

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 1**

[MD Docket No. 10–87; FCC 10–123]

**Assessment and Collection of Regulatory Fees for Fiscal Year 2010**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, we amend our Schedule of Regulatory Fees 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). These 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.

**DATES:** August 18, 2010.

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

**SUPPLEMENTARY INFORMATION:**

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**Table of Contents**

Heading	Paragraph No.
I. Introduction	1
II. Report and Order	2
A. FY 2010 Regulatory Fee Assessment Methodology	3
1. AM and FM Radio Stations	5
2. Submarine Cable Methodology	11
B. Regulatory Fee Obligations for Digital Full Service Television Broadcasters	16
C. Regulatory Fee Obligations for Digital Low Power, Class A, and TV Translators/Boosters	21
D. Commercial Mobile Radio Service Messaging Service	22
E. Interstate Telecommunications Service Provider Fees	25
F. Administrative and Operational Issues	32
1. Mandatory Use of Fee Filer	33
2. Notification and Collection of Regulatory Fees	35
a. Pre-Bills	35
III. Procedural Matters	39
A. Public Notices and Fact Sheets	40
B. Assessment Notifications	41
1. Media Services Licensees	41
2. CMRS Cellular and Mobile Services Assessments	44
C. Streamlined Regulatory Fee Payment Process	47
1. Cable Television Subscribers	47
2. CMRS Cellular and Mobile Providers	48
3. Interstate Telecommunications Service Providers (“ITSP”)	49
D. Payment of Regulatory Fees	50
1. Lock Box Bank	50
2. Receiving Bank for Wire Payments	51
3. De Minimis Regulatory Fees	52
4. Standard Fee Calculations and Payment Dates	53
E. Enforcement	54
F. Final Regulatory Flexibility Analysis	56
G. Final Paperwork Reduction Act of 1995 Analysis	57
H. Congressional Review Act Analysis	58
IV. Ordering Clauses	59
Appendix A—List of Commenters and Reply Commenters	
Appendix B—Calculation of FY 2010 Revenue Requirements and Pro-Rata Fees	
Appendix C—FY 2010 Schedule of Regulatory Fees	
Appendix D—Sources of Payment Unit Estimates for FY 2010	
Appendix E—Factors, Measurements, and Calculations That Go Into Determining Station Signal Contours and Associated Population Coverages	
Appendix F—Final Regulatory Flexibility Analysis	
Appendix G—Rule Changes	
Appendix H—FY 2009 Schedule of Regulatory Fees	

**I. Introduction**

1. In this *Report and Order*, we conclude the Assessment and Collection of Regulatory Fees for Fiscal Year (“FY”) 2010 proceeding to collect \$335,794,000 in regulatory fees for 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.<sup>1</sup> 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.<sup>2</sup> 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.

**II. Report and Order**

2. On April 13, 2010, we released a *Notice of Proposed Rulemaking (“FY 2010 NPRM”)* (75 FR 21536, April 26, 2010) seeking comment on regulatory fee issues for FY

<sup>1</sup> 47 U.S.C. 159(a).

<sup>2</sup> 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.

2010.<sup>3</sup> The section 9 regulatory fee proceeding is an annual rulemaking process to ensure the Commission collects the required fee amount each year. In the *FY 2010 NPRM*, we proposed to retain the section 9 regulatory fee methodology used in the prior fiscal year except as discussed below. We received nine comments and five reply comments.<sup>4</sup> We address the issues raised in our *FY 2010 NPRM* and these comments below.

#### A. FY 2010 Regulatory Fee Assessment Methodology

3. 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 B. 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.<sup>5</sup> 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.

4. In calculating the FY 2010 regulatory fees listed in Appendix C, we further adjusted the FY 2009 list of payment units (see Appendix D) 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.<sup>6</sup> 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

5. 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 E. 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.<sup>7</sup>

6. In response to our FY 2010 *Notice of Proposed Rulemaking*, we received two comments and one reply comment regarding regulatory fees applicable to radio stations. In his comment, Robert Bittner states that the regulatory fee structure unfairly favors the largest AM, FM, and television stations, which have much higher revenues.<sup>8</sup> Mr. Bittner compares the greater revenues earned by large AM, FM, and TV stations and the proportion of regulatory fees that they pay with the revenues and regulatory fees of smaller markets.<sup>9</sup> Mr. Bittner proposes the Commission use a flat percentage of a station's income as a more equitable methodology for assessing regulatory fees.<sup>10</sup> As an alternative approach, Mr. Bittner suggests that the Commission assess regulatory fees on a per-person basis based on the station's city-grade contour, taking into consideration reductions for AM stations and those stations that have to reduce power at night.<sup>11</sup> Finally, Mr. Bittner argues that the population thresholds currently in use are too narrow, thereby favoring the larger stations, which are well beyond the 750,000 population threshold. In his reply comment, Mr. Alex Goldman agrees with Mr. Bittner's recommendations.<sup>12</sup>

7. Mr. Edward A. Schober, representing Radiotechniques Engineering, also submitted a comment regarding radio station regulatory fees. Mr. Schober recommends that the

<sup>7</sup> 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.

<sup>8</sup> See comments of Robert Bittner at page 1.

<sup>9</sup> *Id.* at page 1.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> See comments of Alex Goldman at page 1.

Commission review the regulatory fee structure for AM radio stations in which fees, from highest to lowest, are currently assessed according to class: Class A, B, D, and C. Mr. Schober argues that Class D AM radio stations should be assessed the lowest AM regulatory fee as a class of service.<sup>13</sup> In addition, Mr. Schober also recommends that the AM and FM radio station regulatory fees be related to the amount of spectrum occupied by the stations, which is 100 kHz for FM stations and 10 kHz for AM stations; hence, he asserts that AM stations should be assessed 10 percent of the FM station fee covering the same population.<sup>14</sup>

8. Although Mr. Bittner and Mr. Schober provide interesting recommendations, the Commission is required to comply with the language and intent of 47 U.S.C. 159, which governs the assessment of regulatory fees. Any changes in fee methodology must be consistent with the governing statute, including the prior notification to Congress required therein. Mr. Bittner's recommendation to assess a fee based on revenue income is not without precedent; we currently consider revenues in assessing regulatory fees for the Interstate Telecommunications Service Provider (ITSP) fee. However, there are two significant obstacles to the use of revenues in assessing radio and TV station fees: (1) In contrast to ITSPs, radio stations are not required to submit income or revenue information, which means that radio and television stations would be left to the honor system in determining their regulatory fee obligation (and since revenues on a per station basis can fluctuate from year to year, it would be difficult for the Commission to project the total revenue base upon which regulatory fees would be calculated for future collections), and (2) there are over 12,000 radio and television facilities for which income data would have to be gathered and maintained from year to year.

9. Mr. Bittner also recommends using a fee per person regulatory fee methodology for radio stations based on a station's city-grade contour, rather than the current flat fee per station.<sup>15</sup> According to Mr. Bittner, the advantage here would be for radio stations to account for every person within the station's contour. Implementing such a regulatory fee methodology would be very burdensome for both the Commission and the licensees, with more than 10,600 radio stations having to calculate the per person fee each year. Moreover, if the Commission were to change to a fee per person methodology, there would actually be double-counting of persons that are served by many radio stations in the same community. For example, in a city such as Los Angeles, there are many radio stations that serve the same listening public, and if we assessed a fee on a per person basis, many of these radio stations would be paying a regulatory fee for the same person many times over. Thus, this proposed "per person" fee would not improve upon the current

<sup>13</sup> See comments from Edward A. Schober, representing Radiotechniques Engineering, at page 2.

<sup>14</sup> *Id.* at pages 1–2.

<sup>15</sup> Comments by Robert Bittner, at page 1.

<sup>3</sup> See *FY 2010 NPRM*.

<sup>4</sup> See Appendix A for the list of commenters and abbreviated names.

<sup>5</sup> 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.

<sup>6</sup> 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.

assessment methodology, under which regulatory fees are assessed on a per license per station basis based on the population reach of the signal. For all of these reasons, implementing a fee structure based on a per person basis would be impractical as well as unmanageable.

10. Finally, Mr. Schober recommends that the Commission use spectrum occupancy as the basis of assessing AM and FM regulatory fees. The Commission's current system uses population as the basis for differentiating between higher and lower regulatory fees. There is a dearth of data in the record to support a correlation between the amount of bandwidth occupied and the appropriate amount of regulatory fees to be assessed. Furthermore, the correlation between spectrum use and regulatory fees may not be consistent with the intent of the original Section 9 legislation. The original Section 9 legislation only differentiates radio station regulatory fees by class and by type of service (AM or FM).<sup>16</sup> We do not dismiss Mr. Schober's points about the need to review the current AM fee structure based on class, and find that this fee structure should be reviewed further for future funding years. Although the original AM and FM fee grid was submitted as a comment by the National Association of Broadcasters (NAB) and supported by 19 State Broadcaster Associations, it should be noted that the Commission adopted this grid in its FY 1998 *Report & Order*.<sup>17</sup> (63 FR 35847, July 1, 1998) more than a decade ago.

#### 2. Submarine Cable Methodology

11. In the NPRM, we proposed to continue to use an 87.6/12.4 percent revenue allocation between submarine cable and satellite/terrestrial for the bearer circuit regulatory fees for 2010.<sup>18</sup> This allocation was established by the Commission in the *FY 2009 Regulatory Fees Report and Order*,<sup>19</sup> (74 FR 40089, August 11, 2009) and was based on a "Consensus Proposal" from a large group of submarine cable operators that was the basis for Commission revising the methodology for the bearer circuit regulatory fee in the *Submarine Cable Order*.<sup>20</sup> In that Order, the Commission acted on the Consensus Proposal and adopted a new submarine cable bearer circuit methodology that assesses 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 carriers and non-common carrier cables.<sup>21</sup> In the NPRM we stated that since we do not have any additional information that would lead us to change the allocation, we would use the 87.6/12.4 percent allocation to calculate the FY 2010 bearer circuit regulatory fees.<sup>22</sup>

12. In response to the NPRM, Global Crossing North America, Inc. ("GCNA") filed comments seeking changes to the regulatory fee methodology for bearer circuits adopted by the Commission in the *Submarine Cable Order*.<sup>23</sup> GCNA urges the Commission to place a limit on the aggregate fee that a submarine cable operator (or group of affiliated operators) should be required to pay in any given fiscal year to prevent the total regulatory fee from reaching an inequitable level.<sup>24</sup> GSNC suggests several changes that the Commission could make to the regulatory fee methodology to address its concerns: (1) Imposing a fee on no more than two cable landing licenses held by a single licensee or group of affiliated licensees, (2) limiting the aggregate fee that any licensee or group of affiliated licensees must pay, (3) defining the "system" subject to a regulatory fee as an integrated network of cables, rather than presuming that each license represents a separate system, or (4) changing from the 87.6/12.4 percent allocation to a different one, such as a 50/50 percent allocation.<sup>25</sup> Verizon and Qwest Communications International, Inc. ("Qwest") filed reply comments opposing GCNA's proposals.<sup>26</sup> GCNA filed reply comments noting that the Office of the Managing Director ("OMD") had denied its petition to have its 2009 regulatory fees reduced.<sup>27</sup>

13. We will not make any changes to the methodology for the bearer circuit regulatory fees and will use the 87.6/12.4 percent revenue allocation for 2010. The Commission adopted the current methodology in 2009 in the *Submarine Cable Order*, and it has only been in place since that time. In the *Submarine Cable Order* the Commission found that this methodology allocates bearer circuit regulatory fees in an equitable and competitively neutral manner.<sup>28</sup> As Qwest and Verizon point out, the proposals from GCNA would shift the payment of the regulatory fees to the benefit of a few payers, such as GCNA, and to the detriment of most. The Commission must collect a certain amount of revenue from the bearer circuit regulatory fee category each year. Reducing the regulatory fees that certain submarine cable operators pay by either limiting the number of cable landing licenses for which a fee must be paid, limiting the aggregate fee a submarine cable operator must pay or changing the basis for the fees to a "system" fee that may include multiple cable landing licenses, will mean that other submarine cable operators will have to pay higher regulatory fees. We agree with Qwest that these changes would disadvantage cable operators with only one or two cables by increasing the proportion of the bearer circuit fee that they must pay.<sup>29</sup> Thus, we find that

these proposals would not be as equitable as the methodology adopted in the *Submarine Cable Order*.

14. We also decline to change the basis for the assessment of the regulatory fee on submarine cable operators. In the *Submarine Cable Order* the Commission adopted a methodology for submarine cables based on a per cable landing license fee consistent with the Consensus Proposal.<sup>30</sup> GCNA proposes that the Commission change the basis for the fee to be a "system," which may include multiple cable landing licenses.<sup>31</sup> This proposal, in addition to shifting the regulatory fees from operators with multiple submarine cable licenses to other submarine cable operators, would add complexity to the administration of the regulatory fees. In addition to being equitable and competitively neutral, the current methodology is easy to administer.<sup>32</sup> As Qwest notes, using a "system" as the basis for the submarine cable fees will require the Commission to establish a new process to determine which submarine cable licenses comprise a "system" and to maintain an updated list of systems.<sup>33</sup> This would be complex and controversial because different submarine cable operators may have different criteria for what comprises a system and indeed may argue that all of their submarine cables comprise a "system" regardless of any difference in technology or geography between the submarine cables.<sup>34</sup> In addition, changing what is meant by a cable system will affect the Commission's submarine cable licensing procedures. As the Commission noted in the *Submarine Cable Order*, adoption of the new regulatory fee methodology did not amend the rules for licensing submarine cables,<sup>35</sup> and we should not interpret our licensing rules for the purpose of achieving a particular result in connection with the application of the regulatory fee methodology.

15. Finally, we will not change the revenue allocation between submarine cable operators and terrestrial/satellite operators for the 2010 regulatory fees. For the 2009 regulatory fees the Commission used the 87.4/12.6 percent allocation proposed in the Consensus Proposal.<sup>36</sup> The Commission noted in the *Submarine Cable Order* that this apportionment would be determined on an annual basis in the annual regulatory fee proceeding.<sup>37</sup> In the NPRM we proposed to continue to use the 87.4/12.6 percent revenue allocation because we did not have any information on which to base a change in that allocation.<sup>38</sup> We do not find that there is any basis in the record of this proceeding to alter that allocation. GCNA proposes that we change the allocation and suggests a 50/50 allocation.<sup>39</sup> We agree with Qwest and

<sup>30</sup> *Submarine Cable Order* at para. 1.

<sup>31</sup> GCNA comments at 7.

<sup>32</sup> *Submarine Cable Order* at paras. 7, 10.

<sup>33</sup> Qwest reply comments at 2.

<sup>34</sup> We note that most U.S. international service providers state that they provide seamless global services over their global networks which integrate subcable, terrestrial and satellite facilities.

<sup>35</sup> *Submarine Cable Order* at para. 12.

<sup>36</sup> *FY 2009 Report and Order* at para. 8.

<sup>37</sup> *Submarine Cable Order* at n. 35.

<sup>38</sup> NPRM at 6.

<sup>39</sup> GCNA comments at 7-8.

<sup>16</sup> 47 U.S.C. 159(g).

<sup>17</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 1998*, Report and Order, FCC 98-115, 13 FCC Rcd 19820, para. 37 (adopted June 16, 1998).

<sup>18</sup> NPRM at para. 6.

<sup>19</sup> See *FY 2009 Report and Order* at para. 8.

<sup>20</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Second Report and Order, 24 FCC Rcd 4208 (2009) ("*Submarine Cable Order*").

<sup>21</sup> *Id.*

<sup>22</sup> NPRM at para. 6.

<sup>23</sup> GCNA comments. GCNA was not part of the group of submarine cable operators that supported the Consensus Proposal, but GCNA also did not file comments opposing the Consensus Proposal. See *Submarine Cable Order* at n. 3, para. 11. See also GCNA comments at n. 22.

<sup>24</sup> GCNA comments at 1.

<sup>25</sup> GCNA comments at pages 6-7.

<sup>26</sup> Qwest reply comments; Verizon reply comments.

<sup>27</sup> GCNA reply comments.

<sup>28</sup> *Submarine Cable Order* at paras. 1, 7, 9.

<sup>29</sup> Qwest reply comments at 1-2.

Verizon that GCNA has not provided any basis for a change in the allocation.<sup>40</sup> GCNA questions the appropriateness of the current allocation, but provides no basis for a 50/50 allocation other than that it was included in a 2008 proposal by certain cable operators, including GCNA, as part of the process that lead to the Consensus Proposal.<sup>41</sup> We will continue to review this allocation as part of our annual regulatory fee proceeding, but do not find any basis to alter the 87.4/12.6 percent revenue allocation for the 2010 regulatory fees.

#### B. Regulatory Fee Obligations for Digital Full Service Television Broadcasters

16. The digital transition on June 12, 2009 eliminated the distinction between digital and analog full-service television stations. As a result, beginning in FY 2010, the Commission will collect annual regulatory fees from all digital full-service television stations, and the “digital-only” exemption will no longer be applicable. Also, it is possible that because this is the first year following the Commission’s transition to digital full service television, 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, 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.

17. Although we did not seek comment on this issue, we received two comments regarding the assessment of regulatory fees for VHF television stations in the wake of the digital conversion. Fireweed Communications (“Fireweed”) states that VHF television station channels come in two ranges: Channels 2–6 (Low VHF and less desirable) and Channels 7–13 (High VHF and more desirable).<sup>42</sup> Fireweed states that historically VHF television stations have been considered to be “superior to UHF”, and as a result, VHF stations were assessed a much higher regulatory fee than UHF stations. Fireweed further asserts that, with the transition to digital TV, UHF channel assignments have become more advantageous, both in terms of lower interference and greater desirability.<sup>43</sup> Therefore, Fireweed contends, it should not be surprising to see VHF licensees transitioning not only to UHF channels, but also between VHF Channels 2–6 and VHF Channels 7–13.<sup>44</sup> Because of this transitioning within VHF and to UHF channels, Fireweed argues, the Commission should base its regulatory fee structure on three tiers of bands, VHF Channels 2–6, VHF Channels 7–13, and all UHF Channels (channels 14 and greater).<sup>45</sup>

18. Sky Television LLC, Spanish Broadcasting System, Inc., and Sarkes

Tarzian, together known as VHF Digital Stations (“VHF Digital Stations”), also filed comments relating to VHF and UHF television stations. VHF Digital Stations urge the Commission to combine VHF and UHF television stations into one fee category by market size.<sup>46</sup> VHF Digital Stations recommend that, instead of having six separate VHF and six separate UHF regulatory fee categories, the Commission should combine VHF and UHF station fees into six categories according to market size and identify them simply as full service digital television stations.<sup>47</sup> By combining the VHF and UHF fee categories into one as VHF recommends, the resulting fee category would in effect eliminate the historical distinction between the higher VHF fees and the lower UHF fees. VHF Digital Stations also argue that the current regulatory fee methodology structure is inconsistent with the spirit of regulatory fees in which higher fees are assessed for more desirable spectrum; in the digital world, VHF argues, the UHF channels are the desirable spectrum.<sup>48</sup>

19. We acknowledge that in the digital transition some stations moved from VHF to UHF channels. In fact, over the past several months, the number of entities changing channels from VHF to UHF has totaled over 38 percent.<sup>49</sup> This will impact the regulatory fees paid by those VHF television stations still operating on VHF channels. In many of the Nielsen Designated Market Areas (DMA), the number of VHF stations decreased almost 50 percent and this in turn will increase the regulatory fee for these categories twofold. While this potential fee escalation underscores the need for more fundamental, long term reform of our regulatory fee process, it is imperative that we take steps under our current fee structure to mitigate the impact of this shift on television stations still operating on VHF channels and, at the same time, take at least a partial step toward more fairly apportioning fees across all television markets.

20. A number of commenters have urged us to either combine all VHF and UHF full-service television stations into one fee category, or else to establish a three-tiered regulatory fee system for full-service televisions.<sup>50</sup> Rather than “flash cut” to one fee category, which would result in a large fee increase to many UHF licensees for FY2010, today we use the shift in stations discussed to move toward a combined fee category by including in the UHF category the units and their corresponding dollar

amounts of the VHF stations that changed channels during or after the digital conversion. Thus, we use the VHF fee amount in the proposed FY 2010 NPRM as a starting point in calculating the final FY 2010 VHF regulatory fee rate. Then, in order to calculate the VHF and UHF FY 2010 regulatory fees, we move the number of “shifting” units (units of the stations that changed channels from VHF to UHF) and their corresponding dollar amounts from the VHF fee category by market size to the UHF fee category within the same market size. Thus, within each UHF fee category by market size, the projected revenue amount is increased along with the number of units in that fee category. The resulting larger projected revenue amount and the higher number of units is then used to calculate each UHF fee category by market size. It is important to note that, by moving only the dollar amounts and their corresponding units from the VHF to the UHF fee category by market size, the impact of the resulting fee increase on the UHF fee category is approximately 18%–20% less than the fee increase that would have resulted from combining all VHF and all UHF television stations into one digital category by market size. We find this to be in the public interest because it is a more equitable result for all entities involved.

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

21. 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 the digital transition conversion with respect to regulatory fees has centered on full-service television stations, and therefore, the elimination of the “digital only” exemption described in paragraph 20 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 of 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

22. Commercial Mobile Radio Service (“CMRS”) Messaging Service, which replaced the CMRS One-Way Paging fee category in

<sup>40</sup> Qwest reply comments at 2; Verizon reply comments at 2–3.

<sup>41</sup> GCNA comments at 7, n. 21.

<sup>42</sup> See comments of Fireweed Communications, LLC at page 2.

<sup>43</sup> *Id.* at pages 1–2.

<sup>44</sup> *Id.* at page 2.

<sup>45</sup> *Id.* at page 3.

<sup>46</sup> See comments of VHF Digital Stations at page 1.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at pages 3–4.

<sup>49</sup> Data from the Media Bureau’s Consolidated Database System (CDBS) shows that prior to the digital conversion, there were 600 full service analog VHF stations; after the digital conversion, there were 370 VHF digital television stations, a reduction of 230 VHF stations.

<sup>50</sup> For comments regarding a combined VHF/UHF television fee category, see comments of VHF Digital Stations at pages 1–2; for recommendations on a three-tiered regulatory fees system for television stations, see comments of Fireweed Communications at page 3.

1997, includes all narrowband services.<sup>51</sup> 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. Because of this declining subscribership, since FY 2003 the Commission has maintained the CMRS Messaging fee rate at \$0.08 per subscriber, the rate that was established in FY 2002.<sup>52</sup> We therefore sought comment in the FY 2010 *Notice of Proposed Rulemaking* to continue maintaining the regulatory fee rate at \$0.08 per subscriber due to the declining subscriber base in this industry.<sup>53</sup>

23. We received one comment. The American Association of Paging Carriers (“AAPC”) filed a comment urging the Commission to either maintain the FY 2010 CMRS Messaging Service fee at \$0.08 per unit or prescribe a lower fee.<sup>54</sup> AAPC asserts that the industry circumstances of 2003 of declining subscribership continue today.<sup>55</sup> AAPC also contends that a review of the regulatory fee methodology would reveal that further reduction in the paging regulatory fee is warranted.<sup>56</sup>

24. We agree with AAPC that the circumstances prevailing in 2003 still exist today, and conclude that the FY 2010 CMRS Messaging regulatory fee should remain at a rate of \$0.08 per subscriber.

#### E. Interstate Telecommunications Service Provider Fees

25. As we noted in Fiscal Year 2009 Regulatory Fee Report and Order,<sup>57</sup> the comprehensive regulatory fee revision issues raised in the FY 2008 *Further Notice of Proposed Rulemaking (FNPRM)*<sup>58</sup> (73 FR 50201, August 26, 2008) remain outstanding. In part, we invited the Interstate Telecommunications Service Providers (ITSPs) to comment on several specific regulatory fee issues.<sup>59</sup> We note that in

addition to our request for comment, we released specific data to assist commenters.<sup>60</sup> The responses were not as detailed as we had hoped. Indeed, we received two comments and one reply comment on the subject of regulatory fees applicable to ITSPs. STi Prepaid LLC (“STi Prepaid”) argues that since its inception in 1994, the Commission’s regulatory fee methodology has not changed significantly,<sup>61</sup> and as a result, the regulatory fee structure may not accurately reflect significant changes that have occurred in the interstate and international telecommunications marketplace since that time.<sup>62</sup> Because the marketplace has changed while the regulatory fee structure has not, STi Prepaid asserts that ITSP providers bear by far the largest burden of total regulatory fees, and further increases in ITSP regulatory fees borne by interstate and international providers are no longer tenable.<sup>63</sup> STi Prepaid urges the Commission to re-evaluate the allocation and methodology that is used to calculate ITSP regulatory fees.<sup>64</sup>

26. Unlike most other regulatory fees that are based on a flat fee per license, or on some multiplier based on the regulatee’s market size, ITSP regulatory fees are based on revenues, with ITSP providers paying a regulatory fee on each dollar of revenue generated from both interstate and international revenues. STi contends that, since ITSPs compete with entities paying regulatory fees based on a flat fee, the current regulatory fee methodology applicable to ITSPs puts them at a competitive disadvantage.<sup>65</sup> Further, STi Prepaid urges the Commission to consider the size and scope of the carrier’s resources, as well as the type of customer base, as grounds for regulatory fee relief.<sup>66</sup>

27. In its comments, The United States Telecom Association (USTelecom) argues

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

<sup>60</sup> *The Office of Managing Director Releases Data to Assist Commenters on Issues Presented in Further Notice of Proposed Rulemaking Adopted on August 1, 2008*, Public Notice, 23 FCC Rcd. 14581 (2008).

<sup>61</sup> STi Prepaid’s view of the antecedent regulatory fee events is a generalized overstatement. Indeed, the Commission has opened a number of proceedings to adjust the fee methodology, see e.g., *Assessment and Collection of Regulatory Fees for Fiscal Year 2004, Report and Order*, 19 FCC Rcd. 11662, 11667, para. 12 (2004).

<sup>62</sup> See comments of STi Prepaid LLC at page 1.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* at page 4.

<sup>66</sup> *Id.* at page 8.

that ITSP providers pay a disproportionate share of the regulatory fee burden based on a methodology that was established in 1994, and that this burden is passed on to consumers.<sup>67</sup> USTelecom also argues that the methodology currently used to calculate regulatory fees does not take into consideration the changes that have occurred in the communications marketplace since 1994 that directly impact the ITSP industry.<sup>68</sup> Updating FTEs and proportionally allocating the cost of support bureaus, USTA contends, would be the first step in rectifying an otherwise inequitable regulatory fee methodology that disproportionately burdens ITSP providers.<sup>69</sup> In its reply comments, STi Prepaid again stresses that there have been few reforms in the regulatory fee methodology since 1994,<sup>70</sup> and argues that, consistent with similar arguments for reforming the regulatory fee methodology made by paging, submarine cable, and VHF television service licensees during the past several years,<sup>71</sup> the Commission should “look for ways to ensure that [its] regulatory fee methodologies continue to reflect the industries [it] regulates.”<sup>72</sup>

28. Section 9 of the Act permits the Commission to “add, delete, or reclassify services in the [regulatory fee] Schedule to reflect \* \* \* changes in the nature of \* \* \* services as a consequence of Commission rulemaking proceedings or changes in law,”<sup>73</sup> and significant changes in telecommunications services and markets have unquestionably occurred as a result, *inter alia*, of the implementation of the Telecommunications Act of 1996. Our current fee methodology is based in part on a macro-level FTE data model that we instituted in FY 1999 after we discontinued attempts to base our fee schedule on the available cost data first used in 1997.<sup>74</sup> Since the inception of that last change to our model, both the industry and the Commission have undergone significant change. Accordingly, we agree with the notion that the proportion of regulatory fees paid by ITSP providers as a whole should be re-examined. We further believe that we should consider whether and how our methodology for assessing regulatory fees should be changed to reflect other changes in the communications landscape.

29. With respect to the specific issue of rebalancing the fees paid by ITSPs, we note that for a number of years, the regulatory fees collected from ITSP service providers have accounted for a significant percentage of all regulatory fees collected.<sup>75</sup> In recent years

<sup>67</sup> See comments of The United States Telecom Association, at page 1.

<sup>68</sup> *Id.* at pages 1–2.

<sup>69</sup> *Id.* at pages 1, 4–5.

<sup>70</sup> See STi Prepaid reply comments at page 1.

<sup>71</sup> *Id.* at pages 2–3.

<sup>72</sup> *Id.* at page 4.

<sup>73</sup> 47 U.S.C. 159(b)(3).

<sup>74</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2004, Report and Order*, 19 FCC Rcd. 11662, 11667, para. 12 (2004)

<sup>75</sup> See e.g., *Assessment and Collection of Regulatory Fees for Fiscal Year 1997, Report and Order*, 12 FCC Rcd 17161, Attachment C (1997). The pro-rated revenue requirement was \$64,960,438 of a total revenue requirement of \$152,523,000.

<sup>51</sup> 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”).

<sup>52</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 2003*, MD Docket No. 03–83, Report and Order, 18 FCC Rcd 15985, paras. 21–22 (2003) (“FY 2003 Report and Order”).

<sup>53</sup> 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.

<sup>54</sup> See comments of American Association of Paging Carriers, at page 1.

<sup>55</sup> *Id.* at page 3.

<sup>56</sup> *Id.* at page 2.

<sup>57</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Assessment and Collection of Regulatory Fees for Fiscal Year 2008, Report and Order*, 24 FCC Rcd. 10301 (2009).

<sup>58</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2008, Report and Order and Further Notice of Proposed Rulemaking*, 24 FCC Rcd. 6388 (2008) (2008 Regulatory Fee R&O and FNPRM).

<sup>59</sup> *Id.*, at 6402–05. We sought comments on ways to improve our regulatory fee process regarding any and all categories of service (see paras. 31–36), and we specifically invited ITSPs to respond to the following:

41. Relative to other services that pay regulatory fees, we recognize that the ITSP market has changed since the Commission calculated the cost of ITSP

the ITSP industry has experienced a decline in revenues but, because ITSPs do not pay a flat regulatory fee but instead pay fees based on a percentage of their revenues, the regulatory fees paid by ITSP service providers has risen substantially.<sup>76</sup> Because the comments to our question did not provide sufficient detail, we are unable to ascertain exactly how the collection of fees from end users has affected the operation of the ITSP service providers or to what extent a shift in the amount of the payment would be warranted to address the alleged competitive disadvantage or provide warranted relief to ITSP service providers.

30. Moreover, we are aware that reducing the fees paid by ITSP providers will increase the fees paid by licensees in other service categories (some of which are not able to pass the cost of the fee to the end user), and this could potentially impact the regulatory fees paid by all other entities regulated by the Commission. Unless we revisit the fee schedule in light of all the shifts that have occurred in the market for telecommunications services, and consider carefully what further changes may occur in the foreseeable future, we may succeed in addressing one anomaly while unintentionally creating others.

31. In light of these considerations and consistent with the comments received in response to the FY 2008 *Further Notice of Proposed Rulemaking*, we acknowledge that the revenue base upon which the ITSP fee is calculated has been decreasing for several years.<sup>77</sup> Therefore, we believe it would best serve the public interest for the Commission in FY 2010 to set the ITSP regulatory fee rate at \$0.00349 per revenue dollar. In future years, we will further examine the nature and extent of all changes that need to be made to our regulatory fee schedule and calculations. In a separate and forthcoming action, we will call for comment on issues including, but not limited to, how changes in the telecommunications marketplace may warrant rebalancing of regulatory fees among existing service providers, and how further

<sup>76</sup> Between FY 2007 and FY 2009, the ITSP fee rate increased from \$0.00266 to \$0.00342 per revenue dollar. Because of further declines in revenue, the FY 2010 ITSP fee rate is slated to increase further from \$0.00351 (the rate set forth in the FY 2010 *Notice of Proposed Rulemaking*) to \$0.00364 per revenue dollar based on more accurate revenue projections available at the time of this *Report and Order*.

<sup>77</sup> The projected FY 2010 ITSP fee factor in the FY 2010 NPRM of \$0.00351 was based on December 2009 ITSP revenue data. April 2010 ITSP revenue data, however, reflected revenues 3.4 percent lower than projections. This revenue decrease would have resulted in an increase in the resulting fee factor from the projected \$0.00351 to a fee factor of \$0.00364. Thus, based on the proposed methodology of the FY 2010 NPRM and the revised revenue numbers, the ITSP fee factor would have increased from \$0.00342 (FY 2009 ITSP fee rate) to \$0.00364. The concerns of these providers, which collectively represent 46.82 percent of all regulatory fees paid in any given year, resulted in the adoption, as an interim measure, an ITSP fee rate at \$0.00349, which is a 2.1% increase from FY 2009. We find this to be a reasonable interim measure pending our review of whether part of that 46.82 percent of the regulatory fee burden might be moved from ITSP in the context of fundamental reform.

changes to the schedule of fees may be anticipated in light of new changes to the telecommunications landscape resulting from implementation of the National Broadband Plan and the introduction of other new wired and wireless services. This *FNPRM* will therefore serve two purposes: it will update, to the extent necessary, the record on regulatory fee rebalancing that we had already been contemplating for existing services,<sup>78</sup> and it will expand this inquiry to new issues and services not covered by the 2008 *Further Notice of Proposed Rulemaking*.

#### F. Administrative and Operational Issues

32. 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.

##### 1. Mandatory Use of Fee Filer

33. In FY 2009, we required that all regulatees use the Commission's electronic filing and payment system (also known as "Fee Filer").<sup>79</sup> 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 licensees, the mandatory use of Fee Filer eliminated the need to manually complete and submit a hardcopy Form 159, and for the Commission, having 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 proposed in the FY 2010 *NPRM* to continue to make the use of Fee Filer mandatory as the starting point for filing annual regulatory fees. We sought comment on this proposal, but received no comments or reply comments on this specific issue.

34. 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

<sup>78</sup> The Commission has acted on several of the issues raised in the FY 2008 *Report and Order* and *Further Notice of Proposed Rulemaking*, including implementation of (1) a change in the bearer circuit methodology for calculating regulatory fees, and (2) the elimination of two regulatory fee categories, the *International Public Fixed Radio* and *International High Frequency Broadcast Stations*.

<sup>79</sup> FY 2009 *Report and Order* at paras. 20 and 21.

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 completed manually and mailed to the Commission. Hence, in FY 2010, we conclude that regulatees must start the FY 2010 regulatory fee payment process using the Commission's electronic filing and payment system ("Fee Filer").

##### 2. Notification and Collection of Regulatory Fees

###### a. Pre-Bills

35. 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,<sup>80</sup> holders of Cable Television Relay Service ("CARS") licenses, and Earth Station licensees.<sup>81</sup> 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.<sup>82</sup> Overall, the response to this procedural change was positive. In our FY 2010 *NPRM*, the Commission again proposed to continue the practice of not mailing out annual regulatory fee bills. We sought comment on this issue, and received one comment from the American Cable Association (ACA).

36. ACA urges the Commission to send e-mails to CARS and Earth Station licensees to notify them when pre-bills are loaded into Fee Filer for viewing, and to mail a final hardcopy notice to these licensees on how to log-in to Fee Filer and access the pre-bill.<sup>83</sup> As an association of small and medium-sized cable companies, ACA believes that many of its member entities are not able to keep up with the Commission's rules and regulations, and therefore the Commission should make more of an effort to reach out to these entities regarding regulatory fees.<sup>84</sup>

<sup>80</sup> Geostationary orbit space station ("GSO") licensees received regulatory fee pre-bills for satellites that (1) were licensed by the Commission and operational on or before October 1 of the respective fiscal year; and (2) were not co-located with and technically identical to another operational satellite on that date (*i.e.*, were not functioning as a spare satellite). Non-geostationary orbit space station ("NGSO") licensees received regulatory fee pre-bills for systems that were licensed by the Commission and operational on or before October 1 of the respective fiscal year.

<sup>81</sup> 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.

<sup>82</sup> See FY 2009 *Report and Order* at paras. 24, 26.

<sup>83</sup> See comments of the American Cable Association (ACA) at page 1.

<sup>84</sup> *Id.* at pages 2–3.

37. We agree with ACA that many small and medium-sized regulatees do not have the same resources as large regulatees to monitor Commission rulings on a regular basis. However, we are not imposing any significant burden on these small to medium-sized regulatees. Historically, regulatory fees have always been due in an August or September timeframe, and the due date is generally posted on the Commission-wide Web site weeks before the fee deadline. Hence, by checking the Commission's Web site periodically beginning in July, regulatees will be able to ascertain the fee due date, and receive instructions on how to access Fee Filer, view their bill, and make a fee payment.

38. With respect to ACA's recommendation to send e-mails to CARS and Earth Station licensees as a form of notification, the Commission does not maintain a systematic listing of e-mail addresses for individual CARS and Earth Station licensees, and sending out e-mails that are not necessarily current in the Commission's licensing systems may not result in adequate notification. However, once Fee Filer is open to licensees, a public notice will be placed on the Commission's Web site, which will provide the signal for licensees to begin viewing their pre-bill information online. Until the Commission is able to maintain a current, systematic listing of licensee e-mails, the use of Commission e-mails would provide less than adequate notification.

### III. Procedural Matters

39. 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

40. 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 public notices and fact sheets to regulatees.

#### B. Assessment Notifications

##### 1. Media Services Licensees

41. Beginning in FY 2003, we sent fee assessment notifications via surface mail to media services entities on a per-facility basis.<sup>85</sup> 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

<sup>85</sup> 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.

results.<sup>86</sup> Consistent with procedures used last year, we will mail media assessment notifications to licensees in FY 2010 at their primary record of contact in our Consolidated Database System ("CDBS"), and to a secondary record of contact, if available.<sup>87</sup> 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 [www.fccfees.com](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.<sup>88</sup>

42. 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 allow more time for comment by leaving 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 reviewed the various comments and reply comments submitted. The Commission will also remind media licensees of this proposed change in notification procedures for next year when it sends out letters to media licensees regarding their FY 2010 regulatory fee obligations. To ensure that the comments

<sup>86</sup> 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.

<sup>87</sup> 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.

<sup>88</sup> 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>).

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:

- *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).

- *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.

- 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.

- *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](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

- *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.

- *Accessibility Information.* To request information in accessible formats (computer diskettes, large print, audio recording, and braille), send an e-mail to [fcc504@fcc.gov](mailto: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>.

43. 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 in Fee Filer. However, we caution licensees not to send in these notification assessments as 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 when mailing in the annual regulatory fee payment.

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

44. 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").<sup>89</sup> The letter will include a listing of the carrier's Operating Company Numbers ("OCNs") upon which the assessment is based.<sup>90</sup> The letters will not include OCNs with their respective assigned number counts, but rather, an aggregate total of assigned numbers for each carrier.

45. If the carrier does not agree with the number of subscribers listed on the initial assessment letter, the carrier will have an opportunity within a specific timeframe to revise the subscriber count 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.<sup>91</sup> 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 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 assessed.

<sup>89</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 2005* and *Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, MD Docket Nos. 05-59 and 04-73, Report and Order and Order on Reconsideration, 20 FCC Rcd 12259, 12264, paras. 38-44 (2005).

<sup>90</sup> *Id.*

<sup>91</sup> In the supporting documentation, the provider will need to state a reason for the change, such as a purchase or sale of a subsidiary, the date of the transaction, and any other pertinent information that will help to justify the change.

Providers will be able to view their final subscriber counts online in Fee Filer. A final CMRS assessment letter will *not* be mailed out.

46. 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<sup>92</sup> 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. If 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

47. 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

48. 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.<sup>93</sup> 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 CMRS mobile fee categories into one regulatory fee category.

##### 3. Interstate Telecommunications Service Providers ("ITSP")

49. 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

<sup>92</sup> See, e.g., Federal Communications Commission, *Regulatory Fees Fact Sheet: What You Owe—Commercial Wireless Services for FY 2009* at 1 (released September 2009).

<sup>93</sup> 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).

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

50. 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

51. 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

52. 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

53. 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, VHF/UHF full service television stations, and satellite television stations. Beginning in FY 2010, the digital-only exemption for full service VHF and UHF television stations is no longer applicable; with respect to other media services, such as Low Power Television, and TV Translators and Boosters, there is no exemption for having digital service. 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.<sup>94</sup>

- *Wireless Services:* CMRS cellular, mobile, and messaging services (fees based on number of subscribers or telephone number count): Regulatory fees must be paid for authorizations that were granted on or before October 1, 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 C) 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.<sup>95</sup> 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: Terrestrial 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 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

54. 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.<sup>96</sup> 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<sup>97</sup> and in the Debt Collection Improvement Act of 1996 (“DCIA”).<sup>98</sup> 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.<sup>99</sup> These administrative processing charges will be assessed on any delinquent regulatory fee, in addition to the 25 percent late charge penalty. In case of partial payments (underpayments) of regulatory fees, the 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.

55. We will withhold action on any applications or other requests for benefits filed by anyone who is delinquent in any non-tax debts owed to the Commission (including regulatory fees) and will ultimately dismiss those applications or other requests if payment of the delinquent debt or other satisfactory arrangement for payment is not made.<sup>100</sup> Failure to pay regulatory fees can also result in the initiation of a proceeding to revoke any and all authorizations held by the entity responsible for paying the delinquent fee(s).

#### F. Final Regulatory Flexibility Analysis

56. As required by the Regulatory Flexibility Act of 1980 (“RFA”),<sup>101</sup> the Commission has prepared a Final Regulatory Flexibility Analysis (“FRFA”) relating to this Report and Order. The FRFA is set for in Appendix F.

#### G. Final Paperwork Reduction Act of 1995 Analysis

57. This Report and Order 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

58. The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.<sup>102</sup>

<sup>94</sup> 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*”).

<sup>95</sup> 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.

<sup>96</sup> 47 U.S.C. 159(c).

<sup>97</sup> See 47 CFR 1.1910.

<sup>98</sup> Delinquent debt owed to the Commission triggers application of the “red light rule” which requires offsets or holds on pending disbursements. 47 CFR 1.1910. In 2004, the Commission adopted rules implementing the requirements of the DCIA. See *Amendment of Parts 0 and 1 of the Commission’s Rules*, MD Docket No. 02–339, Report and Order, 19 FCC Rcd 6540 (2004); 47 CFR Part 1, Subpart O, Collection of Claims Owed the United States.

<sup>99</sup> 47 CFR 1.1940(d).

<sup>100</sup> See 47 CFR 1.1161(c), 1.1164(f)(5), and 1.1910.

<sup>101</sup> See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”), Public Law 104–121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 (“CWAAA”).

<sup>102</sup> See 5 U.S.C. 801(a)(1)(A). The Congressional Review Act is contained in Title II, 251, of the CWAAA; see Public Law 104–121, Title II, 110 Stat. 868.

**IV. Ordering Clauses**

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

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

**List of Subjects in 47 CFR Part 1 Administrative Practice and Procedure**

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

**APPENDIX A**

**LIST OF COMMENTERS**

Commenter	Abbreviated name
American Association of Paging Carriers .....	"AAPC."
American Cable Association .....	"ACA."
Robert Bittner .....	"Robert Bittner."
Fireweed Communications, LLC .....	"Fireweed."
Global Crossing North America, Inc .....	"GCNA."
Edward A. Schober, Radiotechniques Engineering, LLC .....	"Radiotechniques Engineering."
STi Prepaid, LLC .....	"STi Prepaid."
The United States Telecom Association .....	"USTelecom."
VHF Digital Stations .....	"VHF Digital Stations."

**LIST OF REPLY COMMENTERS**

Commenter	Abbreviated name
Global Crossing North America, Inc .....	"GCNA."
Alex Goldman .....	"Alex Goldman."
Qwest Communications International, Inc .....	"Qwest."
STi Prepaid, LLC .....	"STi Prepaid."
Verizon .....	"Verizon."

**APPENDIX B**

**Calculation of FY 2010 Revenue Requirements and Pro-Rata Fees**

advance to cover the term of the license and are submitted along with the application at the time the application is filed.

Regulatory fees for the categories shaded in gray are collected by the Commission in

Fee category	FY 2010 Payment units	Years	FY 2009 Revenue estimate	Pro-Rated FY 2010 revenue requirement	Computed new FY 2010 regulatory fee	Rounded new FY 2010 regulatory 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 <sup>4a</sup> .....	68	1	248,625	253,752	3,732	3,725	253,300
AM Class B <sup>4b</sup> .....	1,566	1	2,977,300	3,038,695	1,940	1,950	3,053,700
AM Class C <sup>4c</sup> .....	918	1	1,055,250	1,077,010	1,173	1,175	1,078,650
AM Class D <sup>4d</sup> .....	1,689	1	3,515,750	3,588,249	2,124	2,125	3,589,125
FM Classes A, B1 & C3 <sup>4e</sup> .....	3,104	1	7,384,125	7,374,954	2,376	2,375	7,372,000
FM Classes B, C, C0, C1 & C2 <sup>4f</sup> .....	3,129	1	9,076,725	9,285,549	2,968	2,975	9,308,775
AM Construction Permits .....	112	1	42,800	43,683	390	390	43,680
FM Construction Permits <sup>1</sup> .....	156	1	145,600	105,300	675	675	105,300
Satellite TV .....	126	1	161,925	165,264	1,312	1,300	163,800
Satellite TV Construction Permit .....	3	1	1,950	1,990	663	675	2,025
VHF Markets 1–10 .....	20	1	3,258,150	1,631,100	81,555	81,550	1,631,000
VHF Markets 11–25 .....	27	1	3,330,250	1,708,429	63,275	63,275	1,708,425
VHF Markets 26–50 .....	33	1	2,818,125	1,404,112	42,549	42,550	1,404,150
VHF Markets 51–100 .....	48	1	2,708,100	1,140,215	23,754	23,750	1,140,000
VHF Remaining Markets .....	122	1	1,190,000	747,235	6,125	6,125	747,250
VHF Construction Permits <sup>1</sup> .....	3	1	17,850	18,375	6,125	6,125	18,375

Fee category	FY 2010 Payment units	Years	FY 2009 Revenue estimate	Pro-Rated FY 2010 revenue requirement	Computed new FY 2010 regulatory fee	Rounded new FY 2010 regulatory fee	Expected FY 2010 revenue
UHF Markets 1–10 .....	117	1	2,109,750	3,776,478	32,278	32,275	3,775,175
UHF Markets 11–25 .....	113	1	1,743,525	3,399,110	30,081	30,075	3,398,475
UHF Markets 26–50 .....	154	1	1,468,500	2,908,952	18,889	18,900	2,910,600
UHF Markets 51–100 .....	245	1	1,246,400	2,828,382	11,544	11,550	2,829,750
UHF Remaining Markets .....	274	1	380,250	836,331	3,052	3,050	835,700
UHF Construction Permits <sup>1</sup> ...	12	1	29,250	36,600	3,050	3,050	36,600
Broadcast Auxiliaries .....	27,500	1	275,000	280,671	10	10	275,000
LPTV/Translators/Boosters/ Class A TV .....	3,400	1	1,380,000	1,408,457	414	415	1,411,000
CARS Stations .....	550	1	169,000	172,485	314	315	173,250
Cable TV Systems .....	64,500,000	1	56,760,000	57,545,458	0.89218	0.89	57,405,000
Interstate Telecommunication Service Providers .....	\$43,300,000,000	1	160,056,000	151,290,200	0.00349400	0.00349	151,117,000
CMRS Mobile Services (Cel- lular/Public Mobile) .....	283,000,000	1	49,680,000	50,796,008	0.1795	0.18	50,940,000
CMRS Messag. Services .....	6,000,000	1	560,000	480,000	0.0800	0.080	480,000
BRS <sup>2</sup> LMDS .....	1,660	1	552,000	514,600	310	310	514,600
Per 64 kbps Int'l Bearer Cir- cuits Terrestrial (Common) & Satellite (Common & Non-Common) .....	510	1	107,200	158,100	310	310	158,100
Submarine Cable Providers (see chart in Appendix C) <sup>3</sup>	2,898,033	1	1,111,779	1,130,306	.390	.39	1,130,233
Earth Stations .....	34.13	1	7,818,040	7,983,656	233,919	233,925	7,983,860
Space Stations (Geo- stationary) .....	3,600	1	850,500	868,038	241	240	864,000
Space Stations (Non-Geo- stationary) .....	87	1	11,064,225	11,130,522	127,937	127,925	11,129,475
Space Stations (Non-Geo- stationary) .....	6	1	823,350	828,283	138,047	138,050	828,300
<b>Total Estimated Revenue to be Collected .....</b>			<b>342,998,994</b>	<b>336,693,623</b>			<b>336,712,213</b>
<b>Total Revenue Require- ment .....</b>			<b>341,875,000</b>	<b>335,794,000</b>			<b>335,794,000</b>
<b>Difference .....</b>			<b>1,123,994</b>	<b>899,623</b>			<b>918,213</b>

<sup>1</sup> 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.

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

<sup>3</sup> The chart at the end of 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.

<sup>4</sup> 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 C**

**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

Fee category	Annual regulatory fee (U.S. \$s)
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) .....	.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) .....	310
Local Multipoint Distribution Service (per call sign) (47 CFR part 101) .....	310
AM Radio Construction Permits .....	390
FM Radio Construction Permits .....	675
TV (47 CFR part 73) VHF Commercial:	
Markets 1–10 .....	81,550
Markets 11–25 .....	63,275
Markets 26–50 .....	42,550
Markets 51–100 .....	23,750
Remaining Markets .....	6,125
Construction Permits .....	6,125
TV (47 CFR part 73) UHF Commercial:	
Markets 1–10 .....	32,275
Markets 11–25 .....	30,075
Markets 26–50 .....	18,900
Markets 51–100 .....	11,550
Remaining Markets .....	3,050
Construction Permits .....	3,050
Satellite Television Stations (All Markets) .....	1,300
Construction Permits—Satellite Television Stations .....	675
Low Power TV, Class A TV, TV/FM Translators & Boosters (47 CFR part 74) .....	415
Broadcast Auxiliaries (47 CFR part 74) .....	10
CARS (47 CFR part 78) .....	315
Cable Television Systems (per subscriber) (47 CFR part 76) .....	.89
Interstate Telecommunication Service Providers (per revenue dollar) .....	.00349
Earth Stations (47 CFR part 25) .....	240
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100) .....	127,925
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25) .....	138,050
International Bearer Circuits—Terrestrial/Satellites (per 64 KB circuit) .....	.39
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 .....	\$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
1,200,001–3,000,000 .....	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 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 .....	\$14,625	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000
2.5 Gbps or greater, but less than 5 Gbps .....	29,250	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000
5 Gbps or greater, but less than 10 Gbps .....	58,500	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000
10 Gbps or greater, but less than 20 Gbps .....	116,975	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000

Submarine cable systems (capacity as of December 31, 2009)	Fee amount	Address
20 Gbps or greater .....	233,950	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000

**APPENDIX D**

**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) LMDS .....	Based on WTB reports and actual FY 2009 payment units. Based on WTB reports and actual FY 2009 payment units.
Cable Television Relay Service (“CARS”) Stations.	Based on data from Media Bureau’s COALS database 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 E**

**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.<sup>1</sup> Radiation values were calculated for each of 360 radials around the transmitter site. Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure R3.<sup>2</sup> Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the principal community (5 mV/m) contour was predicted for each of the 360 radials. The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 block centroids were contained in the

<sup>1</sup> 47 CFR 73.150 and 73.152.

<sup>2</sup> See Map of Estimated Effective Ground Conductivity in the United States, 47 CFR 73.190 Figure R3.

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 (“HMSL”) was available, it was used in lieu of the average HAAT figure to calculate specific HAAT figures for each of 360 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in

conjunction with the Field Strength (50–50) propagation curves specified in 47 CFR 73.313 of the Commission's rules to predict the distance to the principal community (70 dBu (decibel above 1 microVolt per meter) or 3.17 mV/m) contour for each of the 360 radials.<sup>3</sup> The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

## APPENDIX F

### Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act ("RFA"),<sup>1</sup> the Commission prepared an Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities by the policies and rules proposed in its *Notice of Proposed Rulemaking*. Written public comments were sought on the FY 2010 fees proposal, including comments on the IRFA. This present Final Regulatory Flexibility Analysis ("FRFA") conforms to the RFA.<sup>2</sup>

#### I. Need for, and Objectives of, the Notice

2. This rulemaking proceeding was initiated for the Commission to amend 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. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

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

#### 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.<sup>3</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>4</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>5</sup> A "small business

concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>6</sup>

5. Small Businesses. Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.<sup>7</sup>

6. Small Organizations. Nationwide, as of 2002, there are approximately 1.6 million small organizations.<sup>8</sup> A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."<sup>9</sup>

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."<sup>10</sup> Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.<sup>11</sup> We estimate that, of this total, 84,377 entities were "small governmental jurisdictions."<sup>12</sup> 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."<sup>13</sup> 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.<sup>14</sup> We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action

applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the *Federal Register*."

<sup>6</sup> 15 U.S.C. 632.

<sup>7</sup> See SBA, Office of Advocacy, "Frequently Asked Questions," <http://web.sba.gov/faqs> (accessed Jan. 2009).

<sup>8</sup> Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

<sup>9</sup> 5 U.S.C. 601(4).

<sup>10</sup> 5 U.S.C. 601(5).

<sup>11</sup> U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, Section 8, p. 272, Table 415.

<sup>12</sup> 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.*

<sup>13</sup> 15 U.S.C. 632.

<sup>14</sup> 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).

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.<sup>15</sup> According to Commission data,<sup>16</sup> 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 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.<sup>17</sup> According to Commission data,<sup>18</sup> 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 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.<sup>19</sup> According to Commission data,<sup>20</sup> 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

<sup>15</sup> 13 CFR 121.201, North American Industry Classification System (NAICS) code 517110.

<sup>16</sup> 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.

<sup>17</sup> 13 CFR 121.201, NAICS code 517110.

<sup>18</sup> "Trends in Telephone Service" at Table 5.3.

<sup>19</sup> 13 CFR 121.201, NAICS code 517310.

<sup>20</sup> "Trends in Telephone Service" at Table 5.3.

<sup>3</sup> 47 CFR 73.313.

<sup>5</sup> 15 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").

<sup>2</sup> 5 U.S.C. 604.

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

<sup>4</sup> 5 U.S.C. 601(6).

<sup>5</sup> 5 U.S.C. 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business

local resellers are small entities that may be affected by our 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 small if it has 1,500 or fewer employees.<sup>21</sup> According to Commission data,<sup>22</sup> 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 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.<sup>23</sup> According to Commission data,<sup>24</sup> 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 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.<sup>25</sup> According to Commission data,<sup>26</sup> 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 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.<sup>27</sup> According to Commission data,<sup>28</sup> 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 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.<sup>29</sup> According to Commission data,<sup>30</sup> 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 action.

17. 800 and 800-Like Service Subscribers.<sup>31</sup> 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.<sup>32</sup> 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.<sup>33</sup> 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.<sup>34</sup> The second has a size standard of \$25 million or less in annual receipts.<sup>35</sup> 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.<sup>36</sup>

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."<sup>37</sup> For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year.<sup>38</sup> Of this total, 307 firms had annual receipts of under \$10 million, and 26 firms had receipts of \$10 million to \$24,999,999.<sup>39</sup> 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."<sup>40</sup> For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year.<sup>41</sup> 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.<sup>42</sup> 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.<sup>43</sup> Prior to that time, such firms were within the now-superseded categories of "Paging" and "Cellular and Other Wireless

<sup>36</sup> 13 CFR 121.201, NAICS codes 517410 and 517910 (2002).

<sup>37</sup> U.S. Census Bureau, 2007 NAICS Definitions, "517410 Satellite Telecommunications"; <http://www.census.gov/naics/2007/def/ND517410.HTM>.

<sup>38</sup> 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).

<sup>39</sup> *Id.* An additional 38 firms had annual receipts of \$25 million or more.

<sup>40</sup> U.S. Census Bureau, 2007 NAICS Definitions, "517919 All Other Telecommunications"; <http://www.census.gov/naics/2007/def/ND517919.HTM#N517919>.

<sup>41</sup> 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).

<sup>42</sup> *Id.* An additional 14 firms had annual receipts of \$25 million or more.

<sup>43</sup> U.S. Census Bureau, 2007 NAICS Definitions, "517210 Wireless Telecommunications Categories (Except Satellite)"; <http://www.census.gov/naics/2007/def/ND517210.HTM#N517210>.

<sup>21</sup> 13 CFR 121.201, NAICS code 517310.

<sup>22</sup> "Trends in Telephone Service" at Table 5.3.

<sup>23</sup> 3 CFR 121.201, NAICS code 517110.

<sup>24</sup> "Trends in Telephone Service" at Table 5.3.

<sup>25</sup> 13 CFR 121.201, NAICS code 517110.

<sup>26</sup> "Trends in Telephone Service" at Table 5.3.

<sup>27</sup> 13 CFR 121.201, NAICS code 517110.

<sup>28</sup> "Trends in Telephone Service" at Table 5.3.

<sup>29</sup> 13 CFR 121.201, NAICS code 517310.

<sup>30</sup> "Trends in Telephone Service" at Table 5.3.

<sup>31</sup> We include all toll-free number subscribers in this category.

<sup>32</sup> 13 CFR 121.201, NAICS code 517310.

<sup>33</sup> "Trends in Telephone Service" at Tables 18.4, 18.5, 18.6, and 18.7.

<sup>34</sup> 13 CFR 121.201, NAICS code 517410.

<sup>35</sup> 13 CFR 121.201, NAICS code 517919.

Telecommunications.”<sup>44</sup> Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.<sup>45</sup> 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.<sup>46</sup> Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.<sup>47</sup> 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.<sup>48</sup> Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.<sup>49</sup> Thus, we estimate that the majority of wireless firms are small.

22. Auctions. Initially, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

23. 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.”<sup>50</sup> Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.<sup>51</sup> Prior to that time, such firms were within the now-superseded categories of “Paging” and “Cellular and Other Wireless

Telecommunications.”<sup>52</sup> Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.<sup>53</sup> 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.<sup>54</sup> Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.<sup>55</sup> 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.<sup>56</sup> Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.<sup>57</sup> Thus, we estimate that the majority of wireless firms are small.

24. 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.<sup>58</sup> 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.<sup>59</sup> The SBA has approved this definition.<sup>60</sup> An initial auction of Metropolitan Economic

Area (“MEA”) licenses was conducted in the year 2000. Of the 2,499 licenses auctioned, 985 were sold.<sup>61</sup> Fifty-seven companies claiming small business status won 440 licenses.<sup>62</sup> 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.<sup>63</sup> 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.<sup>64</sup>

25. 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.<sup>65</sup> Of these, an estimated 279 have 1,500 or fewer employees and two have more than 1,500 employees.<sup>66</sup> We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

26. 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.<sup>67</sup> The SBA has approved these definitions.<sup>68</sup> 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.

27. 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.

28. Wireless Telephony. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted,

<sup>61</sup> See “929 and 931 MHz Paging Auction Closes,” Public Notice, 15 FCC Rcd 4858 (WTB 2000).

<sup>62</sup> See *id.*

<sup>63</sup> See “Lower and Upper Paging Band Auction Closes,” Public Notice, 16 FCC Rcd 21821 (WTB 2002).

<sup>64</sup> 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.

<sup>65</sup> “Trends in Telephone Service” at Table 5.3.

<sup>66</sup> “Trends in Telephone Service” at Table 5.3.

<sup>67</sup> *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).

<sup>68</sup> See Alvarez Letter 1998.

<sup>44</sup> 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>.

<sup>45</sup> 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).

<sup>46</sup> 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).

<sup>47</sup> *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.”

<sup>48</sup> 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).

<sup>49</sup> *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.”

<sup>50</sup> 13 CFR 121.201, NAICS code 517212.

<sup>51</sup> U.S. Census Bureau, 2007 NAICS Definitions, “517210 Wireless Telecommunications Categories (Except Satellite)”; <http://www.census.gov/naics/2007/def/ND517210.HTM#N517210>.

<sup>52</sup> 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>.

<sup>53</sup> 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).

<sup>54</sup> 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).

<sup>55</sup> *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.”

<sup>56</sup> 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).

<sup>57</sup> *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.”

<sup>58</sup> *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).

<sup>59</sup> *Paging Second Report and Order*, 12 FCC Rcd at 2811, para. 179.

<sup>60</sup> 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*”).



the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite).<sup>69</sup> Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.<sup>70</sup> According to *Trends in Telephone Service* data, 434 carriers reported that they were engaged in wireless telephony.<sup>71</sup> Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees.<sup>72</sup> We have estimated that 222 of these are small under the SBA small business size standard.

29. Broadband Personal Communications Service. The broadband personal 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.<sup>73</sup> 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.<sup>74</sup> These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.<sup>75</sup> 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.<sup>76</sup> In 1999, the Commission reaucted 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.<sup>77</sup>

30. 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.<sup>78</sup> 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.<sup>79</sup> 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.<sup>80</sup> Of the 14 winning bidders, six were designated entities.<sup>81</sup> In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.<sup>82</sup>

31. Advanced Wireless Services. In 2006, the Commission conducted its first auction of Advanced Wireless Services licenses in the 1710–1755 MHz and 2110–2155 MHz bands ("AWS-1"), designated as Auction 66.<sup>83</sup> The Commission defined "small business" as an entity with attributed average annual gross revenues that exceeded \$15 million and did not exceed \$40 million for the preceding three years.<sup>84</sup> A small business received a 15 percent discount on its winning bid.<sup>85</sup> A "very small business" is defined as an entity with attributed average annual gross revenues that did not exceed \$15 million for the preceding three years.<sup>86</sup> A very small business received a 25 percent discount on its winning bid.<sup>87</sup> In Auction 66, thirty-one winning bidders identified themselves as very small businesses and won 142 licenses.<sup>88</sup> Twenty-six of the winning bidders identified themselves as small businesses and won 73 licenses.<sup>89</sup> In 2008, the Commission conducted an auction of AWS-1 licenses, designated as Auction 78, which offered 35 licenses for which there were no winning bids in Auction 66.<sup>90</sup> Four winning bidders that identified themselves as very small businesses won 17 AWS-1 licenses.<sup>91</sup>

<sup>79</sup> See "Broadband PCS Spectrum Auction Closes; Winning Bidders Announced for Auction No. 58," *Public Notice*, 20 FCC Rcd 3703 (2005).

<sup>80</sup> See "Auction of Broadband PCS Spectrum Licenses Closes; Winning Bidders Announced for Auction No. 71," *Public Notice*, 22 FCC Rcd 9247 (2007).

<sup>81</sup> *Id.*

<sup>82</sup> 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").

<sup>83</sup> See Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 66, AU Docket No. 06–30, *Public Notice*, 21 FCC Rcd 4562 (2006) ("Auction 66 Procedures Public Notice");

<sup>84</sup> 47 CFR 27.1102(a)(1).

<sup>85</sup> See 47 CFR 1.2110(f)(2).

<sup>86</sup> 47 CFR 27.1102(a)(2).

<sup>87</sup> See 47 CFR 1.2110(f)(2).

<sup>88</sup> See Auction of Advanced Wireless Services Licenses Closes; Winning Bidders Announced for Auction No. 66, *Public Notice*, 21 FCC Rcd 10,521 (2006) ("Auction 66 Closing Public Notice")

<sup>89</sup> *See id.*

<sup>90</sup> See AWS-1 and Broadband PCS Procedures Public Notice, 23 FCC Rcd 7496. Auction 78 also included an auction of Broadband PCS licenses.

<sup>91</sup> 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).

Three of the winning bidders that identified themselves as a small business won five AWS-1 licenses.

32. 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.<sup>92</sup> Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses.<sup>93</sup> 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.<sup>94</sup> 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.<sup>95</sup> 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.<sup>96</sup> The SBA has approved these small business size standards.<sup>97</sup> A third auction was conducted in 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses.<sup>98</sup> Three of these claimed status as a small or very small entity and won 311 licenses.

33. 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.<sup>99</sup> 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.<sup>100</sup> A "very small business" is defined as an entity that, together with its affiliates and controlling

<sup>92</sup> *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).

<sup>93</sup> 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 (released 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 (released Nov. 9, 1994).

<sup>94</sup> *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").

<sup>95</sup> *Narrowband PCS Second Report and Order*, 15 FCC Rcd at 10476, para. 40.

<sup>96</sup> *Id.*

<sup>97</sup> See Alvarez Letter 1998.

<sup>98</sup> See "Narrowband PCS Auction Closes," *Public Notice*, 16 FCC Rcd 18663 (WTB 2001).

<sup>99</sup> 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").

<sup>100</sup> See *Channels 52–59 Report and Order*, 17 FCC Rcd at 1087–88, para. 172.

<sup>69</sup> 13 CFR 121.201, NAICS code 517210.

<sup>70</sup> *Id.*

<sup>71</sup> "Trends in Telephone Service" at Table 5.3.

<sup>72</sup> "Trends in Telephone Service" at Table 5.3.

<sup>73</sup> 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).

<sup>74</sup> See *PCS Report and Order*, 11 FCC Rcd at 7852, para. 60.

<sup>75</sup> See Alvarez Letter 1998.

<sup>76</sup> FCC News, "Broadband PCS, D, E and F Block Auction Closes," No. 71744 (rel. Jan. 14, 1997).

<sup>77</sup> See "C, D, E, and F Block Broadband PCS Auction Closes," *Public Notice*, 14 FCC Rcd 6688 (WTB 1999).

<sup>78</sup> See "C and F Block Broadband PCS Auction Closes; Winning Bidders Announced," *Public Notice*, 16 FCC Rcd 2339 (2001).

principals, has average gross revenues that are not more than \$15 million for the preceding three years.<sup>101</sup> 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.<sup>102</sup> The SBA approved these small size standards.<sup>103</sup> 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.<sup>104</sup> The Commission conducted a second auction in 2003 that included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses.<sup>105</sup> 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.<sup>106</sup> 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.

34. In 2007, the Commission adopted the *700 MHz Second Report and Order*.<sup>107</sup> 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 conducted 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. 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. At the conclusion of Auction 73, there were 36 winning bidders (who won 330 of the 1,090 licenses won) that identified themselves as very small businesses.<sup>108</sup> There were 20 winning bidders that identified themselves as a small business that won 49 of the 1,090 licenses won.<sup>109</sup> 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.<sup>110</sup>

35. 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.<sup>111</sup> 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.<sup>112</sup> 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.<sup>113</sup> SBA approval of these definitions is not required.<sup>114</sup> In 2000, the Commission conducted an auction of 52 Major Economic Area (“MEA”) licenses.<sup>115</sup> 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 eight 700 MHz Guard Band licenses commenced and closed in 2001. Of the three winning bidders, one was a small business that won two of the eight licenses.<sup>116</sup>

36. Specialized Mobile Radio. The Commission awards small business bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to entities that had revenues of no more than \$15 million in each of the three previous calendar years.<sup>117</sup> The Commission awards very small business bidding credits to entities that had revenues of no more than \$3 million in each of the three previous calendar years.<sup>118</sup> The SBA has approved these small business size standards for the 800 MHz and 900 MHz SMR Service.<sup>119</sup> 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.<sup>120</sup> 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.<sup>121</sup>

37. 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.<sup>122</sup> 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.<sup>123</sup> Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic

<sup>101</sup> See *id.*

<sup>102</sup> See *id.*, 17 FCC Rcd at 1088, para. 173.

<sup>103</sup> See Letter from Aida Alvarez, Administrator, SBA, to Thomas Sugrue, Chief, WTB, FCC (Aug. 10, 1999) (“Alvarez Letter 1999”).

<sup>104</sup> See “Lower 700 MHz Band Auction Closes,” *Public Notice*, 17 FCC Rcd 17272 (WTB 2002).

<sup>105</sup> See “Lower 700 MHz Band Auction Closes,” *Public Notice*, 18 FCC Rcd 11873 (WTB 2003).

<sup>106</sup> See *id.*

<sup>107</sup> 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. Upper 700 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).

<sup>108</sup> See 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).

<sup>109</sup> *Id.* 23 FCC Rcd at 4572–73.

<sup>110</sup> *Id.*

<sup>111</sup> 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”).

<sup>112</sup> See *746–764 MHz Band Second Report and Order*, 15 FCC Rcd at 5343, para. 108.

<sup>113</sup> See *id.*

<sup>114</sup> 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).

<sup>115</sup> See “700 MHz Guard Bands Auction Closes: Winning Bidders Announced,” *Public Notice*, 15 FCC Rcd 18026 (2000).

<sup>116</sup> See “700 MHz Guard Bands Auction Closes: Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 4590 (WTB 2001).

<sup>117</sup> 47 CFR 90.814(b)(1).

<sup>118</sup> 47 CFR 90.814(b)(1).

<sup>119</sup> See Alvarez Letter 1999.

<sup>120</sup> 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).

<sup>121</sup> See “Multi-Radio Service Auction Closes,” *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

<sup>122</sup> 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).

<sup>123</sup> See, “800 MHz SMR Service Lower 80 Channels Auction Closes: Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 1736 (2000).

licenses in the 800 MHz SMR band claimed status as small business.

38. 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.<sup>124</sup> 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.

39. 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. 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).<sup>125</sup> This category provides that a small business is a wireless company employing no more than 1,500 persons.<sup>126</sup> The Commission estimates that most such licensees are small businesses under the SBA's small business standard.

40. 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 licenses are assigned by auction, where mutually exclusive applications are accepted. 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.<sup>127</sup> 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.<sup>128</sup> 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.<sup>129</sup> The SBA has

approved these small size standards.<sup>130</sup> A small business is eligible for a 25 percent discount on its winning bid. A very small business is eligible for a 35 percent discount on its winning bid. The first auction of Phase II licenses was conducted in 1998.<sup>131</sup> In the first auction, 908 licenses were offered 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.<sup>132</sup> Thirty-nine small businesses won 373 licenses in the first 220 MHz auction. A second auction in 1999 included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.<sup>133</sup> 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.<sup>134</sup> In 2007, the Commission conducted a fourth auction of the 220 MHz licenses, designated as Auction 72.<sup>135</sup> Auction 72 offered 94 Phase II 220 MHz Service licenses.<sup>136</sup> In this auction, five winning bidders won a total of 76 licenses.<sup>137</sup> Two winning bidders identified themselves as very small businesses won 56 of the 76 licenses. One of the winning bidders that identified itself as a small business won 5 of the 76 licenses won.

41. 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.<sup>138</sup> Bidding credits for designated entities were not available in Auction 77.<sup>139</sup> 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.<sup>140</sup>

42. 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.<sup>141</sup> 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.<sup>142</sup>

43. 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.

44. Fixed Microwave Services. Fixed microwave services include common carrier,<sup>143</sup> private operational-fixed,<sup>144</sup> and broadcast auxiliary radio services.<sup>145</sup> 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

<sup>130</sup> See Letter from Aida Alvarez, Administrator, SBA, to Daniel Phythyon, Chief, WTBS, FCC (Jan. 6, 1998) ("*Alvarez to Phythyon Letter 1998*").

<sup>131</sup> See generally "220 MHz Service Auction Closes," *Public Notice*, 14 FCC Rcd 605 (1998).

<sup>132</sup> 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).

<sup>133</sup> See "Phase II 220 MHz Service Spectrum Auction Closes," *Public Notice*, 14 FCC Rcd 11218 (1999).

<sup>134</sup> See "Multi-Radio Service Auction Closes," *Public Notice*, 17 FCC Rcd 1446 (2002).

<sup>135</sup> 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).

<sup>136</sup> *Id.*

<sup>137</sup> 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).

<sup>138</sup> 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).

<sup>139</sup> *Id.* at 6685.

<sup>140</sup> 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).

<sup>141</sup> See 13 CFR 121.201, NAICS code 517210.

<sup>142</sup> See generally 13 CFR 121.201.

<sup>143</sup> See 47 CFR 101 *et seq.* for common carrier fixed microwave services (except Multipoint Distribution Service).

<sup>144</sup> 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.

<sup>145</sup> 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.

<sup>124</sup> See generally 13 CFR 121.201, NAICS code 517210.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> 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).

<sup>128</sup> *Id.* at 11068, para. 291.

<sup>129</sup> *Id.*

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.<sup>146</sup> 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.

45. 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.<sup>147</sup> An 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.<sup>148</sup> The SBA has approved these small business size standards.<sup>149</sup> The auction of the 2,173, 39 GHz licenses was conducted in 2000. The 18 bidders who claimed small business status won 849 licenses.

46. 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.<sup>150</sup> 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.<sup>151</sup> 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.<sup>152</sup> The SBA has approved these small business size standards in the context of LMDS auctions.<sup>153</sup> 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 that won 119 licenses.

47. 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”).<sup>154</sup> 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.<sup>155</sup> 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.<sup>156</sup> 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.<sup>157</sup> The SBA has approved of these definitions.<sup>158</sup>

48. 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.<sup>159</sup> 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.<sup>160</sup> These definitions have been approved by the SBA.<sup>161</sup> An auction for LMS licenses was conducted in 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses.

49. Rural Radiotelephone Service. The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.<sup>162</sup> A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (“BETRS”).<sup>163</sup> 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.<sup>164</sup> 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 our action.

50. Air-Ground Radiotelephone Service.<sup>165</sup> 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.<sup>166</sup> 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.<sup>167</sup> 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.<sup>168</sup> These definitions were approved by the SBA.<sup>169</sup> In 2006, the

<sup>160</sup> *Automatic Vehicle Monitoring Systems Second Report and Order*, 13 FCC Rcd at 15192, para. 20; see also 47 CFR 90.1103.

<sup>161</sup> See Alvarez Letter 1998.

<sup>162</sup> The service is defined in 22.99 of the Commission's rules, 47 CFR 22.99.

<sup>163</sup> BETRS is defined in 22.757 and 22.759 of the Commission's rules, 47 CFR 22.757 and 22.759.

<sup>164</sup> 13 CFR 121.201, NAICS code 517210.

<sup>165</sup> The service is defined in 22.99 of the Commission's rules, 47 CFR 22.99.

<sup>166</sup> 13 CFR 121.201, NAICS codes 517210.

<sup>167</sup> *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).

<sup>168</sup> *Id.*

<sup>169</sup> See Letter from Hector V. Barreto, Administrator, SBA, to Gary D. Michaels, Deputy Chief, Auctions and Spectrum Access Division, WT, FCC (Sept. 19, 2005).

<sup>146</sup> 13 CFR 121.201, NAICS code 517210.

<sup>147</sup> See *Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands*, ET Docket No. 95–183, Report and Order, 12 FCC Rcd 18600 (1997).

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

<sup>149</sup> See Letter from Aida Alvarez, Administrator, SBA, to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, WT, FCC (Feb. 4, 1998); see Letter from Hector Barreto, Administrator, SBA, to Margaret Wiener, Chief, Auctions and Industry Analysis Division, WT, FCC (Jan. 18, 2002).

<sup>150</sup> 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*”).

<sup>151</sup> See *LMDS Second Report and Order*, 12 FCC Rcd at 12689–90, para. 348.

<sup>152</sup> See *id.*

<sup>153</sup> See Alvarez to Phythyon Letter 1998.

<sup>154</sup> See “*Interactive Video and Data Service (IVDS) Applications Accepted for Filing*,” Public Notice, 9 FCC Rcd 6227 (1994).

<sup>155</sup> *Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, Fourth Report and Order, 9 FCC Rcd 2330 (1994).

<sup>156</sup> *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).

<sup>157</sup> *Id.*

<sup>158</sup> See Alvarez to Phythyon Letter 1998.

<sup>159</sup> *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.

Commission completed an auction of nationwide commercial Air-Ground Radiotelephone Service licenses in the 800 MHz band (Auction 65). The auction closed with two winning bidders winning two Air-Ground Radiotelephone Services licenses. Neither of the winning bidders claimed small business status.

51. Aviation and Marine Radio Services. There are approximately 26,162 aviation, 34,555 marine (ship), and 3,296 marine (coast) licensees.<sup>170</sup> 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 Carriers (except Satellite), which is 1,500 or fewer employees.<sup>171</sup> 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.<sup>172</sup> 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. 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.<sup>173</sup> Further, the Commission made available Automated Maritime Telecommunications System (“AMTS”) licenses in Auctions 57 and 61.<sup>174</sup> Winning bidders could claim status as a small business or a very 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.<sup>175</sup> 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.

52. 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.<sup>176</sup> 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.<sup>177</sup> Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.<sup>178</sup>

53. 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. The Commission defines a small business for MAS licenses as an entity that has average gross revenues of less than \$15 million in the three previous calendar years.<sup>179</sup> A 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.<sup>180</sup> The SBA has approved these definitions.<sup>181</sup> 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.<sup>182</sup> 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.

54. With respect to 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.<sup>183</sup> 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.

55. 1.4 GHz Band Licensees. The Commission conducted an auction of 64 1.4 GHz band licenses<sup>184</sup> in 2007.<sup>185</sup> 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.<sup>186</sup> Neither of the two winning bidders sought designated entity status.<sup>187</sup>

56. 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.<sup>188</sup> 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<sup>189</sup> 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 our action.

57. 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

<sup>170</sup> 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).

<sup>171</sup> 13 CFR 121.201, NAICS code 517210.

<sup>172</sup> A licensee may have a license in more than one category.

<sup>173</sup> *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).

<sup>174</sup> 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).

<sup>175</sup> 47 CFR 80.1252.

<sup>176</sup> This service is governed by Subpart I of Part 22 of the Commission’s rules. See 47 CFR 22.1001–22.1037.

<sup>177</sup> 13 CFR 121.201, NAICS code 517210.

<sup>178</sup> *Id.*

<sup>179</sup> See *Amendment of the Commission’s Rules Regarding Multiple Address Systems*, Report and Order, 15 FCC Rcd 11956, 12008, para. 123 (2000).

<sup>180</sup> *Id.*

<sup>181</sup> See *Alvarez Letter 1999*.

<sup>182</sup> See “Multiple Address Systems Spectrum Auction Closes,” Public Notice, 16 FCC Rcd 21011 (2001).

<sup>183</sup> See 13 CFR 121.201, NAICS code 517210.

<sup>184</sup> See “Auction of 1.4 GHz Bands Licenses Scheduled for February 7, 2007,” Public Notice, 21 FCC Rcd 12393 (WTB 2006).

<sup>185</sup> 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”).

<sup>186</sup> *Auction No. 69 Closing PN*, Attachment C.

<sup>187</sup> See *Auction No. 69 Closing PN*.

<sup>188</sup> 13 CFR 121.201, NAICS code 517210.

<sup>189</sup> 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.

\$15 million.<sup>190</sup> “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.<sup>191</sup> The SBA has approved these definitions.<sup>192</sup> In a 2004 auction of 24 GHz licenses, three winning bidders won seven licenses. Two of the winning bidders were very small businesses that won five licenses.

58. Broadband Radio Service and Educational Broadband Service. Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (“MDS”) 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”).<sup>193</sup> 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.<sup>194</sup> 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.<sup>195</sup> 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. The Commission has adopted three levels of bidding credits for BRS: (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.<sup>196</sup> In 2009, the Commission conducted Auction 86, which offered 78 BRS licenses.<sup>197</sup> Auction 86 concluded with the sale of 61 licenses.<sup>198</sup> Of the ten winning bidders, three bidders that claimed small business status won 7 licenses, and two bidders that claimed entrepreneur status won six licenses.

59. 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.<sup>199</sup> 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.”<sup>200</sup> 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.<sup>201</sup> 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.<sup>202</sup> 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.<sup>203</sup> Thus, the majority of these firms can be considered small.

60. 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.”<sup>204</sup> The SBA has created the following small business size standard for Television Broadcasting firms: Those having \$14 million or less in annual receipts.<sup>205</sup> The Commission has estimated the number of licensed commercial television stations to be 1,395.<sup>206</sup> 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.<sup>207</sup> We therefore estimate that the majority of commercial television broadcasters are small entities.

61. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations<sup>208</sup> 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.

62. In addition, the Commission has estimated the number of licensed

<sup>190</sup> *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).

<sup>191</sup> *24 GHz Report and Order*, 15 FCC Rcd at 16967, para. 77; see also 47 CFR 101.538(a)(1).

<sup>192</sup> 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).

<sup>193</sup> *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”).

<sup>194</sup> 47 CFR 21.961(b)(1).

<sup>195</sup> 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.

<sup>196</sup> *Id.* at 8296.

<sup>197</sup> 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).

<sup>198</sup> 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).

<sup>199</sup> 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.

<sup>200</sup> U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers” (partial definition); <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

<sup>201</sup> 13 CFR 121.201, NAICS code 517110.

<sup>202</sup> 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).

<sup>203</sup> *Id.* An additional 61 firms had annual receipts of \$25 million or more.

<sup>204</sup> U.S. Census Bureau, 2007 NAICS Definitions, “515120 Television Broadcasting” (partial definition); <http://www.census.gov/naics/2007/def/ND515120.HTM#N515120>.

<sup>205</sup> 13 CFR 121.201, NAICS code 515120 (updated for inflation in 2008).

<sup>206</sup> 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](http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC-280836A1.pdf).

<sup>207</sup> We recognize that BIA’s estimate differs slightly from the FCC total given *supra*.

<sup>208</sup> “[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).

noncommercial educational (NCE) television stations to be 390.<sup>209</sup> These stations are non-profit, and therefore considered to be small entities.<sup>210</sup>

63. In addition, there are also 2,386 low power television stations (LPTV).<sup>211</sup> 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.

64. 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 studio, from an affiliated network, or from external sources."<sup>212</sup> The SBA has established a small business size standard for this category, which is: Such firms having \$7 million or less in annual receipts.<sup>213</sup> 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.

65. We note, however, that in assessing whether a business concern qualifies as small under the above size standard, business affiliations must be included.<sup>214</sup> In addition, to be determined to be a "small business," the entity may not be dominant in its field of operation.<sup>215</sup> 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.

66. 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.<sup>216</sup>

67. The Commission estimates that there are approximately 5,618 FM translators and

boosters.<sup>217</sup> 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.<sup>218</sup>

68. 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."<sup>219</sup> 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.<sup>220</sup> 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.<sup>221</sup> 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.<sup>222</sup> Thus, the majority of these firms can be considered small.

69. 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.<sup>223</sup> Industry data indicate that, of

1,076 cable operators nationwide, all but eleven are small under this size standard.<sup>224</sup> In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.<sup>225</sup> Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have under 10,000 subscribers, and an additional 302 systems have 10,000–19,999 subscribers.<sup>226</sup> Thus, under this second size standard, most cable systems are small.

70. 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."<sup>227</sup> 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.<sup>228</sup> Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.<sup>229</sup> 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,<sup>230</sup> and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

71. 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

*of the 1992 Cable Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

<sup>224</sup> These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, "Top 25 Cable/Satellite Operators," pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, "Ownership of Cable Systems in the United States," pages D-1805 to D-1857.

<sup>225</sup> 47 CFR 76.901(c).

<sup>226</sup> 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.

<sup>227</sup> 47 U.S.C. 543(m)(2); see 47 CFR 76.901(f) & nn. 1-3.

<sup>228</sup> 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).

<sup>229</sup> These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, "Top 25 Cable/Satellite Operators," pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, "Ownership of Cable Systems in the United States," pages D-1805 to D-1857.

<sup>230</sup> The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to 76.901(f) of the Commission's rules. See 47 CFR 76.909(b).

<sup>209</sup> 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](http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC-280836A1.pdf).

<sup>210</sup> See generally 5 U.S.C. 601(4), (6).

<sup>211</sup> 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](http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC-280836A1.pdf).

<sup>212</sup> U.S. Census Bureau, 2007 NAICS Definitions, "515112 Radio Stations"; <http://www.census.gov/naics/2007/def/ND515112.HTM#N515112>.

<sup>213</sup> 13 CFR 121.201, NAICS code 515112 (updated for inflation in 2008).

<sup>214</sup> "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).

<sup>215</sup> 13 CFR 121.102(b) (an SBA regulation).

<sup>216</sup> 13 CFR 121.201, NAICS codes 515112 and 515120.

<sup>217</sup> See *supra* note 242.

<sup>218</sup> See 15 U.S.C. 632.

<sup>219</sup> U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition); <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

<sup>220</sup> 13 CFR 121.201, NAICS code 517110.

<sup>221</sup> 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).

<sup>222</sup> *Id.* An additional 61 firms had annual receipts of \$25 million or more.

<sup>223</sup> 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*

carriers.<sup>231</sup> The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,<sup>232</sup> OVS falls within the SBA small business size standard covering cable services, which is “Wired Telecommunications Carriers.”<sup>233</sup> 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 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.<sup>234</sup> 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.<sup>235</sup> 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.<sup>236</sup> 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.<sup>237</sup> Broadband service providers (“BSPs”) are currently the only significant holders of OVS certifications or local OVS franchises.<sup>238</sup> 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.

72. 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.”<sup>239</sup> 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.<sup>240</sup> 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.<sup>241</sup> 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.<sup>242</sup> Thus, the majority of these firms can be considered small.

73. 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.<sup>243</sup> These definitions were approved by the SBA.<sup>244</sup> 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.<sup>245</sup> 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).

<sup>239</sup> U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers” (partial definition); <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

<sup>240</sup> 13 CFR 121.201, NAICS code 517110.

<sup>241</sup> 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).

<sup>242</sup> *Id.* An additional 61 firms had annual receipts of \$25 million or more.

<sup>243</sup> *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).

<sup>244</sup> 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).

<sup>245</sup> See “Multichannel Video Distribution and Data Service Auction Closes,” Public Notice, 19 FCC Rcd 1834 (2004).

Of the three winning bidders who won 22 licenses, two winning bidders, winning 21 of the licenses, claimed small business status.<sup>246</sup>

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

75. 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.<sup>247</sup> 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.<sup>248</sup> 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.

76. 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.<sup>249</sup> 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”),

<sup>246</sup> 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).

<sup>247</sup> 13 CFR 121.201, NAICS code 517210.

<sup>248</sup> *Amendment of the Commission’s Rules Concerning Maritime Communications*, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853 (1998).

<sup>249</sup> 47 CFR Part 90.

<sup>231</sup> 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”).

<sup>232</sup> See 47 U.S.C. 573.

<sup>233</sup> U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers”; <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

<sup>234</sup> 13 CFR 121.201, NAICS code 517110.

<sup>235</sup> 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).

<sup>236</sup> *Id.* An additional 61 firms had annual receipts of \$25 million or more.

<sup>237</sup> A list of OVS certifications may be found at <http://www.fcc.gov/mb/ovs/csovscer.html>.

<sup>238</sup> 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.



Low Power Radio Service (“LPRS”), and Multi-Use Radio Service (“MURS”).<sup>250</sup> 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 persons.<sup>251</sup> 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 our action.

77. Public Safety Radio Services. Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.<sup>252</sup> There are a total of approximately 127,540 licensees in these services. Governmental entities<sup>253</sup> as well as

<sup>250</sup> 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.

<sup>251</sup> 13 CFR 121.201, NAICS Code 517210.

<sup>252</sup> 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.

<sup>253</sup> 47 CFR 1.1162.

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.<sup>254</sup>

78. 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,<sup>255</sup> which has an SBA small business size standard of 1,500 or fewer employees.<sup>256</sup> The latter are within the category of All Other Telecommunications,<sup>257</sup> which has a size standard of annual receipts of \$25 million or less.<sup>258</sup> The most current Census Bureau data for all such firms, however, are the 2002 data for the previous census category called Internet Service Providers.<sup>259</sup> 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.<sup>260</sup> 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.<sup>261</sup> Consequently, we estimate that the majority of ISP firms are small entities.

79. 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.

80. 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

81. With certain exceptions, the Commission’s Schedule of Regulatory Fees

<sup>254</sup> 5 U.S.C. 601(5).

<sup>255</sup> U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers”, <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

<sup>256</sup> 13 CFR 121.201, NAICS code 517110 (updated for inflation in 2008).

<sup>257</sup> U.S. Census Bureau, 2007 NAICS Definitions, “517919 All Other Telecommunications”; <http://www.census.gov/naics/2007/def/ND517919.HTM#N517919>.

<sup>258</sup> 13 CFR 121.201, NAICS code 517919 (updated for inflation in 2008).

<sup>259</sup> U.S. Census Bureau, “2002 NAICS Definitions, “518111 Internet Service Providers”; <http://www.census.gov/eped/naics02/def/NDEF518.HTM>.

<sup>260</sup> 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).

<sup>261</sup> An additional 45 firms had receipts of \$25 million or more.

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 electronically an FCC Form 159 Remittance Advice, and pay a regulatory fee based on the number of licenses or call signs.<sup>262</sup> 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 electronically 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 electronically 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 electronic FCC Form 159, and it can be completed by the employees responsible for an entity’s business records.

82. As discussed previously in this *Order*, 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

<sup>262</sup> 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 (except 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.

those payments that are simply mailed in with a hardcopy Form 159.

83. 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.<sup>263</sup> If payment is not received, new or pending applications may be dismissed, and existing authorizations may be subject to rescission.<sup>264</sup> 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.<sup>265</sup> 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 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.<sup>266</sup>

84. 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.<sup>267</sup> 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**

85. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>268</sup> In our *NPRM*, we sought comment on alternatives that might simplify our fee procedures or otherwise benefit filers, including small entities, while remaining consistent with our statutory responsibilities in this proceeding. We received no comments specifically in response to the IRFA.

86. 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. Report to Congress**

87. The Commission will send a copy of this Report and Order, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.<sup>269</sup> In addition, the Commission will send a copy of this Report and Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.<sup>270</sup>

**APPENDIX G**

**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.
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.

<sup>263</sup> 47 CFR 1.1164.

<sup>264</sup> 47 CFR 1.1164(c).

<sup>265</sup> Public Law 104–134, 110 Stat. 1321 (1996).

<sup>266</sup> 31 U.S.C. 7701(c)(2)(B).

<sup>267</sup> 47 CFR 1.1166.

<sup>268</sup> 5 U.S.C. 603.

<sup>269</sup> *See* 5 U.S.C. 801(a)(1)(A). The Congressional Review Act is contained in Title II, 251, of the

CWAAA; *see* Public Law 104–121, Title II, 251, 110 Stat. 868.

<sup>270</sup> *See* 5 U.S.C. 604(b).

Fee category	Annual regulatory fee (U.S. \$'s)
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)**

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.

**APPENDIX H  
Rule Changes**

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

**PART 1—PRACTICE AND PROCEDURE**

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

**Authority:** 15 U.S.C. 79 et seq.; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 303(r), 309.

■ 2. Section 1.1152 is revised to read as follows:

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

Exclusive use services (per license)	Fee amount <sup>1</sup>	Address
1. Land Mobile (Above 470 MHz and 220 MHz Local, Base Station & SMRS) (47 CFR, Part 90)		
(a) New, Renew/Mod (FCC 601 & 159) .....	\$40.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159) .....	40.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(c) Renewal Only (FCC 601 & 159) .....	40.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159) .....	40.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
220 MHz Nationwide		
(a) New, Renew/Mod (FCC 601 & 159) .....	40.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159) .....	40.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(c) Renewal Only (FCC 601 & 159) .....	40.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159) .....	40.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
2. Microwave (47 CFR Pt. 101) (Private)		
(a) New, Renew/Mod (FCC 601 & 159) .....	25.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159) .....	25.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(c) Renewal Only (FCC 601 & 159) .....	25.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.

Exclusive use services (per license)	Fee amount <sup>1</sup>	Address
(d) Renewal Only (Electronic Filing) (FCC 601 & 159) .....	25.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
3. 218-219 MHz Service		
(a) New, Renew/Mod (FCC 601 & 159) .....	65.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159) .....	65.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(c) Renewal Only (FCC 601 & 159) .....	65.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159) .....	65.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
4. Shared Use Services		
Land Mobile (Frequencies Below 470 MHz—except 220 MHz)		
(a) New, Renew/Mod (FCC 601 & 159) .....	20.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159) .....	20.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(c) Renewal Only (FCC 601 & 159) .....	20.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159) .....	20.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
General Mobile Radio Service		
(a) New, Renew/Mod (FCC 605 & 159) .....	5.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(b) New, Renew/Mod (Electronic Filing) (FCC 605 & 159) .....	5.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(c) Renewal Only (FCC 605 & 159) .....	5.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(d) Renewal Only (Electronic Filing) (FCC 605 & 159) .....	5.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
Rural Radio (Part 22)		
(a) New, Additional Facility, Major Renew/Mod (Electronic Filing) (FCC 601 & 159).	20.00	FCC, P.O. Box 979097, St. Louis, MO, 63197-9000.
(b) Renewal, Minor Renew/Mod (Electronic Filing) (FCC 601 & 159)	20.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
Marine Coast		
(a) New Renewal/Mod (FCC 601 & 159) .....	45.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(b) New, Renewal/Mod (Electronic Filing) (FCC 601 & 159) .....	45.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(c) Renewal Only (FCC 601 & 159) .....	45.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159) .....	45.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
Aviation Ground		
(a) New, Renewal/Mod (FCC 601 & 159) .....	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(b) New, Renewal/Mod (Electronic Filing) (FCC 601 & 159) .....	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(c) Renewal Only (FCC 601 & 159) .....	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(d) Renewal Only (Electronic Only) (FCC 601 & 159) .....	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
Marine Ship		
(a) New, Renewal/Mod (FCC 605 & 159) .....	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(b) New, Renewal/Mod (Electronic Filing) (FCC 605 & 159) .....	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(c) Renewal Only (FCC 605 & 159) .....	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(d) Renewal Only (Electronic Filing) (FCC 605 & 159) .....	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
Aviation Aircraft		
(a) New, Renew/Mod (FCC 605 & 159) .....	5.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(b) New, Renew/Mod (Electronic Filing) (FCC 605 & 159) .....	5.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(c) Renewal Only (FCC 605 & 159) .....	5.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(d) Renewal Only (Electronic Filing) (FCC 605 & 159) .....	5.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
5. Amateur Vanity Call Signs		
(a) Initial or Renew (FCC 605 & 159) .....	1.33	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(b) Initial or Renew (Electronic Filing) (FCC 605 & 159) .....	1.33	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
6. CMRS Cellular/Mobile Services (per unit) (FCC 159) .....	.18 <sup>2</sup>	FCC, P.O. Box 979084, St. Louis, MO 63197-9000.
7. CMRS Messaging Services (per unit) (FCC 159) .....	.08 <sup>3</sup>	FCC, P.O. Box 979084, St. Louis, MO 63197-9000.
8. Broadband Radio Service (formerly MMDS and MDS) .....	310	FCC, P.O. Box 979084, St. Louis, MO 63197-9000.
9. Local Multipoint Distribution Service .....	310	FCC, P.O. Box 979084, St. Louis, MO 63197-9000.

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

<sup>2</sup> These are standard fees that are to be paid in accordance with 1.1157(b).

<sup>3</sup> These are standard fees that are to be paid in accordance with 1.1157(b).

■ 3. Section 1.1153 is revised to read as follows:

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

Radio [AM and FM] (47 CFR, Part 73)	Fee amount	Address
1. AM Class A:		
<=25,000 population .....	\$675	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197-9000.
25,001-75,000 population .....	1,350	
75,001-150,000 population .....	2,025	
150,001-500,000 population .....	3,050	
500,001-1,200,000 population .....	4,400	
1,200,001-3,000,000 population .....	6,750	
>3,000,000 population .....	8,100	
2. AM Class B:		

Radio [AM and FM] (47 CFR, Part 73)	Fee amount	Address
<=25,000 population .....	550	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197-9000.
25,001-75,000 population .....	1,075	
75,001-150,000 population .....	1,350	
150,001-500,000 population .....	2,300	
500,001-1,200,000 population .....	3,500	
1,200,001-3,000,000 population .....	5,400	
>3,000,000 population .....	6,475	
<b>3. AM Class C:</b>		
<=25,000 population .....	500	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197-9000.
25,001-75,000 population .....	750	
75,001-150,000 population .....	1,000	
150,001-500,000 population .....	1,500	
500,001-1,200,000 population .....	2,500	
1,200,001-3,000,000 population .....	3,750	
>3,000,000 population .....	4,750	
<b>4. AM Class D:</b>		
<=25,000 population .....	575	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197-9000.
25,001-75,000 population .....	875	
75,001-150,000 population .....	1,450	
150,001-500,000 population .....	1,725	
500,001-1,200,000 population .....	2,875	
1,200,001-3,000,000 population .....	4,600	
>3,000,000 population .....	5,750	
<b>5. AM Construction Permit .....</b>	<b>390</b>	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197-9000.
<b>6. FM Classes A, B1 and C3:</b>		
<=25,000 population .....	650	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197-9000.
25,001-75,000 population .....	1,325	
75,001-150,000 population .....	1,825	
150,001-500,000 population .....	2,800	
500,001-1,200,000 population .....	4,450	
1,200,001-3,000,000 population .....	7,250	
>3,000,000 population .....	9,250	
<b>7. FM Classes B, C, C0, C1 and C2:</b>		
<=25,000 population .....	825	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197-9000.
25,001-75,000 population .....	1,450	
75,001-150,000 population .....	2,725	
150,001-500,000 population .....	3,550	
500,001-1,200,000 population .....	5,225	
1,200,001-3,000,000 population .....	8,350	
>3,000,000 population .....	10,850	
<b>8. FM Construction Permits .....</b>	<b>675</b>	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197-9000.
<b>TV (47 CFR, Part 73)</b>		
<b>VHF Commercial:</b>		
1. Markets 1 thru 10 .....	81,550	FCC, TV Branch, P.O. Box 979084, St. Louis, MO 63197-9000.
2. Markets 11 thru 25 .....	63,275	
3. Markets 26 thru 50 .....	42,550	
4. Markets 51 thru 100 .....	23,750	
5. Remaining Markets .....	6,125	
6. Construction Permits .....	6,125	
<b>UHF Commercial:</b>		
1. Markets 1 thru 10 .....	32,275	FCC, UHF Commercial, P.O. Box 979084, St. Louis, MO 63197-9000.
2. Markets 11 thru 25 .....	30,075	
3. Markets 26 thru 50 .....	18,900	
4. Markets 51 thru 100 .....	11,550	
5. Remaining Markets .....	3,050	
6. Construction Permits .....	3,050	
<b>Satellite UHF/VHF Commercial:</b>		
1. All Markets .....	1,300	FCC Satellite TV, P.O. Box 979084, St. Louis, MO 63197-9000.
2. Construction Permits .....	675	
<b>Low Power TV, Class A TV, TV/FM Translator, &amp; TV/FM Booster (47 CFR Part 74).</b>	<b>415</b>	FCC, Low Power, P.O. Box 979084, St. Louis, MO 63197-9000.
<b>Broadcast Auxiliary .....</b>	<b>10</b>	FCC, Auxiliary, P.O. Box 979084, St. Louis, MO 63197-9000.

■ 4. Section 1.1154 is revised to read as follows:

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

Radio facilities	Fee amount	Address
1. Microwave (Domestic Public Fixed) (Electronic Filing) (FCC Form 601 & 159). Carriers	\$25.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000
1. Interstate Telephone Service Providers (per interstate and international end-user revenues (see FCC Form 499-A).	.00349	FCC, Carriers, P.O. Box 979084, St. Louis, MO 63197-9000

■ 5. Section 1.1155 is revised to read as follows:

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

	Fee amount	Address
1. Cable Television Relay Service .....	\$315	FCC, Cable, P.O. Box 979084, St. Louis, MO 63197-9000
2. Cable TV System (per subscriber) .....	.89	

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

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

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

Fee category	Fee amount	Address
Space Stations (Geostationary Orbit) .....	\$127,925	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000
Space Stations (Non-Geostationary Orbit) .....	138,050	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000
Earth Stations: Transmit/Receive & Transmit only (per authorization or registration).	240	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000

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

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

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

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

International terrestrial and satellite (capacity as of December 31, 2009)	Fee amount	Address
Terrestrial Common Carrier .....	\$0.39 per 64 KB Circuit .....	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000.
Satellite Common Carrier		
Satellite Non-Common Carrier		

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

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

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

Submarine cable systems (capacity as of Dec. 31, 2009)	Fee amount	Address
<2.5 Gbps .....	\$14,625	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000.
2.5 Gbps or greater, but less than 5 Gbps .....	\$29,250	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000.
5 Gbps or greater, but less than 10 Gbps .....	\$58,500	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000.

Submarine cable systems (capacity as of Dec. 31, 2009)	Fee amount	Address
10 Gbps or greater, but less than 20 Gbps .....	\$116,975	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000.
20 Gbps or greater .....	\$233,950	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000.

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