDEF518.HTM.*

[290] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 518111 (issued Nov. 2005).

[291] An additional 45 firms had receipts of $25 million or more.

[292] *See* 47 CFR 1.1162 for the general exemptions from regulatory fees. *E.g.,* Amateur radio licensees (except applicants for vanity call signs) and operators in other non-licensed services (*e.g.,* Personal Radio, part 15, ship and aircraft). Governments and non-profit (exempt under section 501(c) of the Internal Revenue Code) entities are exempt from payment of regulatory fees and need not submit payment. Non-commercial educational broadcast licensees are exempt from regulatory fees as are licensees of auxiliary broadcast services such as low power auxiliary stations, television auxiliary service stations, remote pickup stations and aural broadcast auxiliary stations where such licenses are used in conjunction with commonly owned non-commercial educational stations. Emergency Alert System licenses for auxiliary service facilities are also exempt as are 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.

[293] 47 CFR 1.1164.

[294] 47 CFR 1.1164(c).

[295] Public Law 104–134, 110 Stat. 1321 (1996).

enforcement measures, as well as administrative and judicial remedies, may be exercised by the Commission. Debts owed to the Commission may result in a person or entity being denied a Federal loan or loan guarantee pending before another Federal agency until such obligations are paid.[296]

83. The Commission's rules currently provide for relief in exceptional circumstances. Persons or entities may request a waiver, reduction or deferment of payment of the regulatory fee.[297] 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 (*e.g.,* where payment of the regulatory fee along with the waiver or reduction request could result in reduction of service to a community or other financial hardship to the licensee), the Commission will defer payment in response to a request filed with the appropriate supporting documentation.

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

84. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[298] In this *NPRM,* we seek comment on alternatives that might simplify our fee procedures or otherwise benefit filers, including small entities, while remaining consistent with our statutory responsibilities in this proceeding.

85. Several categories of licensees and regulatees are exempt from payment of regulatory fees. Also, waiver procedures provide regulatees, including small entity regulatees, relief in exceptional circumstances. We note that small entities should be assisted by our implementation of the Fee Filer program, and that we have continued our practice of exempting fees whose total sum owed is less than $10.00.

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

86. None.

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[293] 47 CFR 1.1164.

[294] 47 CFR 1.1164(c).

[295] Public Law 104–134, 110 Stat. 1321 (1996).

APPENDIX F

FY 2009 Schedule of Regulatory Fees

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

Fee Category	Annual Regulatory Fee (U.S. $'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	40
Microwave (per license) (47 CFR part 101)	30
218-219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	65
Marine (Ship) (per station) (47 CFR part 80)	10
Marine (Coast) (per license) (47 CFR part 80)	45
General Mobile Radio Service (per license) (47 CFR part 95)	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	20
PLMRS (Shared Use) (per license) (47 CFR part 90)	20
Aviation (Aircraft) (per station) (47 CFR part 87)	5
Aviation (Ground) (per license) (47 CFR part 87)	10
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.34
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.18
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08
Broadband Radio Service (formerly MMDS/ MDS) (per license) (47 CFR part 21)	320
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	320
AM Radio Construction Permits	400
FM Radio Construction Permits	650
TV (47 CFR part 73) VHF Commercial	
Markets 1-10	77,575
Markets 11-25	60,550
Markets 26-50	37,575

Fee Category	Annual Regulatory Fee (U.S. $'s)
Markets 51-100	22,950
Remaining Markets	5,950
Construction Permits	5,950
TV (47 CFR part 73) UHF Commercial	
Markets 1-10	24,250
Markets 11-25	21,525
Markets 26-50	13,350
Markets 51-100	7,600
Remaining Markets	1,950
Construction Permits	1,950
Satellite Television Stations (All Markets)	1,275
Construction Permits – Satellite Television Stations	650
Low Power TV, Class A TV, TV/FM Translators & Boosters (47 CFR part 74)	400
Broadcast Auxiliaries (47 CFR part 74)	10
CARS (47 CFR part 78)	260
Cable Television Systems (per subscriber) (47 CFR part 76)	.88
Interstate Telecommunication Service Providers (per revenue dollar)	.00342
Earth Stations (47 CFR part 25)	210
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100)	127,175
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	137,225
International Bearer Circuits - Terrestrial/Satellites (per 64KB circuit)	.75
International Bearer Circuits - Submarine Cable	See Table Below

FY 2009 SCHEDULE OF REGULATORY FEES (continued)

FY 2009 RADIO STATION REGULATORY FEES						
Population Served	**AM Class A**	**AM Class B**	**AM Class C**	**AM Class D**	**FM Classes A, B1 & C3**	**FM Classes B, C, C0, C1 & C2**
<=25,000	$675	$550	$500	$575	$650	$825
25,001 – 75,000	$1,350	$1,075	$750	$875	$1,325	$1,450
75,001 – 150,000	$2,025	$1,350	$1,000	$1,450	$1,825	$2,725
150,001 – 500,000	$3,050	$2,300	$1,500	$1,725	$2,800	$3,550
500,001 – 1,200,000	$4,400	$3,500	$2,500	$2,875	$4,450	$5,225
1,200,001 – 3,000,00	$6,750	$5,400	$3,750	$4,600	$7,250	$8,350
>3,000,000	$8,100	$6,475	$4,750	$5,750	$9,250	$10,850

FY 2009 SCHEDULE OF REGULATORY FEES

International Bearer Circuits - Submarine Cable

Submarine Cable Systems (capacity as of December 31, 2008)	Fee amount	Address
< 2.5 Gbps	$15,075	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000
2.5 Gbps or greater, but less than 5 Gbps	$30,125	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000
5 Gbps or greater, but less than 10 Gbps	$60,250	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000
10 Gbps or greater, but less than 20 Gbps	$120,525	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000
20 Gbps or greater	$241,025	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standard No. 108; Lamp, Reflective Devices and Associated Equipment; Denial of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: BMW of North America, LLC (BMW) requested a modification to the motorcycle headlighting system location requirements for a single headlamp with multiple light sources. The current standard requires that the light sources contained in a single motorcycle headlamp containing multiple light sources be located on the vertical centerline of the vehicle or horizontally disposed about the vertical centerline and mounted at the same height. BMW requested that the location requirements be based on the axes of reference instead of the light sources.

For compliance testing purposes, the agency utilizes the manufacturer's specified optical axis marking. As NHTSA explained in a letter of interpretation to Mr. Kiminori,[1] the optical axis is determined by the manufacturer in the certification process. Our lighting standard does not currently have requirements to specify where the optical axis marking must be located and we note that a modification of the standard, as requested by BMW, would effectively remove the location requirements for a single motorcycle headlamp with multiple light sources. Therefore, NHTSA is denying BMW's petition.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mr. Markus Price, Office of Crash Avoidance Standards (Phone: 202–366–0098; FAX: 202–366–7002).

For legal issues, you may call Mr. J. Edward Glancy Office of the Chief Counsel (Phone: 202–366–2992; FAX: 202–366–3820).

You may send mail to these officials at: National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

Federal Motor Vehicle Safety Standard (FMVSS) No. 108; *Lamps, reflective devices, and associated equipment,* establishes lighting requirements for motor vehicles.[2] Motorcycle headlamp systems that contain a single headlamp with multiple light sources must be arranged according to the requirements of paragraph S7.9.6.2.[3] S7.9.6.2(a) requires that "If the headlamp contains more than one light source, each light source shall be mounted on the vertical centerline with the upper beam no higher than the lower beam, or horizontally disposed about the vertical centerline and mounted at the same height."

BMW Group Petition

On October 10, 2008, BMW North America, LLC (BMW) petitioned the agency requesting that the requirements for a motorcycle headlighting system, containing a single headlamp, with multiple light sources, be modified. BMW stated that the purpose of its petition was to harmonize the requirements of FMVSS No. 108 with the similar European Communities (ECE) regulation No. 53 requirements, which have location requirements relative to the vehicle based on the axis of reference rather than the physical filaments in the lamp.

Specifically, BMW requested that paragraph S10.17.1.1.2 [4] of the reorganized standard be amended from the sentence quoted above in "Background," to read as follows:

> S10.17.1.1.2 If the headlamp contains more than one light source, each *axis of reference* must be *located* on the vertical centerline with the upper beam no higher than the lower beam, or horizontally disposed about the vertical centerline and *located* at the same height.[5]

BMW stated that "when using modern, state of the art asymmetrical reflectors, the center of reference is, because of the reflector surface, slightly differently located compared to the original light source. The center of reference is the basis for all photometric measurement, which are required by the ECE regulation." BMW also stated that its requested modification would harmonize FMVSS No. 108 with ECE Regulation No. 53, and would have no negative impact on traffic safety.

Analysis

In consideration of this petition, the agency reviewed the use of the defined term "axis of reference" in order to evaluate the appropriate use of this term within paragraph S10.14.1.1.2.

The axis of reference is defined as the following:

> Axis of reference means the characteristic axis of the lamp for use as the direction of reference (H = 0°, V = 0°) for angles of field or photometric measurements and for installing the lamp on the vehicle.[6]

The term "axis of reference" is used in two key areas within the standard. First, the axis of reference is used in the determination of the effective projected luminous lens area.[7] The other key area in which this term is used is, in determination of the mounting height of various lamps. Lamps mounted with their axis of reference less than 750 millimeters (mm) above the road surface may meet the photometric requirements for the test points located below 5° down at 5° down, rather than at the specified required downward angle. This general concept applies to various lamps and is listed in the table of photometric requirements for each lamp to which it applies.[8]

The agency has also used the term "axis of reference" in a key guidance letter. In a letter to Mr. Kiminori, the agency explains the flexibility manufacturers have in the establishment of the optical marking and therefore the location of the axis of reference. The agency stated, "Paragraph S7.8.5.3(f) [paragraph numeration prior to the technical rewrite of 2007] of FMVSS No. 108 requires that a visually/optically aimed headlamp include a mark or markings identifying the optical axis of the headlamp. The location of this mark or markings is to be determined by the

of polar bears through Letters of Authorization issued under 16 U.S.C.

[2] 49 CFR 571.108 (2009).

[3] In the amended standard, this requirement is found in paragraph S10.17.1.1.2 and paragraph S10.17.1.1.3. *See* 72 FR 68234 (Dec. 4, 2007). In a December 2007 final rule, NHTSA rewrote and reorganized FMVSS No. 108 to provide a more straightforward and logical presentation of the applicable regulatory requirements. *Id.* The effective date of those amendments has been delayed to December 1, 2012. 74 FR 58214 (Nov. 12, 2009).

[4] Paragraph S10.17.1.1.2 of the reorganized standard is identical to the same sentence currently found in paragraph S7.9.6.2(a), i.e., the requirement prior to the 2007 reorganization of the standard. *See* 72 FR 68234, 68283.

[5] *Id.* (emphasis added).

[6] 49 CFR 571.108 S4, Definitions.

[7] "*Effective projected luminous lens area* means the area of the orthogonal projection of the effective light-emitting surface of a lamp on a plane perpendicular to a defined direction relative to the axis of reference. Unless otherwise specified, the direction is coincident with the axis of reference." *Id.*

[8] *See* 72 FR 68234, 68301–68327 (Tables V, VII, VIII, IX, X, XI, XII, XIV, XVI, XVII) (noting in Table footnotes that where various lamps are "mounted with their axis of reference less than 750 mm above the road surface, photometry requirements below 5° down may be met at 5° down rather than at the specified requirement downward angle").