

**Federal Register.** This final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Agricultural commodities, Pesticides and pest.

Dated: July 23, 2012.

**Lois Rossi,**

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

**PART 180—[AMENDED]**

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.666, by removing the entries for “Oilseeds, group 20” and “Plum, prune” and adding in their place entries for “Oilseeds, group 20 (except cottonseed)” and “Plum, prune, dried” in the table to paragraph (a) to read as follows:

**§ 180.666 Fluxapyroxad; tolerances for residues.**

(a) \* \* \*

Commodity	Parts per million
* * * *	*
Oilseeds, group 20 (except cottonseed) .....	0.9
* * * *	*
Plum, prune, dried .....	3.0
* * * *	*

\* \* \* \* \*  
[FR Doc. 2012-18507 Filed 8-2-12; 8:45 am]  
BILLING CODE 6560-50-P

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 1**

[MD Docket No. 12-116; FCC 12-76]

**Assessment and Collection of Regulatory Fees for Fiscal Year 2012**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission revises its Schedule of Regulatory Fees to recover an amount of \$339,844,000 that Congress has required the Commission to collect for fiscal year 2012. Section 9 of the Communications Act of 1934, as

amended, provides for the annual assessment and collection of regulatory fees under sections 9(b)(2) and 9(b)(3), respectively, for annual “Mandatory Adjustments” and “Permitted Amendments” to the Schedule of Regulatory Fees.

**DATES:** Effective September 4, 2012.

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

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s Report and Order (R&O), FCC 12-76, MD Docket No. 12-116, adopted on July 13, 2012 and released on July 19, 2012.

**I. Procedural Matters**

*A. Final Paperwork Reduction Act*

1. This *Report and Order* 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).

*B. Congressional Review Act Analysis*

2. The Commission will send a copy of this *Report and Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act.<sup>1</sup>

*C. Final Regulatory Flexibility Analysis*

3. As required by the Regulatory Flexibility Act of 1980 (“RFA”),<sup>2</sup> the Commission has prepared a Final Regulatory Flexibility Analysis (“FRFA”) relating to this Report and Order. The FRFA is set forth in the section entitled Final Regulatory Flexibility Analysis.

**II. Introduction and Summary**

4. In this *Report and Order*, we conclude the process of assessing and collecting regulatory fees for Fiscal Year (“FY”) 2012 to collect \$339,844,000 in regulatory fees for FY 2012. Section 9(a)(1) of the Communications Act of 1934, as amended (the “Act”) directs the Commission to collect regulatory fees “to recover the costs of \* \* \* enforcement activities, policy and rulemaking activities, user information

services, and international activities.”<sup>3</sup> Section 9(a)(2) stipulates that regulatory fees for the enumerated activities “shall be collected only if, and only in the total amounts, required in Appropriation Acts,” and must “be established in amounts that will result in collection, during each fiscal year, of any amount that can reasonably be expected to equal the amount appropriated” for the performance of the activities enumerated in section 9(a)(1) during that fiscal year. Since FY 2009, Congress has directed the Commission to assess and collect regulatory fees in an amount equal to the entire amount appropriated.<sup>4</sup> Congress appropriated \$339,844,000 for the Commission in FY 2012,<sup>5</sup> and the regulatory fees established in this *FY 2012 Report and Order* are calculated so as to collect this entire amount.<sup>6</sup> In this annual regulatory fee proceeding, we retain many of the current methods, policies, and procedures for collecting section 9 regulatory fees adopted by the Commission in prior years. Consistent with our established practice, we intend to collect these regulatory fees during a September 2012 filing window in order to collect the required amount by the end of our fiscal year.<sup>7</sup>

5. In this *FY 2012 Report and Order*, we address the following issues: (1) Incorporating 2010 Census data into our broadcast population data, (2) assessing a regulatory fee for each broadcasting facility operating either in an analog or digital mode (but not both) for Low Power, Class A, and TV Translators/Boosters, (3) maintaining the FY 2012 Interstate Telecommunications Service Provider (ITSP) fee rate at the same level as in FY 2011, (4) using an online filing system for the filing of requests for a refund, waiver, fee reduction, or deferment of payment of an application or regulatory fee, (5) maintaining the Commercial Mobile Radio Service (“CMRS”) Messaging Service at the rate of \$.08 per subscriber, and (6) the

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

<sup>4</sup> Omnibus Appropriations Act of 2009, Public Law 111-8, 123 Stat. 524, 657 (2009).

<sup>5</sup> Consolidated Appropriations Act of 2012, Public Law 112-74, Div. C, Title V (December 23, 2011).

<sup>6</sup> In FY 2011, the Commission’s collection target goal was \$335,794,000, and it collected \$342.04 million through September 30, 2011. Any over collection amount is unavailable for obligation pursuant to Public Law 112-74 (HR 2055), *Consolidated Appropriations Act of 2012*, page 124.

<sup>7</sup> The Commission also expects to release in the near future a *Notice of Proposed Rulemaking* that will propose to update our current cost allocation percentages and revise our cost allocation methodology. We expect to implement any changes that result from this rulemaking in FY 2013; they do not affect the fees set in this *FY 2012 Report and Order*.

<sup>1</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>2</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”).

Commission will continue to promote greater use of technology (and less use of paper) in improving its regulatory fee notification and collection processes. The resulting FY 2012 Schedule of Regulatory Fees appears in Table B.

**III. Report and Order**

6. In this *FY 2012 Report and Order*, we retain the same regulatory fee methodology used in FY 2011 and in prior fiscal years, with some adjustments to maintain the FY 2012

ITSP fee rate at the same level as in FY 2011. These adjustments are reflected in the ITSP fee rate, as well as in the fee rates of all remaining fee categories listed in Table B.

7. Since FY 1999, the Commission has allocated the amount appropriated by Congress across the various fee categories, and then divided these allocated amounts by the number of estimated payment units in each fee category to determine the unit fee.<sup>8</sup> As in prior years, for cases involving small

multiyear fees (e.g., licenses that are renewed over a multiyear term), we divided the allocated amounts by their respective estimated payment units, as well as by the term of the license (5-year or 10-year) to determine the unit fee, which was then rounded to be consistent with the requirements of section 9(b)(2)(B) of the Act. This process is illustrated in Table A and yields the FY 2012 regulatory fees shown in Table B.

**TABLE A—CALCULATION OF FY 2012 REVENUE REQUIREMENTS AND PRO-RATA FEES**

[Regulatory fees for the first ten categories below are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed.]

Fee category	FY 2012 Payment units	Years	FY 2011 Revenue estimate	Pro-rated FY 2012 revenue requirement	Computed new FY 2012 regulatory fee	Rounded new FY 2012 regulatory fee	Expected FY 2012 revenue
PLMRS (Exclusive Use)	1,400	10	480,000	501,024	36	35	490,000
PLMRS (Shared use) .....	15,000	10	2,120,000	2,397,759	16	15	2,250,000
Microwave .....	13,200	10	2,550,000	2,361,972	18	20	2,640,000
218–219 MHz (Formerly IVDS) .....	5	10	1,950	3,579	72	70	3,500
Marine (Ship) .....	6,550	10	670,000	787,324	12	10	655,000
GMRS .....	7,700	5	232,500	286,300	7	5	192,500
Aviation (Aircraft) .....	2,900	10	460,000	357,874	12	10	290,000
Marine (Coast) .....	285	10	132,500	143,150	50	50	142,500
Aviation (Ground) .....	900	10	165,000	143,150	16	15	135,000
Amateur Vanity Call Signs .....	14,300	10	207,320	214,725	1.50	1.50	214,500
AM Class A <sup>4a</sup> .....	61	1	257,400	250,512	4,107	4,100	250,100
AM Class B <sup>4b</sup> .....	1,471	1	3,057,875	3,113,508	2,117	2,125	3,125,875
AM Class C <sup>4c</sup> .....	869	1	1,078,650	1,109,411	1,277	1,275	1,107,975
AM Class D <sup>4d</sup> .....	1,541	1	3,642,325	3,686,107	2,392	2,400	3,698,400
FM Classes A, B1 & C <sup>34e</sup> .....	3,055	1	7,629,300	7,759,664	2,548	2,550	7,764,750
FM Classes B, C, C0, C1 & C2 <sup>4f</sup> .....	3,020	1	9,410,775	9,513,249	3,150	3,150	9,513,000
AM Construction Permits	65	1	44,100	35787	551	550	35,750
FM Construction Permits <sup>1</sup> .....	120	1	101,925	84,000	700	700	84,000
Satellite TV .....	125	1	166,250	178,937	1,431	1,425	178,125
Satellite TV Construction Permit .....	4	1	2,010	3,579	895	895	3,580
VHF Markets 1–10 .....	22	1	1,692,500	1,761,769	80,080	80,075	1,761,650
VHF Markets 11–25 .....	25	1	1,772,550	1,836,977	73,479	73,475	1,836,875
VHF Markets 26–50 .....	38	1	1,457,100	1,512,153	39,793	39,800	1,512,400
VHF Markets 51–100 .....	60	1	1,183,000	1,255,187	20,920	20,925	1,255,500
VHF Remaining Markets	137	1	774,700	798,915	5,831	5,825	798,025
VHF Construction Permits <sup>1</sup> .....	2	1	12,200	11,650	5,825	5,825	11,650
UHF Markets 1–10 .....	109	1	3,915,450	3,854,222	35,360	35,350	3,853,150
UHF Markets 11–25 .....	106	1	3,525,650	3,456,927	32,613	32,625	3,458,250
UHF Markets 26–50 .....	135	1	3,016,800	2,958,639	21,916	21,925	2,959,875
UHF Markets 51–100 .....	225	1	2,933,350	2,868,448	12,749	12,750	2,868,750
UHF Remaining Markets	247	1	864,600	847,308	3,430	3,425	845,975
UHF Construction Permits <sup>1</sup> .....	7	1	32,750	23,975	3,425	3,425	23,975
Broadcast Auxiliaries .....	24,800	1	268,500	286,300	12	10	248,000
LPTV/Translators/Boosters/Class A TV .....	3,732	1	1,424,765	1,431,498	384	385	1,436,820
CARS Stations .....	375	1	173,900	178,937	477	475	178,125
Cable TV Systems .....	62,200,000	1	58,962,000	59,228,227	0.9522	0.95	59,090,000
Interstate Telecommunication Service Providers .....	\$39,700,000,000	1	148,125,000	148,875,000	0.003750	0.00375	148,875,000

<sup>8</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.

TABLE A—CALCULATION OF FY 2012 REVENUE REQUIREMENTS AND PRO-RATA FEES—Continued

[Regulatory fees for the first ten categories below are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed.]

Fee category	FY 2012 Payment units	Years	FY 2011 Revenue estimate	Pro-rated FY 2012 revenue requirement	Computed new FY 2012 regulatory fee	Rounded new FY 2012 regulatory fee	Expected FY 2012 revenue
CMRS Mobile Services (Cellular/Public Mobile)	313,000,000	1	50,660,000	52,156,612	0.1666	0.17	53,210,000
CMRS Messaging Services	3,400,000	1	336,000	272,000	0.0800	0.080	272,000
BRS <sup>2</sup>	950	1	523,900	451,250	475	475	451,250
LMDS	475	1	161,200	225,625	475	475	225,625
Per 64 kbps Int'l Bearer Circuits Terrestrial (Common) & Satellite (Common & Non-Common)	4,452,315	1	1,136,518	1,153,787	.259	.26	1,157,602
Submarine Cable Providers (see chart in Appendix C) <sup>3</sup>	38.313	1	8,080,734	8,150,949	212,749	212,750	8,150,984
Earth Stations	3,250	1	875,875	894,686	275	275	893,750
Space Stations (Geostationary)	87	1	11,429,625	11,559,346	132,866	132,875	11,560,125
Space Stations (Non-Geostationary)	6	1	850,500	858,899	143,150	143,150	858,900
***** Total Estimated Revenue to be Collected			336,599,047	339,840,896			340,568,811
***** Total Revenue Requirement			335,794,000	339,844,000			339,844,000
Difference			805,048	(3,104)			724,811

<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 Attachment C 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 2012 Regulatory Fee" constitute a weighted average media regulatory fee by class of service. The actual FY 2012 regulatory fees for AM/FM radio station are listed on a grid located at the end of Table B.

TABLE B—FY 2012 SCHEDULE OF REGULATORY FEES

[Regulatory fees for the first eleven categories below are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed.]

Fee category	Annual regulatory fee (U.S. \$'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	35
Microwave (per license) (47 CFR part 101)	20
218–219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	70
Marine (Ship) (per station) (47 CFR part 80)	10
Marine (Coast) (per license) (47 CFR part 80)	50
General Mobile Radio Service (per license) (47 CFR part 95)	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	15
PLMRS (Shared Use) (per license) (47 CFR part 90)	15
Aviation (Aircraft) (per station) (47 CFR part 87)	10
Aviation (Ground) (per license) (47 CFR part 87)	15
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.50
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.17
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08
Broadband Radio Service (formerly MMDS/MDS) (per license) (47 CFR part 27)	475
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	475
AM Radio Construction Permits	550
FM Radio Construction Permits	700
TV (47 CFR part 73) VHF Commercial:	

TABLE B—FY 2012 SCHEDULE OF REGULATORY FEES—Continued

[Regulatory fees for the first eleven categories below are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed.]

Fee category	Annual regulatory fee (U.S. \$'s)
Markets 1–10 .....	80,075
Markets 11–25 .....	73,475
Markets 26–50 .....	39,800
Markets 51–100 .....	20,925
Remaining Markets .....	5,825
Construction Permits .....	5,825
TV (47 CFR part 73) UHF Commercial:	
Markets 1–10 .....	35,350
Markets 11–25 .....	32,625
Markets 26–50 .....	21,925
Markets 51–100 .....	12,750
Remaining Markets .....	3,425
Construction Permits .....	3,425
Satellite Television Stations (All Markets) .....	1,425
Construction Permits—Satellite Television Stations .....	895
Low Power TV, Class A TV, TV/FM Translators & Boosters (47 CFR part 74) .....	385
Broadcast Auxiliaries (47 CFR part 74) .....	10
CARS (47 CFR part 78) .....	475
Cable Television Systems (per subscriber) (47 CFR part 76) .....	.95
Interstate Telecommunication Service Providers (per revenue dollar) .....	.00375
Earth Stations (47 CFR part 25) .....	275
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100) .....	132,875
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25) .....	143,150
International Bearer Circuits—Terrestrial/Satellites (per 64KB circuit) .....	.26
International Bearer Circuits—Submarine Cable .....	See Table Below

FY 2012 SCHEDULE OF REGULATORY FEES (CONTINUED)

FY 2012 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 .....	\$725	\$600	\$550	\$625	\$700	\$875
25,001–75,000 .....	1,475	1,225	850	950	1,425	1,550
75,001–150,000 .....	2,200	1,525	1,125	1,600	1,950	2,875
150,001–500,000 .....	3,300	2,600	1,675	1,900	3,025	3,750
500,001–1,200,000 .....	4,775	3,975	2,800	3,175	4,800	5,525
1,200,001–3,000,000 .....	7,350	6,100	4,200	5,075	7,800	8,850
>3,000,000 .....	8,825	7,325	5,325	6,350	9,950	11,500

FY 2012 SCHEDULE OF REGULATORY FEES

[International bearer circuits—submarine cable]

Submarine cable systems (capacity as of December 31, 2011)	Fee amount	Address
<2.5 Gbps .....	\$13,300	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
2.5 Gbps or greater, but less than 5 Gbps .....	26,600	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
5 Gbps or greater, but less than 10 Gbps .....	53,200	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
10 Gbps or greater, but less than 20 Gbps .....	106,375	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
20 Gbps or greater .....	212,750	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.

8. We then calculated the number of payment units subject to the fee. In some instances, Commission licensee databases were used in calculating payment units; in other instances, actual prior year payment records and/or industry and trade association

projections were used (see Table C).<sup>9</sup> Where appropriate, we adjusted and rounded our final estimates to take into account factors that could affect the number of units for which a fee is

paid.<sup>10</sup> Such factors include waivers and exemptions filed in FYs 2011 and 2012, as well as fluctuations in the number of licenses or station operators due to economic, technical, or other

<sup>9</sup> See Table C for a list of databases we consulted.

<sup>10</sup> The use of “regulatee” in this Order refers to any payor of regulatory fees.

reasons. Our estimated FY 2012 payment units, therefore, were adjusted to account for the variable factors relevant to each fee category. The fee rate may also have been rounded or adjusted slightly to reflect these variables.

**TABLE C—Source of Payment Unit Estimates for FY 2012**

In order to calculate individual service fees for FY 2012, we adjusted FY 2011 payment units for each service to more accurately reflect expected FY 2012 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee databases, 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 2012 estimates with actual FY 2011 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 2012 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 2012 payment units are based on FY 2011 actual payment units, it does not necessarily mean that our FY 2012 projection is exactly the same number as in FY 2011. We have either rounded the FY 2012 number or adjusted it slightly to account for these variables.

**TABLE C—SOURCES OF PAYMENT UNIT ESTIMATES FOR FY 2012**

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 databases. 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 11 payment data.
CMRS Messaging Services .....	Based on WTB reports, and FY 11 payment data.
AM/FM Radio Stations .....	Based on CDBS data, adjusted for exemptions, and actual FY 2011 payment units.
UHF/VHF Television Stations .....	Based on CDBS data, adjusted for exemptions, and actual FY 2011 payment units.
AM/FM/TV Construction Permits .....	Based on CDBS data, adjusted for exemptions, and actual FY 2011 payment units.
LPTV, Translators and Boosters, Class A Television .....	Based on CDBS data, adjusted for exemptions, and actual FY 2011 payment units.
Broadcast Auxiliaries .....	Based on actual FY 2011 payment units.
BRS (formerly MDS/MMDS) .....	Based on WTB reports and actual FY 2011 payment units.
LMDS .....	Based on WTB reports and actual FY 2011 payment units.
Cable Television Relay Service (“CARS”) Stations .....	Based on data from Media Bureau’s COALS database and actual FY 2011 payment units.
Cable Television System Subscribers .....	Based on publicly available data sources for estimated subscriber counts and actual FY 2011 payment units.
Interstate Telecommunication Service Providers .....	The Wireline Competition Bureau projected amount of calendar year 2011 revenues that will be reported on 2012 FCC Form 499–A worksheets due in April, 2012. Some of the projections are based on FCC Form 499–Q data for the four quarters of calendar year 2011.
Earth Stations .....	Based on International Bureau (“IB”) licensing data and actual FY 2011 payment units.
Space Stations (GSOs & NGSOs) .....	Based on IB data reports and actual FY 2011 payment units.
International Bearer Circuits .....	Based on IB reports and submissions by licensees.
Submarine Cable Licenses .....	Based on IB license information.

9. On May 4, 2012, we released the *FY 2012 Notice of Proposed Rulemaking*<sup>11</sup> to seek comment on the proposed FY 2012 regulatory fees. We received two comments and no reply comments (see Table D). We address the issues raised in our *FY 2012 Notice of Proposed Rulemaking* and the comments received below.

<sup>11</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 2012*, Notice of Proposed Rulemaking, 77 FR 29275 (May 17, 2012) (“*FY 2012 Regulatory Fees NPRM*”).

**TABLE D—LIST OF COMMENTERS**

Commenter	Abbreviated name
Critical Messaging Association The United States Telecom Association.	“CMA”. “USTA”.

*A. Regulatory Fee Obligations for AM and FM Radio Stations*

10. The fee methodology for AM and FM radio stations is based on a number

of factors, including facility attributes (e.g. power, channel/frequency) and the population served by each station. The calculation of the population served is determined by applying current United States Census Bureau data to the station’s technical and engineering data, as detailed in Table E. In FY 2012, the Commission will incorporate the results of the 2010 Census data into our broadcast population data, which could precipitate a change in population count for some radio stations. These

population counts, along with the station's class and type of service, are the basis for determining regulatory

fees. We sought comment, but did not receive any on this issue. We conclude that the 2010 census data should be

incorporated into our broadcast population data when determining regulatory fees.

TABLE E—FACTORS, MEASUREMENTS, AND CALCULATIONS THAT DETERMINE 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>12</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>13</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 was used to form a geographical polygon. Population counting was accomplished by determining which 2010 block centroids were contained in the polygon. (A block centroid is the center point of a small area containing population as computed by the U.S. Census Bureau.) The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

#### FM Stations

The greater of the horizontal or vertical effective radiated power ("ERP") (kW) and respective height above average terrain ("HAAT") (m) combination was used. Where the antenna height above mean sea level ("HAMSL") was available, it was used in lieu of the average HAAT figure to calculate specific HAAT figures for each of 360 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the Field Strength (50–50) propagation curves specified in 47 CFR 73.313 of the Commission's rules to predict the distance to the principal community (70 dBu (decibel above 1 microVolt per meter) or 3.17 mV/m) contour for each of the 360 radials.<sup>14</sup> The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2010 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.

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

11. The digital transition to full-service television stations was completed on June 12, 2009, but Low Power, Class A, and TV Translators/Boosters are not required to make the digital transition until September 1, 2015. Historically, we have only considered the digital transition in the context of regulatory fees applicable to full-service television stations. Consequently, the "digital only" exemption does not apply to Low Power, Class A, and TV Translator/Booster facilities. Because the digital transition in the Low Power, Class A, and TV Translator/Booster facilities is still voluntary, these facilities may transition from analog to digital service at varying times prior to September 1, 2015. During this period of transition, licensees of Low Power, Class A, and TV Translator/Booster facilities may be operating in analog mode, in digital mode, or in an analog and digital simulcast mode. We sought comment on how this should be reflected in the regulatory fees paid by licensees of these facilities, but we did not receive any comments in response. In the absence of comment, we conclude that

a single fee will be assessed for each facility regardless of whether it transmits in analog or digital mode, digital mode, or simulcasting in both analog and digital modes. As more of these facilities convert to digital mode, the Commission will revisit how regulatory fees will be assessed.

#### C. Regulatory Fee Obligations of Interstate Telecommunications Service Providers

12. In our *FY 2011 Report and Order*, we assessed the Interstate Telecommunications Service Provider ("ITSP") industry a regulatory fee of \$.00375 per revenue dollar. This fee reflected the Commission's decision to limit the increase in ITSP regulatory fees in light of the continuing decrease in the revenue base upon which ITSP regulatory fees are calculated, and pending a more comprehensive rebalancing of ITSP fees as part of our reexamination of the factual and methodological predicates of our regulatory fee program. This reexamination will commence shortly. For that reason we proposed in our *FY 2012 Notice of Proposed Rulemaking* to assess FY 2012 ITSP regulatory fees at the same fee rate as in FY 2011, and to allocate the remaining revenue requirement across all other fee categories.<sup>15</sup>

13. We received one comment from the United States Telecom Association ("USTA"). USTA supports the Commission's effort to rebalance its regulatory fee structure, including updating the calculation of full-time equivalents ("FTEs") and adjusting the way costs are currently allocated.<sup>16</sup> USTA also contends that today's separate communication platforms, e.g. wireless, cable, and wireline, are capable of providing similar communication services, and it is therefore critical for the Commission to establish fee parity among the providers utilizing these platforms.<sup>17</sup>

14. We have initiated a separate proceeding in which we are requesting comment on these and other issues.<sup>18</sup> Because we expect to use the comments that are received and other data in setting next year's regulatory fees, we will adopt our proposal to maintain the FY 2012 ITSP fee rate in the interim at the FY 2011 rate of .00375.

#### D. Improving Public Information on Waiver Requests and Decisions

15. In our *FY 2012 Notice of Proposed Rulemaking*, we sought comment on requiring regulatees filing a request for a refund, waiver, fee reduction, or

<sup>16</sup> United States Telecom Association, at page 1.

<sup>17</sup> USTA at page 1–2.

<sup>18</sup> In the Matter of Procedures for Assessment and Collection of Regulatory Fees; Assessment and Collection of Regulatory Fees for Fiscal Year 2008, *Notice of Proposed Rulemaking*, FCC 12–77, MD Docket No. 12–201 (released on July 17, 2012).

<sup>12</sup> 47 CFR 73.150 and 73.152.

<sup>13</sup> See Map of Estimated Effective Ground Conductivity in the United States, 47 CFR 73.190 Figure R3.

<sup>14</sup> 47 CFR 73.313.

<sup>15</sup> See *FY 2012 Regulatory Fees NPRM*, at para. 17.

deferral of payment of an application or regulatory fee to use an online filing system rather than submitting their requests in hardcopy format.<sup>19</sup> We believe that an online filing system will complement other existing online Commission systems already in place, such as the Broadcast Radio and Television Electronic Filing System (more commonly referred to as CDBS), the Cable Operations and Licensing System (COALS), and Consumer Complaint Forms. The resulting fee waiver filing system will include such documents as the filed request, any relevant supporting documentation, and the resulting decision. We also proposed to apply the provisions of section 0.459 to requests that electronically-filed material be withheld from public inspection.<sup>20</sup>

16. We received no comments on this issue. We will therefore adopt our proposal and require that all requests for refunds, waivers, fee reductions, or deferrals of payment be filed using an online system. We direct the Office of Managing Director to take the necessary steps to assist regulatees in transitioning to electronic filing.

#### E. Commercial Mobile Radio Services ("CMRS") Messaging Service

17. In response to our *FY 2012 Notice of Proposed Rulemaking*, the Commission received a comment from the Critical Messaging Association ("CMA") regarding the CMRS messaging service regulatory fee category. CMA contends that even though the Commission has not acted on its *FY 2008 Further Notice of Proposed Rulemaking* to review, among other things, the CMRS messaging service fee category, the Commission should maintain the CMRS messaging fee at \$.08 per subscriber as a minimum appropriate action to take in FY 2012.<sup>21</sup> As stated in paragraph 11, we anticipate revising our regulatory fee program in time to calculate FY 2013 fees. For that reason, and because we agree with CMA that the prevailing circumstances in FY 2003 still exist today,<sup>22</sup> we find it

appropriate that the FY 2012 CMRS Messaging regulatory fee remain at a rate of \$.08 per subscriber.

#### F. Administrative and Operational Issues

18. In FY 2009, the Commission implemented several procedural changes that simplified the payment and reconciliation processes of regulatory fees. In FY 2012, the Commission will continue to promote greater use of technology (and less use of paper) in improving our regulatory fee notification and collection processes. We sought comment on how we might do this, but we received no specific comment in response. Accordingly, the Commission will continue its own efforts to promote greater efficiency in its regulatory fee notification and collection processes, subject to appropriate notice and comment.

19. In FY 2009, we instituted a mandatory filing requirement using the Commission's electronic filing and payment system (also known as "Fee Filer").<sup>23</sup> Regulatees filing their annual regulatory fee payments were required to begin the process by entering the Commission's Fee Filer system with a valid FCC Registration Number ("FRN") and password.<sup>24</sup> This change, which required regulatees to use Fee Filer for the filing of annual regulatory fees, not the payment of such regulatory fees<sup>25</sup> was beneficial to both licensees and to the Commission. For licensees, the mandatory use of Fee Filer eliminates the need to manually complete and submit a hardcopy Form 159, and for the Commission, the data in electronic format makes it much easier to process payments efficiently and effectively. We sought comment on how to improve the mandatory use of Fee Filer for filing annual regulatory fees. We received no specific comments or reply comments on this issue. Accordingly, we will continue our own efforts to refine our fee filing and payment procedures, subject to appropriate notice and comment.

#### IV. Fee Collection Procedures

20. 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 do not propose changes to these procedures. Rather, we include them 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

21. 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 relevant regulatory fee payment procedures. We will continue to post this information on <http://transition.fcc.gov/fees/regfees.html>, rather than mailing it to regulatees.

##### B. Pre-Bill Notification and Collection of Regulatory Fees

22. In prior years, the Commission mailed pre-bills via surface mail to regulatees in select regulatory fee categories: ITSPs, Geostationary ("GSO") and Non-Geostationary ("NGSO") satellite space station licensees,<sup>26</sup> holders of Cable Television Relay Service ("CARS") licenses, and Earth Station licensees.<sup>27</sup> The remaining regulatees did not receive pre-bills. In our *FY 2009 Report and Order*, the Commission decided to make the information contained in these pre-bills viewable in Fee Filer, rather than mailing pre-bills to licensees via surface mail.<sup>28</sup> We continued this practice in FY 2010 and FY 2011 by placing the pre-bill information on Fee Filer, where it could be accessed by regulatees through the Commission's Web site. Regulatees can also look to the Commission's Web site for information on upcoming events and deadlines relating to regulatory fees.

##### C. Assessment Notifications

###### 1. Media Services Licensees

23. Beginning in FY 2003, we sent fee assessment notifications via surface mail to media services entities on a per-

<sup>26</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>27</sup> 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>28</sup> See *FY 2009 Report and Order* at para. 24, 26.

<sup>19</sup> See *FY 2012 Regulatory Fees NPRM* at para. 18.

<sup>20</sup> Specifically, section 0.457(a)(2) through (g) describe, *inter alia*, how confidential material should be submitted electronically, what showings must be made to justify withholding electronically-submitted information from public inspection, and how the Commission will resolve confidentiality requests.

<sup>21</sup> The Critical Messaging Association at page 1.

<sup>22</sup> Beginning in FY 2003, the Commission maintained the paging regulatory fee rate at \$.08 per subscriber, the same level as in FY 2002, and it has maintained this level of \$.08 per subscriber for all subsequent years. See *Assessment and Collection of Regulatory Fees for Fiscal Year 2003, Report and Order*, 18 FCC Rcd 15988 paras. 21–22 (2003) (*FY 2003 Report and Order*).

<sup>23</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year FY 2009, Report and Order* 24 FCC Rcd 10301 at paras. 20 and 21 (*"FY 2009 Report and Order"*).

<sup>24</sup> In order to do this, licensees must have a current and valid FRN address on file in the Commission's Registration System (CORES).

<sup>25</sup> Regulatees have different options when making a payment, including credit card, check, and wire transfer.

facility basis.<sup>29</sup> These 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 to be more electronic and paperless.<sup>30</sup> In our *FY 2010 Notice of Proposed Rulemaking*, we sought comment to discontinue mailing the media notifications beginning in FY 2011, relying instead on information on the Commission's Web site and the use of the Commission-authorized Web site at [www.fccfees.com](http://www.fccfees.com).<sup>31</sup> We received no comments or reply comments in FY 2010, and beginning in FY 2011, we discontinued the mailing of fee assessment notifications via surface mail to media service entities. In FY 2012, we will continue the practice of not mailing hardcopy notification assessment letters to media licensees.

## 2. CMRS Cellular and Mobile Services Assessments

24. We will continue to follow our current procedures for conveying CMRS subscriber counts to providers. 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>32</sup> The letter will include a listing of the carrier's Operating Company Numbers ("OCNs") upon which the assessment is based.<sup>33</sup> The letters will not include OCNs with their respective assigned number counts, but rather, an aggregate total of assigned numbers for each carrier.

25. A carrier wishing to revise its subscriber count can do so by accessing Fee Filer after receiving its initial CMRS assessment letter. Providers should follow the prompts in Fee Filer to

record their subscriber revisions, along with any supporting documentation.<sup>34</sup> The Commission will then review the revised count and supporting documentation and either approve or disapprove the submission in Fee Filer. If the submission is disapproved, the Commission will contact the provider to afford the provider 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 our initial disapproval of the provider's revised count submission, we expect the fee payment to be based on the number of subscribers listed on the initial assessment letter. Once the timeframe for revision has passed, the subscriber counts are final and are the basis upon which CMRS regulatory fees are expected to be paid. Providers can also view their final subscriber counts online in Fee Filer. A final CMRS assessment letter will not be mailed out.

26. Because some carriers do not file the NRUF report, they may not receive an initial assessment letter. In these instances, the carriers should compute their fee payment using the standard methodology<sup>35</sup> that is currently in place for CMRS Wireless services (*e.g.*, compute their subscriber counts as of December 31, 2011), and submit their fee payment accordingly. Whether a carrier receives an assessment letter or not, the Commission reserves the right to audit the number of subscribers for which regulatory fees are paid. In the event that the Commission determines that the number of subscribers paid is inaccurate, the Commission will bill the carrier for the difference between what was paid and what should have been paid.

### D. Streamlined Regulatory Fee Payment Process

#### 1. Cable Television

27. The Commission 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 report cable subscriber counts on a per community unit identifier ("CUID") basis. This significantly lessens the cable operators' burden in

calculating and paying their regulatory fees.

#### 2. CMRS Cellular and Mobile Providers

28. 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>36</sup> We will continue this practice in FY 2012. 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 2012, 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

29. 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 worksheet 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, thereby eliminating processing issues. For FY 2012, we will continue to round lines 14 and 16 when calculating the FY 2012 ITSP fee obligation. In addition, we will continue the practice of not mailing out Form 159-W via surface mail.

### E. Payment of Regulatory Fees

#### 1. Lock Box Bank

30. All lock box payments to the Commission for FY 2012 will be processed by U.S. Bank, St. Louis, Missouri, and payable to the FCC. During the fee season for collecting FY 2012 regulatory fees, regulatees can pay their fees by credit card through [Pay.gov](http://Pay.gov),<sup>37</sup> by check, money order, or

<sup>29</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.

<sup>30</sup> Those refinements include providing licensees with a Commission-authorized Web site where they can update or correct any information concerning their facilities, and amend their fee-exempt status, if need be. The notifications also provide licensees with a telephone number to call in the event that they need customer assistance.

<sup>31</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 2010*, Report and Order, 25 FCC Rcd 9278 at para. 42 (2010) ("*FY 2010 Report and Order*").

<sup>32</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 on Reconsideration, 20 FCC Rcd 12259, 12264, paras. 38-44 (2005).

<sup>33</sup> *Id.*

<sup>34</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 a reason for the change.

<sup>35</sup> See, *e.g.*, Federal Communications Commission, *Regulatory Fees Fact Sheet: What You Owe—Commercial Wireless Services for FY 2011* at 1 (rel. September 2011).

<sup>36</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).

<sup>37</sup> In accordance with U.S. Treasury Financial Manual Announcement No. A-2012-02, the U.S. Treasury will reject credit card transactions greater than \$49,999.99 from a single credit card in a single day. This includes online transactions conducted



debit card,<sup>38</sup> or by placing their credit card number on Form 159–E (Remittance Advice form) and mailing their fee and accompanying Form 159–E 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://transition.fcc.gov/fees/regfees.html>.

## 2. Receiving Bank for Wire Payments

31. 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 not to 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://transition.fcc.gov/fees/wiretran.html>.

## 3. De Minimis Regulatory Fees

32. Regulatees whose total FY 2012 regulatory fee liability, including all categories of fees for which payment is due, is less than \$10 are exempted from payment of FY 2012 regulatory fees.

## 4. Standard Fee Calculations and Payment Dates

33. 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 that were granted on or before

via Pay.gov, transactions conducted via other channels, and direct-over-the counter transactions made at a U.S. Government facility. Individual credit card transactions larger than the \$49,999.99 limit may not be split into multiple transactions using the same credit card, whether or not the split transactions are assigned to multiple days. Splitting a transaction violates card network and Financial Management Service (FMS) rules. However, credit card transactions exceeding the daily limit may be split between two or more different credit cards. Other alternatives for transactions exceeding the \$49,999.99 credit card limit include payment by check, electronic debit from your bank account, and wire transfer.

<sup>38</sup> In accordance with U.S. Treasury Financial Manual Announcement No. A–2012–02, the maximum dollar-value limit for debit card transactions will be eliminated. It should also be noted that only Visa and MasterCard branded debit cards are accepted by Pay.gov.

October 1, 2011 for AM/FM radio stations, VHF/UHF full service television stations, and satellite television stations. Regulatory fees must be paid for all broadcast facility licenses granted on or before October 1, 2011. In instances where a permit or license is transferred or assigned after October 1, 2011, 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, 2011. In instances where a permit or license is transferred or assigned after October 1, 2011, 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>39</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, 2011. The number of subscribers, units, or telephone numbers on December 31, 2011 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, 2011, 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 Table B) pay “small multi-year wireless regulatory fees.” Entities pay these regulatory fees in advance for the entire amount of their five-year or ten-year term of initial license, and only pay regulatory fees again when the license is renewed or a new license is obtained. We include these fee categories in our Schedule of Regulatory Fees to publicize our estimates of the number of “small multi-year wireless” licenses that will be renewed or newly obtained in FY 2012.

- **Multichannel Video Programming Distributor Services (cable television operators and CARS licensees):** Regulatory fees must be paid for the number of basic cable television

<sup>39</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*”).

subscribers as of December 31, 2011.<sup>40</sup> Regulatory fees also must be paid for CARS licenses that were granted on or before October 1, 2011. In instances where a permit or license is transferred or assigned after October 1, 2011, 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, 2011. In instances where a permit or license is transferred or assigned after October 1, 2011, 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, 2011. In instances where a license is transferred or assigned after October 1, 2011, responsibility for payment rests with the holder of the license as of the fee due date. For regulatory fee purposes, the allocation in FY 2012 will remain at 87.6 percent for submarine cable and 12.4 percent for satellite/terrestrial facilities.

- **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, 2011 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, 2011. Whether circuits are used

<sup>40</sup> Cable television system operators should compute their number of 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 2011, rather than on a count as of December 31, 2011.

specifically for voice or data is not relevant for purposes of determining that they are active circuits. In instances where a permit or license is transferred or assigned after October 1, 2011, responsibility for payment rests with the holder of the permit or license as of the fee due date. For regulatory fee purposes, the allocation in FY 2012 will remain at 87.6 percent for submarine cable and 12.4 percent for satellite/terrestrial facilities.

*F. Enforcement*

34. To be considered timely, regulatory fee payments must be received and stamped at the lockbox bank by the due date of regulatory fees. Section 9(c) of the Act requires us to impose a late payment penalty of 25 percent of the unpaid amount to be assessed on the first day following the

deadline date for filing of these fees.<sup>41</sup> Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including those set forth in § 1.1910 of the Commission's Rules<sup>42</sup> and in the Debt Collection Improvement Act of 1996 ("DCIA").<sup>43</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 § 1.1940(d) of the Commission's Rules.<sup>44</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 payor 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.

35. 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>45</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).

TABLE F—FY 2011 SCHEDULE OF REGULATORY FEES

[Regulatory fees for the first eleven fee categories below 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) .....	50
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) .....	10
Aviation (Ground) (per license) (47 CFR part 87) .....	15
Amateur Vanity Call Signs (per call sign) (47 CFR part 97) .....	1.42
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90) .....	.17
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90) .....	.08
Broadband Radio Service (formerly MMDS/MDS) (per license) (47 CFR part 21) .....	310
Local Multipoint Distribution Service (per call sign) (47 CFR part 101) .....	310
AM Radio Construction Permits .....	490
FM Radio Construction Permits .....	675
TV (47 CFR part 73) VHF Commercial:	
Markets 1–10 .....	84,625
Markets 11–25 .....	68,175
Markets 26–50 .....	40,475
Markets 51–100 .....	22,750
Remaining Markets .....	6,100
Construction Permits .....	6,100
TV (47 CFR part 73) UHF Commercial:	
Markets 1–10 .....	34,650
Markets 11–25 .....	32,950
Markets 26–50 .....	20,950
Markets 51–100 .....	12,325
Remaining Markets .....	3,275
Construction Permits .....	3,275
Satellite Television Stations (All Markets) .....	1,250
Construction Permits—Satellite Television Stations .....	670
Low Power TV, Class A TV, TV/FM Translators & Boosters (47 CFR part 74) .....	395
Broadcast Auxiliaries (47 CFR part 74) .....	10
CARS (47 CFR part 78) .....	370
Cable Television Systems (per subscriber) (47 CFR part 76) .....	.93
Interstate Telecommunication Service Providers (per revenue dollar) .....	.00375

<sup>41</sup> 47 U.S.C. 159(c).

<sup>42</sup> See 47 CFR 1.1910.

<sup>43</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>44</sup> 47 CFR 1.1940(d).

<sup>45</sup> See 47 CFR 1.1161(c), 1.1164(f)(5), and 1.1910.

TABLE F—FY 2011 SCHEDULE OF REGULATORY FEES—Continued

[Regulatory fees for the first eleven fee categories below 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)
Earth Stations (47 CFR part 25) .....	245
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100) .....	131,375
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25) .....	141,750
International Bearer Circuits—Terrestrial/Satellites (per 64KB circuit) .....	.35
International Bearer Circuits—Submarine Cable .....	See Table Below

FY 2011 SCHEDULE OF REGULATORY FEES (CONTINUED)

FY 2011 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 .....	\$700	\$575	\$525	\$600	\$675	\$850
25,001–75,000 .....	1,400	1,150	800	900	1,350	1,500
75,001–150,000 .....	2,100	1,450	1,050	1,500	1,850	2,750
150,001–500,000 .....	3,150	2,450	1,575	1,800	2,875	3,600
500,001–1,200,000 .....	4,550	3,750	2,625	3,000	4,550	5,300
1,200,001–3,000,00 .....	7,000	5,750	3,950	4,800	7,425	8,500
>3,000,000 .....	8,400	6,900	5,000	6,000	9,450	11,050

FY 2011 SCHEDULE OF REGULATORY FEES

[International bearer circuits—submarine cable]

Submarine cable systems (capacity as of December 31, 2010)	Fee amount	Address
< 2.5 Gbps .....	\$12,825	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
2.5 Gbps or greater, but less than 5 Gbps .....	25,650	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
5 Gbps or greater, but less than 10 Gbps .....	51,300	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
10 Gbps or greater, but less than 20 Gbps .....	102,625	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
20 Gbps or greater .....	205,225	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.

**Final Regulatory Flexibility Analysis**

36. As required by the Regulatory Flexibility Act (“RFA”),<sup>46</sup> the Commission prepared an Initial Regulatory Flexibility Analysis (“IRFA”) in its *Notice of Proposed Rulemaking* (NPRM) to determine the possible economic impact on small entities by the policies and rules proposed in its NPRM. Written public comments were sought on the FY 2012 fee proposal, including on the IRFA. This Final Regulatory Flexibility Analysis (“FRFA”) conforms to the RFA.<sup>47</sup>

**I. Need for, and Objectives of, the Report and Order**

37. This rulemaking proceeding was initiated by the Commission to revise its

Schedule of Regulatory Fees to collect \$339,844,000, the amount that Congress has required the Commission to recover in regulatory fees. This Report and Order revises the fee rates in its Schedule of Regulatory Fees to reflect changes in estimated unit counts, if any, and the amount required by the Commission to collect in regulatory fees. Pursuant to rules adopted in this Order, the FCC will collect these fees in September 2012 in a manner that is efficient (e.g. using the Commission’s various electronic filing and payment systems) and without undue public burden (less reliability on paper transactions and more reliability on pre-loaded payment data).

38. Section 9(a)(1) of the Communications Act of 1934, as amended (the “Act”) directs the Commission to collect regulatory fees “to recover the costs of \* \* \* enforcement activities, policy and rulemaking activities, user information

services, and international activities.”<sup>48</sup> Section 9(a)(2) stipulates that regulatory fees for the enumerated activities “shall be collected only if, and only in the total amounts, required in Appropriation Acts,” and must “be established in amounts that will result in collection, during each fiscal year, of any amount that can be reasonably be expected to equal the amount appropriated” for the performance of the activities enumerated in section 9(a)(1) during that fiscal year. In this annual regulatory fee proceeding, we retain many of the current methods, policies, and procedures for collecting section 9 regulatory fees adopted by the Commission in prior years. Consistent with our established practice, we intend to collect these regulatory fees during a September 2012 filing window in order to collect the required amount by the end of our fiscal year.<sup>49</sup>

<sup>46</sup> 5 U.S.C. 603. The RFA, 5 U.S.C. 601–612, has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (“CWAAA”). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”).  
<sup>47</sup> 5 U.S.C. 604.

<sup>48</sup> 47 U.S.C. 159(a).  
<sup>49</sup> The Commission also expects to release in the near future a *Notice of Proposed Rulemaking* that  
Continued

39. In this *FY 2012 Report and Order*, we address the following issues: (1) Incorporating 2010 Census data into our broadcast population data, (2) assessing a regulatory fee for each broadcasting facility operating either in an analog or digital mode (but not both) for Low Power, Class A, and TV Translators/Boosters, (3) maintaining the FY 2012 Interstate Telecommunications Service Provider (ITSP) fee rate at the same level as in FY 2011, (4) using an online filing system for the filing of requests for a refund, waiver, fee reduction, or deferment of payment of an application or regulatory fee, and (5) maintaining the Commercial Mobile Radio Service (“CMRS”) Messaging Service at the rate of \$.08 per subscriber.

- *Regulatory Fee Obligations for AM and FM Radio Stations:* The fee methodology for AM and FM radio stations is based on a number of factors, including facility attributes (e.g. power, channel/frequency) and the population served by each station. The calculation of the population served is determined by applying current United States Census Bureau data to the station’s technical and engineering data, as detailed in Table E of this Report and Order. In FY 2012, the Commission will incorporate the results of the 2010 Census data into our broadcast population data, which could precipitate a change in population count for some radio stations. These population counts, along with the station’s class and type of service, are the basis for determining regulatory fees.

- *Regulatory Fee Obligations for Digital Low Power, Class A, and TV Translators/Boosters:* The digital transition to full-service television stations was completed on June 12, 2009, but Low Power, Class A, and TV Translators/Boosters are not required to make the digital transition until September 1, 2015. Historically, we have only considered the digital transition in the context of regulatory fees applicable to full-service television stations. Consequently, the “digital only” exemption does not apply to Low Power, Class A, and TV Translator/Booster facilities. Because the digital transition in the Low Power, Class A, and TV Translator/Booster facilities is still voluntary, these facilities may transition from analog to digital service at varying times prior to September 1, 2015. During this period of transition,

will propose to update our current cost allocation percentages and revise our cost allocation methodology. We expect to implement any changes that result from this rulemaking in FY 2013; they do not affect the fees set in this *FY 2012 Report and Order*.

licensees of Low Power, Class A, and TV Translator/Booster facilities may be operating in analog mode, in digital mode, or in an analog and digital simulcast mode. In the absence of receiving any comments, we conclude that a single fee will be assessed for each facility regardless of whether it transmits in analog or digital mode, digital mode, or simulcasting in both analog and digital modes. As more of these facilities convert to digital mode, the Commission will revisit how regulatory fees will be assessed.

- *Regulatory Fee Obligations of Interstate Telecommunications Service Providers (ITSP):* In our *FY 2011 Report and Order*, we assessed the Interstate Telecommunications Service Provider (“ITSP”) industry a regulatory fee of \$.00375 per revenue dollar. This fee reflected the Commission’s decision to limit the increase in ITSP regulatory fees in light of the continuing decrease in the revenue base upon which ITSP regulatory fees are calculated, and pending a more comprehensive rebalancing of ITSP fees as part of our reexamination of the factual and methodological predicates of our regulatory fee program. This reexamination will commence shortly. In our *FY 2012 Notice of Proposed Rulemaking*, we proposed to assess FY 2012 ITSP regulatory fees at the same fee rate as in FY 2011, and to allocate the remaining revenue requirement across all other fee categories.<sup>50</sup> We received one comment in support of our proposal. Because we will initiate a separate proceeding in the near future to examine these and other issues and expect to utilize any new data or methodologies adopted in setting next year’s regulatory fees, we conclude that in the interim the FY 2012 ITSP fee rate should be maintained at the FY 2011 rate of .00375.

- *Improving Public Information on Waiver Requests and Decisions:* In our *FY 2012 Notice of Proposed Rulemaking*, we sought comment on requiring regulatees filing a request for a refund, waiver, fee reduction, or deferment of payment of an application or regulatory fee to use an online filing system rather than submitting their requests in hardcopy format.<sup>51</sup> We believe that an online filing system will complement other existing online Commission systems already in place, such as the Broadcast Radio and Television Electronic Filing System (more commonly referred to as CDBS), the Cable Operations and Licensing

<sup>50</sup> See *FY 2012 Regulatory Fees NPRM*, at para. 17.

<sup>51</sup> See *FY 2012 Regulatory Fees NPRM* at para. 18.

System (COALS), and Consumer Complaint Forms. The resulting fee waiver filing system will include such documents as the filed request, any relevant supporting documentation, and the resulting decision. We also proposed to apply the provisions of section 0.459 to requests that electronically-filed material be withheld from public inspection.<sup>52</sup> We received no comments on this issue. We therefore adopt our proposal and require that all requests for refunds, waivers, fee reductions, or deferments of payment be filed using an online system. We direct the Office of Managing Director to take the necessary steps to assist regulatees in transitioning to electronic filing.

- *Commercial Mobile Radio Services (“CMRS”) Messaging Services:* In our *FY 2012 Notice of Proposed Rulemaking*, the Commission proposed to maintain the CMRS Messaging fee rate at \$.08 per subscriber. We received one comment in support of our action. Because the prevailing circumstances that first initiated our action in FY 2003<sup>53</sup> still exists today, we find it appropriate that the FY 2012 CMRS Messaging regulatory fee remain at a rate of \$.08 per subscriber.

- *Administrative and Operational Issues:* In FY 2009, we instituted a mandatory filing requirement using the Commission’s electronic filing and payment system (also known as “Fee Filer”).<sup>54</sup> Regulatees filing their annual regulatory fee payments were required to begin the process by entering the Commission’s Fee Filer system with a valid FCC Registration Number (“FRN”) and password.<sup>55</sup> This change, which required regulatees to use Fee Filer for the filing of annual regulatory fees, not the payment of such regulatory fees<sup>56</sup> was beneficial to both licensees and to the Commission. For licensees, the

<sup>52</sup> Specifically, section 0.457(a) (2) through (g) describe, *inter alia*, how confidential material should be submitted electronically, what showings must be made to justify withholding electronically-submitted information from public inspection, and how the Commission will resolve confidentiality requests.

<sup>53</sup> Beginning in FY 2003, the Commission maintained the paging regulatory fee rate at \$.08 per subscriber, the same level as in FY 2002, and it has maintained this level of \$.08 per subscriber for all subsequent years. See *Assessment and Collection of Regulatory Fees for Fiscal Year 2003, Report and Order*, 18 FCC Rcd 15988 paras. 21–22 (2003) (*FY 2003 Report and Order*).

<sup>54</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year FY 2009, Report and Order* 24, FCC Rcd 10301 at paras. 20 and 21 (“*FY 2009 Report and Order*”).

<sup>55</sup> In order to do this, licensees must have a current and valid FRN address on file in the Commission’s Registration System (CORES).

<sup>56</sup> Regulatees have different options when making a payment, including credit card, check, and wire transfer.

mandatory use of Fee Filer eliminates the need to manually complete and submit a hardcopy Form 159, and for the Commission, the data in electronic format makes it much easier to process payments efficiently and effectively. We received no specific comment to our general inquiry. Accordingly, the Commission will continue its efforts to promote greater efficiency in its regulatory fee notification and collection processes, subject to appropriate notice and comment.

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

40. 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

41. 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>57</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>58</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>59</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>60</sup>

42. *Small Businesses.* Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.<sup>61</sup>

### 43. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.*

Our action may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity

size standards.<sup>62</sup> First, nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA.<sup>63</sup> In addition, a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>64</sup> Nationwide, as of 2007, there were approximately 1,621,315 small organizations.<sup>65</sup> Finally, 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>66</sup> Census Bureau data for 2011 indicate that there were 89,476 local governmental jurisdictions in the United States.<sup>67</sup> We estimate that, of this total, as many as 88,506 entities may qualify as “small governmental jurisdictions.”<sup>68</sup> Thus, we estimate that most governmental jurisdictions are small.

44. *Incumbent Local Exchange Carriers (Incumbent LECs).* 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>69</sup> Census Bureau data for 2007, which now supersede data

<sup>62</sup> See 5 U.S.C. 601(3)–(6).

<sup>63</sup> See SBA, Office of Advocacy, “Frequently Asked Questions,” [web.sba.gov/faqs](http://web.sba.gov/faqs) (last visited May 6, 2011; figures are from 2009).

<sup>64</sup> 5 U.S.C. 601(4).

<sup>65</sup> Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2010).

<sup>66</sup> 5 U.S.C. 601(5).

<sup>67</sup> U.S. Census Bureau, *Statistical Abstract of the United States: 2011*, Table 427 (2007)

<sup>68</sup> The 2007 U.S. Census data for small governmental organizations indicate that there were 89,476 “Local Governments” in 2007. (U.S. Census Bureau, *Statistical Abstract of the United States 2011*, Table 428.) The criterion by which the size of such local governments is determined to be small is a population of 50,000. However, since the Census Bureau does not specifically apply that criterion, it cannot be determined with precision how many of such local governmental organizations is small. Nonetheless, the inference seems reasonable that substantial number of these governmental organizations has a population of less than 50,000. To look at Table 428 in conjunction with a related set of data in Table 429 in the Census’s *Statistical Abstract of the U.S.*, that inference is further supported by the fact that in both Tables, many entities that may well be small are included in the 89,476 local governmental organizations, e.g. county, municipal, township and town, school district and special district entities. Measured by a criterion of a population of 50,000 many specific sub-entities in this category seem more likely than larger county-level governmental organizations to have small populations. Accordingly, of the 89,476 small governmental organizations identified in the 2007 Census, the Commission estimates that a substantial majority is small. 68 13 CFR 121.201, NAICS code 517110.

from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 or more. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers.<sup>70</sup> Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.<sup>71</sup> Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the NPRM. Thus under this category and the associated small business size standard, the majority of these incumbent local exchange service providers can be considered small providers.<sup>72</sup>

45. *Competitive Local Exchange Carriers (Competitive LECs), 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>73</sup> Census Bureau data for 2007 show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers can be considered small entities.<sup>74</sup> According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.<sup>75</sup> Of these 1,442 carriers, an estimated 1,256 have 1,500

<sup>70</sup> See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (“*Trends in Telephone Service*”).

<sup>71</sup> See *id.*

<sup>72</sup> See [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-fds\\_name=EC0700A1&-geo\\_id=&-skip=600&-ds\\_name=EC0751SSSZ5&-lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-skip=600&-ds_name=EC0751SSSZ5&-lang=en).

<sup>73</sup> 13 CFR 121.201, NAICS code 517110.

<sup>74</sup> See [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-fds\\_name=EC0700A1&-geo\\_id=&-skip=600&-ds\\_name=EC0751SSSZ5&-lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-skip=600&-ds_name=EC0751SSSZ5&-lang=en).

<sup>75</sup> See *Trends in Telephone Service*, at tbl. 5.3.

<sup>57</sup> 5 U.S.C. 603(b)(3).

<sup>58</sup> 5 U.S.C. 601(6).

<sup>59</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 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>60</sup> 15 U.S.C. 632.

<sup>61</sup> See SBA, Office of Advocacy, “Frequently Asked Questions,” <http://web.sba.gov/faqs> (accessed Jan. 2009).

or fewer employees and 186 have more than 1,500 employees.<sup>76</sup> In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.<sup>77</sup> In addition, 72 carriers have reported that they are Other Local Service Providers.<sup>78</sup> Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees.<sup>79</sup> 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 rules adopted pursuant to the NPRM.

46. *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>80</sup> Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000.<sup>81</sup> Thus under this category and the associated small business size standard, the majority of these local resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.<sup>82</sup> Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees.<sup>83</sup> Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the Notice.

47. *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>84</sup> Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees and one operated with more than 1,000.<sup>85</sup> Thus under this category

and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data,<sup>86</sup> 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our proposed rules.

48. *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>87</sup> Census Bureau data for 2007 shows that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these PSPs can be considered small entities.<sup>88</sup> According to Commission data,<sup>89</sup> 657 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 653 have 1,500 or fewer employees and four 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.

49. *Interexchange Carriers.* 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>90</sup> Census Bureau data for 2007 shows that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of

these Interexchange carriers can be considered small entities.<sup>91</sup> According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.<sup>92</sup> Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.<sup>93</sup> Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the NPRM.

50. *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>94</sup> Census Bureau data for 2007 show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Interexchange carriers can be considered small entities.<sup>95</sup> According to Commission data, 33 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 31 have 1,500 or fewer employees and 2 have more than 1,500 employees.<sup>96</sup> Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed rules.

51. *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>97</sup> Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> 13 CFR 121.201, NAICS code 517911.

<sup>81</sup> [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-skip=800&-ds\\_name=EC0751SSSZ5&-lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-skip=800&-ds_name=EC0751SSSZ5&-lang=en).

<sup>82</sup> See *Trends in Telephone Service*, at tbl. 5.3.

<sup>83</sup> *Id.*

<sup>84</sup> 13 CFR 121.201, NAICS code 517911.

<sup>85</sup> [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-skip=800&-ds\\_name=EC0751SSSZ5&-lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-skip=800&-ds_name=EC0751SSSZ5&-lang=en).

<sup>86</sup> *Trends in Telephone Service*, at tbl. 5.3.

<sup>87</sup> 13 CFR 121.201, NAICS code 517110.

<sup>88</sup> See [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-fds\\_name=EC0700A1&-geo\\_id=&-skip=600&-ds\\_name=EC0751SSSZ5&-lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-skip=600&-ds_name=EC0751SSSZ5&-lang=en).

<sup>89</sup> *Trends in Telephone Service*, at tbl. 5.3.

<sup>90</sup> 13 CFR 121.201, NAICS code 517110.

<sup>91</sup> See [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-fds\\_name=EC0700A1&-geo\\_id=&-skip=600&-ds\\_name=EC0751SSSZ5&-lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-skip=600&-ds_name=EC0751SSSZ5&-lang=en).

<sup>92</sup> See *Trends in Telephone Service*, at tbl. 5.3.

<sup>93</sup> *Id.*

<sup>94</sup> 13 CFR 121.201, NAICS code 517110.

<sup>95</sup> See [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-fds\\_name=EC0700A1&-geo\\_id=&-skip=600&-ds\\_name=EC0751SSSZ5&-lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-skip=600&-ds_name=EC0751SSSZ5&-lang=en).

<sup>96</sup> *Trends in Telephone Service*, at tbl. 5.3.

<sup>97</sup> 13 CFR 121.201, NAICS code 517911.

than 1,000.<sup>98</sup> Thus under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards.<sup>99</sup> Of these, all 193 have 1,500 or fewer employees and none have more than 1,500 employees.<sup>100</sup> Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to the Notice.

52. *800 and 800-Like Service Subscribers.*<sup>101</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>102</sup> Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000.<sup>103</sup> Thus under this category and the associated small business size standard, the majority of resellers in this classification can be considered small entities. To focus specifically on the number of subscribers than on those firms which make subscription service available, the most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use.<sup>104</sup> According to our data for September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,888,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736. The Commission does not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free

subscribers that would qualify as small businesses under the SBA size standard. Consequently, the Commission estimates that there are 7,860,000 or fewer small entity 800 subscribers; 5,888,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers.

53. *Satellite Telecommunications Providers.* 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>105</sup> The second has a size standard of \$25 million or less in annual receipts.<sup>106</sup>

54. 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>107</sup> Census Bureau data for 2007 show that 512 Satellite Telecommunications firms that operated for that entire year.<sup>108</sup> Of this total, 464 firms had annual receipts of under \$10 million, and 18 firms had receipts of \$10 million to \$24,999,999.<sup>109</sup> Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

55. The second category, *i.e.* “All Other Telecommunications” comprises “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. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this

industry.”<sup>110</sup> For this category, Census Bureau data for 2007 shows that there were a total of 2,383 firms that operated for the entire year.<sup>111</sup> Of this total, 2,347 firms had annual receipts of under \$25 million and 12 firms had annual receipts of \$25 million to \$49,999,999.<sup>112</sup> Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

56. *Wireless Telecommunications Carriers (except satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services.<sup>113</sup> The appropriate size standard under SBA rules is for the category Wireless Telecommunications Carriers. The size standard for that category is that a business is small if it has 1,500 or fewer employees.<sup>114</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>115</sup> For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year.<sup>116</sup> Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1000 employees or more.<sup>117</sup> Thus under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except

<sup>110</sup> <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517919&search=2007%20NAICS%20Search>.

<sup>111</sup> [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-skip=900&-ds\\_name=EC0751SSSZ4&-lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-skip=900&-ds_name=EC0751SSSZ4&-lang=en).

<sup>112</sup> [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-skip=900&-ds\\_name=EC0751SSSZ4&-lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-skip=900&-ds_name=EC0751SSSZ4&-lang=en).

<sup>113</sup> <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517210&search=2007%20NAICS%20Search>

<sup>114</sup> 13 CFR 121.201, NAICS code 517210.

<sup>115</sup> 13 CFR 121.201, NAICS code 517210. The now-superseded, pre-2007 CFR citations were 13 CFR 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

<sup>116</sup> U.S. Census Bureau, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517210” (issued Nov. 2010).

<sup>117</sup> *Id.* Available 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 “100 employees or more.”

<sup>98</sup> [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-skip=800&-ds\\_name=EC0751SSSZ5&-lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-skip=800&-ds_name=EC0751SSSZ5&-lang=en).

<sup>99</sup> See *Trends in Telephone Service*, at tbl. 5.3.

<sup>100</sup> *Id.*

<sup>101</sup> We include all toll-free number subscribers in this category, including those for 888 numbers.

<sup>102</sup> 13 CFR 121.201, NAICS code 517911.

<sup>103</sup> [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-skip=800&-ds\\_name=EC0751SSSZ5&-lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-skip=800&-ds_name=EC0751SSSZ5&-lang=en).

<sup>104</sup> *Trends in Telephone Service*, at tbls. 18.4, 18.5, 18.6, 18.7.

<sup>105</sup> 13 CFR 121.201, NAICS code 517410.

<sup>106</sup> 13 CFR 121.201, NAICS code 517919.

<sup>107</sup> U.S. Census Bureau, 2007 NAICS Definitions, 517410 Satellite Telecommunications.

<sup>108</sup> See [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-skip=900&-ds\\_name=EC0751SSSZ4&-lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-skip=900&-ds_name=EC0751SSSZ4&-lang=en).

<sup>109</sup> See [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-skip=900&-ds\\_name=EC0751SSSZ4&-lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-skip=900&-ds_name=EC0751SSSZ4&-lang=en).

satellite) are small entities that may be affected by our proposed action.<sup>118</sup>

57. *Licenses Assigned by 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.

58. *Paging Services.* Neither the SBA nor the FCC has developed a definition applicable exclusively to paging services. However, a variety of paging services is now categorized under Wireless Telecommunications Carriers (except satellite).<sup>119</sup> This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services. Illustrative examples in the paging context include paging services, except satellite; two-way paging communications carriers, except satellite; and radio paging services communications carriers. The SBA has deemed a paging service in this category to be small if it has 1,500 or fewer employees.<sup>120</sup> For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year.<sup>121</sup> Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1000 employees or more.<sup>122</sup> Thus under this category and the associated small business size standard, the Commission estimates that the majority of paging services in the category of wireless telecommunications carriers (except

satellite) are small entities that may be affected by our proposed action.<sup>123</sup>

59. 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.<sup>124</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>125</sup> The SBA has approved this definition.<sup>126</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>127</sup> Fifty-seven companies claiming small business status won 440 licenses.<sup>128</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>129</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>130</sup> A fourth auction of 9,603 lower and upper band paging licenses was held in the year 2010. 29 bidders claiming small or very small business status won 3,016 licenses.

<sup>123</sup> See [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-fds\\_name=EC0700A1&-geo\\_id=&-skip=600&-ds\\_name=EC0751SSSZ5&-lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-skip=600&-ds_name=EC0751SSSZ5&-lang=en).

<sup>124</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>125</sup> *Paging Second Report and Order*, 12 FCC Rcd at 2811, para. 179.

<sup>126</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*”).

<sup>127</sup> See “*929 and 931 MHz Paging Auction Closes*,” Public Notice, 15 FCC Rcd 4858 (WTB 2000).

<sup>128</sup> See *id.*

<sup>129</sup> See “*Lower and Upper Paging Band Auction Closes*,” Public Notice, 16 FCC Rcd 21821 (WTB 2002).

<sup>130</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.

60. *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>131</sup> The SBA approved these definitions.<sup>132</sup> The Commission conducted an auction of geographic area licenses in the WCS service in 1997. In the auction, seven bidders that qualified as very small business entities won 31 licenses, and one bidder that qualified as a small business entity won a license.

61. *1670–1675 MHz Services.* This service can be used for fixed and mobile uses, except aeronautical mobile.<sup>133</sup> An auction for one license in the 1670–1675 MHz band was conducted in 2003. The Commission defined a “small business” as an entity with attributable average annual gross revenues of not more than \$40 million for the preceding three years, which would thus be eligible for a 15 percent discount on its winning bid for the 1670–1675 MHz band license. Further, the Commission defined a “very small business” as an entity with attributable average annual gross revenues of not more than \$15 million for the preceding three years, which would thus be eligible to receive a 25 percent discount on its winning bid for the 1670–1675 MHz band license. The winning bidder was not a small entity.

62. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite).<sup>134</sup> Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.<sup>135</sup> Census data for 2007 shows that there were 1,383 firms that operated that year.<sup>136</sup> Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100

<sup>131</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>132</sup> See *Alvarez Letter 1998*.

<sup>133</sup> 47 CFR 2.106; see generally 47 CFR 27.1–70.

<sup>134</sup> 13 CFR 121.201, NAICS code 517210.

<sup>135</sup> *Id.*

<sup>136</sup> U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-fds\\_name=EC0700A1&-skip=700&-ds\\_name=EC0751SSSZ5&-lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-skip=700&-ds_name=EC0751SSSZ5&-lang=en).

<sup>118</sup> See [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-fds\\_name=EC0700A1&-geo\\_id=&-skip=600&-ds\\_name=EC0751SSSZ5&-lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-skip=600&-ds_name=EC0751SSSZ5&-lang=en).

<sup>119</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>120</sup> U.S. Census Bureau, 2007 NAICS Definitions, “517210 Wireless Telecommunications Categories (Except Satellite).”

<sup>121</sup> U.S. Census Bureau, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517210” (issued Nov. 2010).

<sup>122</sup> *Id.* Available 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 “100 employees or more.”



employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. According to Trends in Telephone Service data, 434 carriers reported that they were engaged in wireless telephony.<sup>137</sup> Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees.<sup>138</sup> Therefore, approximately half of these entities can be considered small. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services.<sup>139</sup> Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.<sup>140</sup> Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

63. *Broadband Personal Communications Service. 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 initially defined a “small business” for C- and F-Block licenses as an entity that has average gross revenues of \$40 million or less in the three previous years.<sup>141</sup> For F-Block licenses, 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 years.<sup>142</sup> These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.<sup>143</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 claimed small business status in the first two C-Block auctions. A total of 93 bidders that claimed small and very small business status won approximately 40 percent of the 1,479 licenses in the first auction for the D, E, and F Blocks.<sup>144</sup> On April 15, 1999, the Commission completed the re-auction of 347 C-, D-, E-, and F-Block licenses in Auction No. 22.<sup>145</sup> Of the 57 winning bidders in that auction, 48 claimed small business status and won 277 licenses.

64. On January 26, 2001, the Commission completed the auction of 422 C and F Block Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in that auction, 29 claimed small business status.<sup>146</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. On February 15, 2005, the Commission completed an auction of 242 C-, D-, E-, and F-Block licenses in Auction No. 58. Of the 24 winning bidders in that auction, 16 claimed small business status and won 156 licenses.<sup>147</sup> On May 21, 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction No. 71.<sup>148</sup> Of the 14 winning bidders in that auction, six claimed small business status and won 18 licenses.<sup>149</sup> On August 20, 2008, the Commission completed the auction of 20 C-, D-, E-, and F-Block Broadband PCS licenses in Auction No. 78.<sup>150</sup> Of the eight winning bidders for Broadband PCS licenses in that auction, six claimed small business status and won 14 licenses.<sup>151</sup>

<sup>144</sup> See *Broadband PCS, D, E and F Block Auction Closes*, Public Notice, Doc. No. 89838 (rel. Jan. 14, 1997).

<sup>145</sup> See *C, D, E, and F Block Broadband PCS Auction Closes*, Public Notice, 14 FCC Rcd 6688 (WTB 1999). Before Auction No. 22, the Commission established a very small standard for the C Block to match the standard used for F Block. *Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees*, WT Docket No. 97-82, Fourth Report and Order, 13 FCC Rcd 15743, 15768 para. 46 (1998).

<sup>146</sup> See *C and F Block Broadband PCS Auction Closes; Winning Bidders Announced*, Public Notice, 16 FCC Rcd 2339 (2001).

<sup>147</sup> See *Broadband PCS Spectrum Auction Closes; Winning Bidders Announced for Auction No. 58*, Public Notice, 20 FCC Rcd 3703 (2005).

<sup>148</sup> See *Auction of Broadband PCS Spectrum Licenses Closes; Winning Bidders Announced for Auction No. 71*, Public Notice, 22 FCC Rcd 9247 (2007).

<sup>149</sup> *Id.*

<sup>150</sup> See *Auction of AWS-1 and Broadband PCS Licenses Closes; Winning Bidders Announced for Auction 78*, Public Notice, 23 FCC Rcd 12749 (WTB 2008).

<sup>151</sup> *Id.*

65. *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>152</sup> For the AWS-1 bands, the Commission has defined a “small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$40 million, and a “very small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$15 million.<sup>153</sup> In 2006, the Commission conducted its first auction of AWS-1 licenses.<sup>154</sup> In that initial AWS-1 auction, 31 winning bidders identified themselves as very small businesses won 142 licenses.<sup>155</sup> Twenty-six of the winning bidders identified themselves as small businesses and won 73 licenses.<sup>156</sup> In a subsequent 2008 auction, the Commission offered 35 AWS-1 licenses.<sup>157</sup> Four winning bidders identified themselves as very small businesses, and three of the winning bidders identifying themselves as a small businesses, won five AWS-1 licenses.<sup>158</sup>

66. *Narrowband Personal Communications Services.* In 1994, the Commission conducted two auctions of Narrowband PCS licenses. For these auctions, the Commission defined a “small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$40

<sup>152</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>153</sup> See *Service Rules for Advanced Wireless services in the 1.7 GHz and 2.1 GHz Bands, Report and Order*, 18 FCC Rcd 25,162, App. B (2003), modified by *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, Order on Reconsideration*, 20 FCC Rcd 14,058, App. C (2005).

<sup>154</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>155</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>156</sup> *See id.*

<sup>157</sup> See *AWS-1 and Broadband PCS Procedures Public Notice*, 23 FCC Rcd at 7499. Auction 78 also included an auction of broadband PCS licenses.

<sup>158</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 12,749 (2008).

<sup>137</sup> *Trends in Telephone Service*, at Table 5.3.

<sup>138</sup> *Id.*

<sup>139</sup> See *Trends in Telephone Service*, at tbl. 5.3.

<sup>140</sup> *See id.*

<sup>141</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; Amendment of the Commission's Cellular/PCS Cross-Ownership Rule*, WT Docket No. 96-59, GN Docket No. 90-314, Report and Order, 11 FCC Rcd 7824, 7850-52 paras. 57-60 (1996) (“*PCS Report and Order*”); see also 47 CFR 24.720(b).

<sup>142</sup> See *PCS Report and Order*, 11 FCC Rcd at 7852 para. 60.

<sup>143</sup> See *Alvarez Letter 1998*.

million.<sup>159</sup> Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses.<sup>160</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>161</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>162</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>163</sup> The SBA has approved these small business size standards.<sup>164</sup> A third auction of Narrowband PCS licenses was conducted in 2001. In that auction, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses.<sup>165</sup> Three of the winning bidders claimed status as a small or very small entity and won 311 licenses.

67. *Lower 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>166</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>167</sup> A “very small business” is defined as an entity that, together with its affiliates and

controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.<sup>168</sup> Additionally, the Lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area (“MSA/RSA”) licenses—“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>169</sup> The SBA approved these small size standards.<sup>170</sup> An auction of 740 licenses was conducted in 2002 (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 won by 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>171</sup> A second auction commenced on May 28, 2003, closed on June 13, 2003, and included 256 licenses.<sup>172</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>173</sup> In 2005, the Commission completed an auction of 5 licenses in the lower 700 MHz band (Auction 60). All three winning bidders claimed small business status.

68. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order*.<sup>174</sup> An auction of A, B and E block licenses in the Lower 700

MHz band was held in 2008.<sup>175</sup> Twenty winning bidders claimed small business status (those with attributable average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years). Thirty-three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed \$15 million for the preceding three years). In 2011, the Commission conducted Auction 92, which offered 16 lower 700 MHz band licenses that had been made available in Auction 73 but either remained unsold or were licenses on which a winning bidder defaulted. Two of the seven winning bidders in Auction 92 claimed very small business status, winning a total of four licenses.

69. *Upper 700 MHz Band Licenses.* In the *700 MHz Second Report and Order*, the Commission revised its rules regarding Upper 700 MHz licenses.<sup>176</sup> On January 24, 2008, the Commission commenced Auction 73 in which several licenses in the Upper 700 MHz band were available for licensing: 12 Regional Economic Area Grouping licenses in the C Block, and one nationwide license in the D Block.<sup>177</sup> The auction concluded on March 18, 2008, with 3 winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed \$15 million for the preceding three years) and winning five licenses.

70. *700 MHz Guard Band Licenses.* In 2000, the Commission adopted the *700 MHz Guard Band Report and Order*, in which it established rules for the A and B block licenses in the Upper 700 MHz band, including size standards for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits.<sup>178</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>179</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

<sup>168</sup> See *id.*

<sup>169</sup> See *id.*, 17 FCC Rcd at 1088, para. 173.

<sup>170</sup> See Letter from Aida Alvarez, Administrator, SBA, to Thomas Sugrue, Chief, WTB, FCC (Aug. 10, 1999) (“*Alvarez Letter 1999*”).

<sup>171</sup> See “Lower 700 MHz Band Auction Closes,” *Public Notice*, 17 FCC Rcd 17272 (WTB 2002).

<sup>172</sup> See Lower 700 MHz Band Auction Closes, *Public Notice*, 18 FCC Rcd 11873 (WTB 2003).

<sup>173</sup> See *id.*

<sup>174</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*, 22 FCC Rcd 15289 (2007) (“*700 MHz Second Report and Order*”).

<sup>175</sup> See Auction of 700 MHz Band Licenses Closes, *Public Notice*, 23 FCC Rcd 4572 (WTB 2008).

<sup>176</sup> *700 MHz Second Report and Order*, 22 FCC Rcd 15289.

<sup>177</sup> See *Auction of 700 MHz Band Licenses Closes*, *Public Notice*, 23 FCC Rcd 4572 (WTB 2008).

<sup>178</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) (“*700 MHz Guard Band Report and Order*”).

<sup>179</sup> See *700 MHz Guard Band Report and Order*, 15 FCC Rcd at 5343, para. 108.

<sup>159</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>160</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 (rel. Aug. 2, 1994); “Announcing the High Bidders in the Auction of 30 Regional Narrowband PCS Licenses; Winning Bids Total \$490,901,787,” *Public Notice*, PNWL 94–27 (rel. Nov. 9, 1994).

<sup>161</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>162</sup> *Narrowband PCS Second Report and Order*, 15 FCC Rcd at 10476, para. 40.

<sup>163</sup> *Id.*

<sup>164</sup> See *Alvarez Letter 1998*.

<sup>165</sup> See “Narrowband PCS Auction Closes,” *Public Notice*, 16 FCC Rcd 18663 (WTB 2001).

<sup>166</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>167</sup> See *Channels 52–59 Report and Order*, 17 FCC Rcd at 1087–88, para. 172.

\$15 million for the preceding three years.<sup>180</sup> SBA approval of these definitions is not required.<sup>181</sup> An auction of these licenses was conducted in 2000.<sup>182</sup> Of the 104 licenses auctioned, 96 licenses were won by nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses was held in 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.<sup>183</sup>

71. *Specialized Mobile Radio*. The Commission adopted small business size standards for the purpose of determining eligibility for bidding credits in auctions of Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands. The Commission defined a “small business” as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.<sup>184</sup> The Commission defined a “very small business” as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$3 million for the preceding three years.<sup>185</sup> The SBA has approved these small business size standards for both the 800 MHz and 900 MHz SMR Service.<sup>186</sup> The first 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 licenses in the 900 MHz SMR band. In 2004, the Commission held a second auction of 900 MHz SMR licenses and three winning bidders identifying themselves as very small businesses won 7 licenses.<sup>187</sup> The auction of 800 MHz SMR licenses for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small or very small businesses under the \$15 million size standard won 38

licenses for the upper 200 channels.<sup>188</sup> A second auction of 800 MHz SMR licenses was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.<sup>189</sup>

72. The auction of the 1,053 800 MHz SMR licenses for the General Category channels was conducted in 2000. Eleven bidders who won 108 licenses for the General Category channels in the 800 MHz SMR band qualified as small or very small businesses.<sup>190</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>191</sup> Of the 22 winning bidders, 19 claimed small or very small business status and won 129 licenses. Thus, combining all four auctions, 41 winning bidders for geographic licenses in the 800 MHz SMR band claimed to be small businesses.

73. 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 not exceeding \$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>192</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.

74. *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 small business size

standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the small business size standard under the SBA rules applicable. The SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.<sup>193</sup> For this service, the SBA uses the category of Wireless Telecommunications Carriers (except Satellite). Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year.<sup>194</sup> Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small.

75. *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.<sup>195</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>196</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>197</sup> The SBA has approved these small size standards.<sup>198</sup> Auctions of Phase II licenses commenced on and closed in

<sup>193</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>194</sup> U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-fds\\_name=EC0700A1&-skip=700&-ds\\_name=EC0751SSSZ5&-lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-skip=700&-ds_name=EC0751SSSZ5&-lang=en).

<sup>195</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>196</sup> *Id.* at 11068 para. 291.

<sup>197</sup> *Id.*

<sup>198</sup> See Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated January 6, 1998 (*Alvarez to Phythyon Letter 1998*).

<sup>180</sup> See *id.*

<sup>181</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>182</sup> See “700 MHz Guard Bands Auction Closes: Winning Bidders Announced,” *Public Notice*, 15 FCC Rcd 18026 (2000).

<sup>183</sup> See “700 MHz Guard Bands Auction Closes: Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 4590 (WTB 2001).

<sup>184</sup> 47 CFR 90.810, 90.814(b), 90.912.

<sup>185</sup> 47 CFR 90.810, 90.814(b), 90.912.

<sup>186</sup> See *Alvarez Letter 1999*.

<sup>187</sup> See 900 MHz Specialized Mobile Radio Service Spectrum Auction Closes: Winning Bidders Announced,” *Public Notice*, 19 FCC Rcd. 3921 (WTB 2004).

<sup>188</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>189</sup> See “Multi-Radio Service Auction Closes,” *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

<sup>190</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>191</sup> See “800 MHz SMR Service Lower 80 Channels Auction Closes: Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 1736 (2000).

<sup>192</sup> See generally 13 CFR 121.201, NAICS code 517210.

1998.<sup>199</sup> In the first auction, 908 licenses were auctioned in three different-sized geographic areas: Three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold.<sup>200</sup> Thirty-nine small businesses won 373 licenses in the first 220 MHz auction. A second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.<sup>201</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>202</sup> In 2007, the Commission conducted a fourth auction of the 220 MHz licenses, designated as Auction 72.<sup>203</sup> Auction 72, which offered 94 Phase II 220 MHz Service licenses, concluded in 2007.<sup>204</sup> In this auction, five winning bidders won a total of 76 licenses. Two winning bidders identified themselves as very small businesses won 56 of the 76 licenses. One of the winning bidders that identified themselves as a small business won 5 of the 76 licenses won.

76. *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>205</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>206</sup>

77. 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.

78. *Fixed Microwave Services*. Microwave services include common carrier,<sup>207</sup> private-operational fixed,<sup>208</sup> and broadcast auxiliary radio services.<sup>209</sup> They also include the Local Multipoint Distribution Service ("LMDS"),<sup>210</sup> the Digital Electronic Message Service ("DEMS"),<sup>211</sup> and the 24 GHz Service,<sup>212</sup> where licensees can choose between common carrier and non-common carrier status.<sup>213</sup> The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, the Commission will use the SBA's definition applicable to Wireless Telecommunications Carriers (except satellite)—*i.e.*, an entity with no more than 1,500 persons is considered small.<sup>214</sup> For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007 shows that there were 1,383 firms that operated that year.<sup>215</sup> Of those 1,383, 1,368 had

fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The Commission notes that the number of firms does not necessarily track the number of licensees. The Commission estimates that virtually all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

79. *39 GHz Service*. The Commission adopted small business size standards for 39 GHz licenses. A "small business" is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million in the preceding three years.<sup>216</sup> A "very small business" is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues of not more than \$15 million for the preceding three years.<sup>217</sup> The SBA has approved these small business size standards.<sup>218</sup> In 2000, the Commission conducted an auction of 2,173 39 GHz licenses. A total of 18 bidders who claimed small or very small business status won 849 licenses.

80. *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>219</sup> 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 years.<sup>220</sup> An additional small business size standard for "very small business" was added as

2009), [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-fds\\_name=EC0700A1&-skip=700&-ds\\_name=EC0751SSSZ5&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-skip=700&-ds_name=EC0751SSSZ5&-_lang=en)

<sup>216</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>217</sup> *Id.*

<sup>218</sup> See Letter from Aida Alvarez, Administrator, SBA, to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, WTb, FCC (Feb. 4, 1998); see Letter from Hector Barreto, Administrator, SBA, to Margaret Wiener, Chief, Auctions and Industry Analysis Division, WTb, FCC (Jan. 18, 2002).

<sup>219</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 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, CC Docket No. 92–297, 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>220</sup> See LMDS Second Report and Order, 12 FCC Rcd at 12689–90, para. 348.

<sup>199</sup> See generally 220 MHz Service Auction Closes, Public Notice, 14 FCC Rcd 605 (WTB 1998).

<sup>200</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 (WTB 1999).

<sup>201</sup> See Phase II 220 MHz Service Spectrum Auction Closes, Public Notice, 14 FCC Rcd 11218 (WTB 1999).

<sup>202</sup> See Multi-Radio Service Auction Closes, Public Notice, 17 FCC Rcd 1446 (WTB 2002).

<sup>203</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>204</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>205</sup> See 13 CFR 121.201, NAICS code 517210.

<sup>206</sup> See generally 13 CFR 121.201.

<sup>207</sup> See 47 CFR part 101, subparts C and I.

<sup>208</sup> See *id.* subparts C and H.

<sup>209</sup> Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's rules. See 47 CFR part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

<sup>210</sup> See 47 CFR part 101, subpart L.

<sup>211</sup> See *id.* subpart G.

<sup>212</sup> See *id.*

<sup>213</sup> See 47 CFR 101.533, 101.1017.

<sup>214</sup> 13 CFR 121.201, NAICS code 517210.

<sup>215</sup> U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20,

an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three years.<sup>221</sup> The SBA has approved these small business size standards in the context of LMDS auctions.<sup>222</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 winning that won 119 licenses.

81. *218–219 MHz Service.* The first auction of 218–219 MHz Service (previously referred to as the Interactive and Video Data Service or IVDS) licenses resulted in 170 entities winning licenses for 594 Metropolitan Statistical Areas (“MSAs”).<sup>223</sup> Of the 594 licenses, 557 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>224</sup> In the *218–219 MHz Report and Order and Memorandum Opinion and Order*, the Commission revised its small business size standards for the 218–219 MHz Service and 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>225</sup> The Commission defined a “very small business” 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>226</sup> The SBA has approved these definitions.<sup>227</sup>

82. *Location and Monitoring Service (“LMS”).* Multilateration LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For auctions of LMS

licenses, the Commission has defined a “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>228</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>229</sup> These definitions have been approved by the SBA.<sup>230</sup> An auction of LMS licenses was conducted in 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses.

83. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.<sup>231</sup> A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (“BETRS”).<sup>232</sup> For purposes of its analysis of the Rural Radiotelephone Service, 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>233</sup> Census data for 2007 shows that there were 1,383 firms that operated that year.<sup>234</sup> Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms in the Rural Radiotelephone Service can be considered small.

84. *Air-Ground Radiotelephone Service.*<sup>235</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>236</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>237</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>238</sup> These definitions were approved by the SBA.<sup>239</sup> In 2006, the 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.

85. *Aviation and Marine Radio 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>240</sup> Census data for 2007 shows that there were 1,383 firms that operated that year.<sup>241</sup> Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small

<sup>228</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.

<sup>229</sup> Automatic Vehicle Monitoring Systems Second Report and Order, 13 FCC Rcd at 15192, para. 20; see also 47 CFR 90.1103.

<sup>230</sup> See Alvarez Letter 1998.

<sup>231</sup> The service is defined in section 22.99 of the Commission’s rules, 47 CFR 22.99.

<sup>232</sup> BETRS is defined in sections 22.757 and 22.759 of the Commission’s rules, 47 CFR 22.757 and 22.759.

<sup>233</sup> 13 CFR 121.201, NAICS code 517210.

<sup>234</sup> U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-fds\\_name=EC0700A1&-skip=700&-ds\\_name=EC0751SSSZ5&-lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-skip=700&-ds_name=EC0751SSSZ5&-lang=en).

<sup>235</sup> The service is defined in section 22.99 of the Commission’s rules, 47 CFR 22.99.

<sup>236</sup> 13 CFR 121.201, NAICS codes 517210.

<sup>237</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>238</sup> *Id.*

<sup>239</sup> See Letter from Hector V. Barreto, Administrator, SBA, to Gary D. Michaels, Deputy Chief, Auctions and Spectrum Access Division, WTB, FCC (Sept. 19, 2005).

<sup>240</sup> 13 CFR 121.201, NAICS code 517210.

<sup>241</sup> U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-fds\\_name=EC0700A1&-skip=700&-ds\\_name=EC0751SSSZ5&-lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-skip=700&-ds_name=EC0751SSSZ5&-lang=en).

<sup>221</sup> See *id.*

<sup>222</sup> See Alvarez to Phythyon Letter 1998.

<sup>223</sup> See “Interactive Video and Data Service (IVDS) Applications Accepted for Filing,” Public Notice, 9 FCC Rcd 6227 (1994).

<sup>224</sup> Implementation of Section 309(j) of the Communications Act—Competitive Bidding, Fourth Report and Order, 9 FCC Rcd 2330 (1994).

<sup>225</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>226</sup> *Id.*

<sup>227</sup> See Alvarez to Phythyon Letter 1998.

business size standard, the majority of firms can be considered small.

86. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.<sup>242</sup> There are presently approximately 55 licensees in this service. The Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for the category of Wireless Telecommunications Carriers (except Satellite). Under that standard.<sup>243</sup> Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.<sup>244</sup> Census data for 2007 shows that there were 1,383 firms that operated that year.<sup>245</sup> Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small.

87. *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 preceding three years.<sup>246</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 years.<sup>247</sup> The SBA has approved these definitions.<sup>248</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 2001, an auction of 5,104 MAS licenses in 176 EAs was

conducted.<sup>249</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.

88. 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>250</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.

89. *1.4 GHz Band Licensees.* The Commission conducted an auction of 64 1.4 GHz band licenses in the paired 1392–1395 MHz and 1432–1435 MHz bands, and in the unpaired 1390–1392 MHz band in 2007.<sup>251</sup> For these licenses, the Commission defined "small business" as an entity that, together with its affiliates and controlling interests, had average gross revenues not exceeding \$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>252</sup> Neither of the two winning bidders claimed small business status.<sup>253</sup>

90. *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. For this service, 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>254</sup> To gauge small business prevalence for these cable services we must, however, use the most current census data. Census data for 2007 shows that there were 1,383 firms that operated that year.<sup>255</sup> Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The Commission notes that the Census' use of the classifications "firms" does not track the number of "licenses". The Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent<sup>256</sup> and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

91. *Future 24 GHz Licensees.* With respect to new applicants for licenses in the 24 GHz band, for the purpose of determining eligibility for bidding credits, the Commission established three small business definitions. An "entrepreneur" is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding \$40 million.<sup>257</sup> A "small business" is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding \$15 million.<sup>258</sup> A "very small business" in the 24 GHz band is defined as an entity that, together with

<sup>242</sup> This service is governed by subpart I of part 22 of the Commission's rules. See 47 CFR 22.1001–22.1037.

<sup>243</sup> 13 CFR 121.201, NAICS code 517210.

<sup>244</sup> *Id.*

<sup>245</sup> U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-fds\\_name=EC0700A1&-skip=700&-ds\\_name=EC0751SSSZ5&-lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-skip=700&-ds_name=EC0751SSSZ5&-lang=en).

<sup>246</sup> See *Amendment of the Commission's Rules Regarding Multiple Address Systems*, Report and Order, 15 FCC Rcd 11956, 12008, para. 123 (2000).

<sup>247</sup> *Id.*

<sup>248</sup> See *Alvarez Letter 1999*.

<sup>249</sup> See "Multiple Address Systems Spectrum Auction Closes," Public Notice, 16 FCC Rcd 21011 (2001).

<sup>250</sup> See 13 CFR 121.201, NAICS code 517210.

<sup>251</sup> See "Auction of 1.4 GHz Band Licenses Scheduled for February 7, 2007," Public Notice, 21 FCC Rcd 12393 (WTB 2006); "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>252</sup> Auction No. 69 Closing PN, Attachment C.

<sup>253</sup> See Auction No. 69 Closing PN.

<sup>254</sup> 13 CFR 121.201, NAICS code 517210.

<sup>255</sup> U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-fds\\_name=EC0700A1&-skip=700&-ds\\_name=EC0751SSSZ5&-lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-skip=700&-ds_name=EC0751SSSZ5&-lang=en).

<sup>256</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.

<sup>257</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)(3).

<sup>258</sup> 24 GHz Report and Order, 15 FCC Rcd at 16967 para. 77; see also 47 CFR 101.538(a)(2).

controlling interests and affiliates, has average gross revenues not exceeding \$3 million for the preceding three years.<sup>259</sup> The SBA has approved these small business size standards.<sup>260</sup> In a 2004 auction of 24 GHz licenses, three winning bidders won seven licenses.<sup>261</sup> Two of the winning bidders were very small businesses that won five licenses.

92. *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>262</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 years.<sup>263</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>264</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. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas.<sup>265</sup> The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years (small business) will receive a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding three years (very small business) will receive a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years (entrepreneur) will receive a 35 percent discount on its winning bid.<sup>266</sup> Auction 86 concluded in 2009 with the sale of 61 licenses.<sup>267</sup> Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

93. 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>268</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

is SBA’s small business size standard of 1,500 or fewer employees.

<sup>265</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>266</sup> *Id.* at 8296.

<sup>267</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>268</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.

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>269</sup> For these services, 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>270</sup> To gauge small business prevalence for these cable services we must, however, use the most current Census data. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year.<sup>271</sup> Of this total, 939 firms employed 999 or fewer employees, and 16 firms employed 1,000 employees or more.<sup>272</sup> Thus, the majority of these firms can be considered small.

94. *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>273</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>274</sup> The Commission has estimated the number of licensed commercial television stations to be 1,387.<sup>275</sup> In addition, according to Commission staff review of the BIA Advisory Services, LLC’s *Media Access Pro Television Database* on March 28, 2012, about 950 of an estimated 1,300 commercial television stations (or approximately 73 percent) had revenues

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

<sup>270</sup> 13 CFR 121.201, NAICS code 517210.

<sup>271</sup> U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, Employment Size of Firms for the United States: 2007, NAICS code 5171102 (issued November 2010).

<sup>272</sup> *Id.*

<sup>273</sup> U.S. Census Bureau, 2007 NAICS Definitions, “515120 Television Broadcasting” (partial definition); <http://www.census.gov/naics/2007/def/ND515120.HTM#N515120>.

<sup>274</sup> 13 CFR 121.201, NAICS code 515120 (updated for inflation in 2010).

<sup>275</sup> See *FCC News Release*, “Broadcast Station Totals as of December 31, 2011,” dated January 6, 2012; [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-311837A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-311837A1.pdf).

<sup>259</sup> *24 GHz Report and Order*, 15 FCC Rcd at 16967 para. 77; see also 47 CFR 101.538(a)(1).

<sup>260</sup> See Letter to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Gary M. Jackson, Assistant Administrator, SBA (July 28, 2000).

<sup>261</sup> *Auction of 24 GHz Service Spectrum Auction Closes, Winning Bidders Announced for Auction 56, Down Payments Due August 16, 2004, Final Payments Due August 30, 2004, Ten-Day Petition to Deny Period*, Public Notice, 19 FCC Rcd 14738 (2004).

<sup>262</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, PP Docket No. 93–253, Report and Order, 10 FCC Rcd 9589, 9593 para. 7 (1995).

<sup>263</sup> 47 CFR 21.961(b)(1).

<sup>264</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

of \$14 million or less.<sup>276</sup> We therefore estimate that the majority of commercial television broadcasters are small entities.

95. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations<sup>277</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.

96. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 396.<sup>278</sup> These stations are non-profit, and therefore considered to be small entities.<sup>279</sup>

97. In addition, there are also 2,528 low power television stations, including Class A stations (LPTV).<sup>280</sup> Given the nature of these services, we will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

98. *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>281</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>282</sup> According to Commission staff review of BIA Advisory Services, LLC's *Media Access Pro Radio Database* on March 28, 2012, about 10,759 (97%) of 11,102 commercial radio stations had revenues of \$7 million or less. Therefore, the majority of such entities are small entities.

99. We note, however, that in assessing whether a business concern qualifies as small under the above size standard, business affiliations must be included.<sup>283</sup> In addition, to be determined to be a "small business," the entity may not be dominant in its field of operation.<sup>284</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.

100. *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>285</sup>

101. The Commission estimates that there are approximately 6,099 FM translators and boosters.<sup>286</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>287</sup>

102. *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>288</sup> The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. Census data for 2007 shows that there were 1,383 firms that operated that year.<sup>289</sup> Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of such firms can be considered small.

103. *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>290</sup> Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.<sup>291</sup> In addition, under the

<sup>276</sup> We recognize that BIA's estimate differs slightly from the FCC total given *supra*.

<sup>277</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).

<sup>278</sup> See *FCC News Release*, "Broadcast Station Totals as of December 31, 2011," dated January 6, 2012; [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2012/db0106/DOC-311837A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0106/DOC-311837A1.pdf).

<sup>279</sup> See generally 5 U.S.C. 601(4), (6).

<sup>280</sup> See *FCC News Release*, "Broadcast Station Totals as of December 31, 2011," dated January 6, 2012; [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2012/db0106/DOC-311837A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0106/DOC-311837A1.pdf).

<sup>281</sup> U.S. Census Bureau, 2007 NAICS Definitions, "515112 Radio Stations"; <http://www.census.gov/naics/2007/def/ND515112.HTM#N515112>.

<sup>282</sup> 13 CFR 121.201, NAICS code 515112 (updated for inflation in 2010).

<sup>283</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>284</sup> 13 CFR 121.102(b) (an SBA regulation).

<sup>285</sup> 13 CFR 121.201, NAICS codes 515112 and 515120.

<sup>286</sup> See *FCC News Release*, "Broadcast Station Totals as of December 31, 2011," dated January 6, 2012; [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2012/db0106/DOC-311837A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0106/DOC-311837A1.pdf).

<sup>287</sup> See 15 U.S.C. 632.

<sup>288</sup> U.S. Census Bureau, 2007 NAICS Definitions, 517110 Wired Telecommunications Carriers, (partial definition), <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110> (last visited Oct. 21, 2009).

<sup>289</sup> U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-fds\\_name=EC0700A1&-skip=700&-ds\\_name=EC0751SSZ5&-lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-skip=700&-ds_name=EC0751SSZ5&-lang=en).

<sup>290</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 of the 1992 Cable Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

<sup>291</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*



Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.<sup>292</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>293</sup> Thus, under this second size standard, most cable systems are small.

104. *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>294</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>295</sup> Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.<sup>296</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>297</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.

105. *Open Video Systems.* Open Video Service (OVS) systems provide subscription services.<sup>298</sup> The open video system ("OVS") framework was

*Factbook 2006*, "Ownership of Cable Systems in the United States," pages D-1805 to D-1857.

<sup>292</sup> 47 CFR 76.901(c).

<sup>293</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>294</sup> 47 U.S.C. 543(m)(2); see 47 CFR 76.901(f) & nn. 1-3.

<sup>295</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>296</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>297</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 section 76.901(f) of the Commission's rules. See 47 CFR 76.909(b).

<sup>298</sup> See 47 U.S.C. 573.

established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers.<sup>299</sup> The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,<sup>300</sup> OVS falls within the SBA small business size standard covering cable services, which is "Wired Telecommunications Carriers."<sup>301</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 the OVS service, the Commission relies on data currently available from the U.S. Census for the year 2007. According to that source, there were 3,188 firms that in 2007 were Wired Telecommunications Carriers. Of these, 3,144 operated with less than 1,000 employees, and 44 operated with more than 1,000 employees. However, as to the latter 44 there is no data available that shows how many operated with more than 1,500 employees. Based on this data, the majority of these firms can be considered small.<sup>302</sup> In addition, we note that the Commission has certified some OVS operators, with some now providing service.<sup>303</sup> Broadband service providers ("BSPs") are currently the only significant holders of OVS certifications or local OVS franchises.<sup>304</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, at least some of the OVS operators may qualify as small entities. The Commission further notes that it has certified approximately 45 OVS operators to serve 75 areas, and some of these are currently providing service.<sup>305</sup> Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, DC, and other areas. RCN

<sup>299</sup> 47 U.S.C. 571(a)(3)-(4). See *13th Annual Report*, 24 FCC Rcd at 606, para. 135.

<sup>300</sup> See 47 U.S.C. 573.

<sup>301</sup> U.S. Census Bureau, 2007 NAICS Definitions, 517110 Wired Telecommunications Carriers, <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

<sup>302</sup> See [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-fds\\_name=EC0700A1&-geo\\_id=&-skip=600&-ds\\_name=EC0751SSSZ5&-lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-skip=600&-ds_name=EC0751SSSZ5&-lang=en).

<sup>303</sup> A list of OVS certifications may be found at <http://www.fcc.gov/mb/ovs/csovscer.html>.

<sup>304</sup> See *13th Annual 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.

<sup>305</sup> See <http://www.fcc.gov/mb/ovs/csovscer.html> (current as of February 2007).

has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 44 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies adopted herein.

106. *Cable Television Relay Service.* The industry in which Cable Television Relay Services operate 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. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.<sup>306</sup> The category designated by the SBA for this industry is "Wired Telecommunications Carriers."<sup>307</sup> The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, Census data for 2007 shows 3,188 firms in this category.<sup>308</sup> Of these 3,188 firms, only 44 had 1,000 or more employees. While we could not find precise Census data on the number of firms with in the group with 1,500 or fewer employees, it is clear that at least 3,144 firms with fewer than 1,000 employees would be in that group. On this basis, the Commission estimates that a substantial majority of the providers of interconnected VoIP, non-

<sup>306</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>307</sup> 13 CFR 121.201, NAICS code 517110.

<sup>308</sup> [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-skip=600&-ds\\_name=EC0751SSSZ5&-lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-skip=600&-ds_name=EC0751SSSZ5&-lang=en).

interconnected VoIP, or both in this category, are small.<sup>309</sup>

107. *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 defines 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>310</sup> These definitions were approved by the SBA.<sup>311</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>312</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). Of the three winning bidders who won 22 licenses, two winning bidders, winning 21 of the licenses, claimed small business status.<sup>313</sup>

<sup>309</sup> *Id.* As noted in para. 18 above with regard to the distinction between manufacturers of equipment used to provide interconnected VoIP and manufactures of equipment to provide non-interconnected VoIP, our estimates of the number of the number of providers of non-interconnected VoIP (and the number of small entities within that group) are likely overstated because we could not draw in the data a distinction between such providers and those that provide interconnected VoIP. However, in the absence of more accurate data, we present these figures to provide as thorough an analysis of the impact on small entities as we can at this time.

<sup>310</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 Broadband 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>311</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>312</sup> See “*Multichannel Video Distribution and Data Service Auction Closes*,” Public Notice, 19 FCC Rcd 1834 (2004).

<sup>313</sup> See “*Auction of Multichannel Video Distribution and Data Service Licenses Closes*;

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

109. *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>314</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”), Low Power Radio Service (“LPRS”), and Multi-Use Radio Service (“MURS”).<sup>315</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>316</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.

110. *Public Safety Radio Services*. Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.<sup>317</sup>

*Winning Bidders Announced for Auction No. 63*,” Public Notice, 20 FCC Rcd 19807 (2005).

<sup>314</sup> 47 CFR part 90.

<sup>315</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>316</sup> 13 CFR 121.201, NAICS Code 517210.

<sup>317</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

There are a total of approximately 127,540 licensees in these services. Governmental entities<sup>318</sup> as well as private businesses comprise the licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small entity.<sup>319</sup>

111. *Internet Service Providers, Internet Service Providers, Web Portals and Other Information Services*. In 2007, the SBA recognized two new small business economic census categories. They are (1) Internet Publishing and Broadcasting and Web Search Portals,<sup>320</sup> and (2) All Other Information Services.<sup>321</sup>

112. *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 facilities (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>322</sup> which has an SBA small business size standard of 1,500 or fewer employees.<sup>323</sup> These are also labeled “broadband.” The latter are within the

(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 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 for highway maintenance service to 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>318</sup> 47 CFR 1.1162.

<sup>319</sup> 5 U.S.C. 601(5).

<sup>320</sup> 13 CFR 121.201, NAICS code 519130 (establishing a \$500,000 revenue ceiling).

<sup>321</sup> 13 CFR 121.201, NAICS code 519190 (establishing a \$6.5 million revenue ceiling).

<sup>322</sup> U.S. Census Bureau, 2007 NAICS Definitions, 517110 Wired Telecommunications Carriers, <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

<sup>323</sup> 13 CFR 121.201, NAICS code 517110.

category of All Other Telecommunications,<sup>324</sup> which has a size standard of annual receipts of \$25 million or less.<sup>325</sup> These are labeled non-broadband.

113. The most current Economic Census data for all such firms are 2007 data, which are detailed specifically for ISPs within the categories above. For the first category, the data show that 396 firms operated for the entire year, of which 159 had nine or fewer employees.<sup>326</sup> For the second category, the data show that 1,682 firms operated for the entire year.<sup>327</sup> Of those, 1,675 had annual receipts below \$25 million per year, and an additional two had receipts of between \$25 million and \$49,999,999. Consequently, we estimate that the majority of ISP firms are small entities.

114. *Internet Publishing and Broadcasting and Web Search Portals.* This industry comprises establishments primarily engaged in (1) publishing and/or broadcasting content on the Internet exclusively or (2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals). The publishing and broadcasting establishments in this industry do not provide traditional (non-Internet) versions of the content that they publish or broadcast. They provide textual, audio, and/or video content of general or specific interest on the Internet exclusively. Establishments known as Web search portals often provide additional Internet services, such as email, connections to other Web sites, auctions, news, and other limited content, and serve as a home base for Internet users.<sup>328</sup> The SBA deems businesses in this industry with 500 or fewer employees small.<sup>329</sup> According to Census Bureau data for 2007, there were 2,705 firms that provided one or more of these services for that entire year. Of

these, 2,682 operated with less than 500 employees and 13 operated with to 999 employees.<sup>330</sup> Consequently, we estimate the majority of these firms are small entities that may be affected by our proposed actions.

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

115. With certain exceptions, the Commission's Schedule of Regulatory Fees applies to all Commission licensees and regulatees. Most licensees will be required to count the number of licenses or call signs authorized, and pay a regulatory fee based on the number of licenses or call signs.<sup>331</sup> In some instances, licensees or regulatees may decide to submit an FCC Form 159 Remittance Advice. 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. Compliance with the fee schedule will require some regulatees to tabulate the number of units (e.g., cellular telephones, pagers, cable TV subscribers) they have in service. Regulatees 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 submit a regulatory fee payment, and it can be completed by the employees

<sup>330</sup> [http://factfinder.census.gov/servlet/IBQTable?\\_lang=en&\\_ds\\_name=EC0751SSSZ5&\\_geo\\_id=&\\_bm=y&\\_skip=1000&-ds\\_name=EC0751SSSZ5&-lang=en](http://factfinder.census.gov/servlet/IBQTable?_lang=en&_ds_name=EC0751SSSZ5&_geo_id=&_bm=y&_skip=1000&-ds_name=EC0751SSSZ5&-lang=en).

<sup>331</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 (exempt under section 501(c) of the Internal Revenue Code) entities are exempt from payment of regulatory fees and need not submit payment. Non-commercial educational broadcast licensees are exempt from regulatory fees as are licensees of auxiliary broadcast services such as low power auxiliary stations, television auxiliary service stations, remote pickup stations and aural broadcast auxiliary stations where such licenses are used in conjunction with commonly owned non-commercial educational stations. Emergency Alert System licenses for auxiliary service facilities are also exempt as are instructional television fixed service licensees. Regulatory fees are automatically waived for the licensee of any translator station that: (1) Is not licensed to, in whole or in part, and does not have common ownership with, the licensee of a commercial broadcast station; (2) does not derive income from advertising; and (3) is dependent on subscriptions or contributions from members of the community served for support. Receive only earth station permittees are exempt from payment of regulatory fees. A regulatee will be relieved of its fee payment requirement if its total fee due, including all categories of fees for which payment is due by the entity, amounts to less than \$10.

responsible for an entity's business records.

116. As discussed previously in this *Report and Order*, the Commission concluded in its FY 2009 regulatory fee cycle that regulatees 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 regulatees 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 the Commission will be able to create an electronic record of regulatee payment attributes that are more easily traceable than payments that were previously mailed in with a hardcopy Form 159.

117. 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>332</sup> If payment is not received, new or pending applications may be dismissed, and existing authorizations may be subject to rescission.<sup>333</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>334</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>335</sup>

118. 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>336</sup> However, timely submission of the required regulatory fee must accompany requests for

<sup>332</sup> 47 CFR 1.1164.

<sup>333</sup> 47 CFR 1.1164(c).

<sup>334</sup> Public Law 104-134, 110 Stat. 1321 (1996).

<sup>335</sup> 31 U.S.C. 7701(c)(2)(B).

<sup>336</sup> 47 CFR 1.1166.

<sup>324</sup> U.S. Census Bureau, 2007 NAICS Definitions, "517919 All Other Telecommunications," <http://www.census.gov/naics/2007/def/ND517919.HTM#N517919>.

<sup>325</sup> 13 CFR 121.201, NAICS code 517919 (updated for inflation in 2008).

<sup>326</sup> U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, "Establishment and Firm Size," NAICS code 5171103 (rel. Nov. 19, 2010) (employment size). The data show only two categories within the whole: The categories for 1-4 employees and for 5-9 employees.

<sup>327</sup> U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, "Establishment and Firm Size," NAICS code 5179191 (rel. Nov. 19, 2010) (receipts size).

<sup>328</sup> <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=519130&search=2007%20NAICS%20Search>

<sup>329</sup> [http://www.sba.gov/sites/default/files/Size\\_Standards\\_Table.pdf](http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf).

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 regulatee), 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**

119. 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>337</sup>

120. In the *FY 2012 Regulatory Fee Notice of Proposed Rulemaking*, 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. For example, the Commission has considered creating bills for all fee categories so that payments that are received will

liquidate more quickly, thereby reducing errors in processing and improving efficiency. The Commission has also considered ways to notify small entities electronically regarding regulatory fee updates. We received no comments specifically in response to the IRFA.

121. Several categories of licensees and regulatees are exempt from payment of regulatory fees, such as government entities, tribal nations, tax exempt (non-profit) entities, amateur radio operator licensees, and entities whose total sum owed in regulatory fees is less than \$10. In addition, the Commission's waiver procedures also provide regulatees, including small entity regulatees, relief in exceptional circumstances such as financial hardship. We note that small entities in particular should be assisted by the Commission's electronic filing and payment system ("Fee Filer"), which pre-loads payment data to minimize the time spent by entities searching for payment information. The Commission's Fee Filer system also permits entities to make fee payment in a variety of ways, even on the due date of regulatory fees.

**VI. Report to Congress**

122. 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>338</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>339</sup>

**VII. Ordering Clauses**

123. 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*.

124. *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 Table F, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

**List of Subjects in 47 CFR Part 1**

Practice and procedures.  
Federal Communications Commission.  
**Sheryl D. Todd**,  
*Deputy Secretary*.

**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) .....	\$35.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	35.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(c) Renewal Only (FCC 601 & 159) .....	35.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159) .....	35.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
220 MHz Nationwide:		
(a) New, Renew/Mod (FCC 601 & 159) .....	35.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	35.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(c) Renewal Only (FCC 601 & 159) .....	35.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159) .....	35.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
2. Microwave (47 CFR Pt. 101) (Private):		
(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.
3. 218-219 MHz Service:		
(a) New, Renew/Mod (FCC 601 & 159) .....	70.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	70.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.

<sup>337</sup> 5 U.S.C. 603.

<sup>338</sup> See 5 U.S.C. 801(a)(1)(A). The Congressional Review Act is contained in Title II, section 251, of

the CWAAA; see Public Law 104-121, Title II, section 251, 110 Stat. 868.

<sup>339</sup> See 5 U.S.C. 604(b).

Exclusive use services (per license)	Fee amount <sup>1</sup>	Address
(c) Renewal Only (FCC 601 & 159) .....	70.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159) .....	70.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
<b>4. Shared Use Services:</b>		
Land Mobile (Frequencies Below 470 MHz—except 220 MHz):		
(a) New, Renew/Mod (FCC 601 & 159) .....	15.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159) .....	15.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(c) Renewal Only (FCC 601 & 159) .....	15.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159) .....	15.00	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).	15.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(b) Renewal, Minor Renew/Mod (Electronic Filing) (FCC 601 & 159).	15.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
Marine Coast:		
(a) New Renewal/Mod (FCC 601 & 159) .....	50.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(b) New, Renewal/Mod (Electronic Filing) (FCC 601 & 159).	50.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(c) Renewal Only (FCC 601 & 159) .....	50.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159) .....	50.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
Aviation Ground:		
(a) New, Renewal/Mod (FCC 601 & 159) .....	15.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(b) New, Renewal/Mod (Electronic Filing) (FCC 601 & 159).	15.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(c) Renewal Only (FCC 601 & 159) .....	15.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(9) Renewal Only (Electronic Only) (FCC 601 & 159) .....	15.00	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) .....	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(b) New, Renew/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.
<b>5. Amateur Vanity Call Signs:</b>		
(a) Initial or Renew (FCC 605 & 159) .....	1.50	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(b) Initial or Renew (Electronic Filing) (FCC 605 & 159) .....	1.50	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
6. CMRS Cellular/Mobile Services (per unit) (FCC 159) .....	<sup>2</sup> .17	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
7. CMRS Messaging Services (per unit) (FCC 159) .....	<sup>3</sup> .08	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
8. Broadband Radio Service (formerly MMDS and MDS) .....	475.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
9. Local Multipoint Distribution Service .....	475.00	FCC, P.O. Box 979097, 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 section 1.1102 of this chapter.

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

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

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

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

	Fee amount	Address
Radio [AM and FM] (47 CFR part 73):		
1. AM Class A:		
< = 25,000 population .....	\$725	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197-9000.
25,001-75,000 population	1,475	
75,001-150,000 population	2,200	
150,001-500,000 population	3,300	
500,001-1,200,000 population	4,775	
1,200,001-3,000,000 population	7,350	
>3,000,000 population	8,825	
2. AM Class B:		

	Fee amount	Address
< = 25,000 population .....	600	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197-9000.
25,001-75,000 population .....	1,225	
75,001-150,000 population .....	1,525	
150,001-500,000 population .....	2,600	
500,001-1,200,000 population .....	3,975	
1,200,001-3,000,000 population .....	6,100	
>3,000,000 population .....	7,325	
<b>3. AM Class C:</b>		
< = 25,000 population .....	550	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197-9000.
25,001-75,000 population .....	850	
75,001-150,000 population .....	1,125	
150,001-500,000 population .....	1,675	
500,001-1,200,000 population .....	2,800	
1,200,001-3,000,000 population .....	4,200	
>3,000,000 population .....	5,325	
<b>4. AM Class D:</b>		
< = 25,000 population .....	625	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197-9000.
25,001-75,000 population .....	950	
75,001-150,000 population .....	1,600	
150,001-500,000 population .....	1,900	
500,001-1,200,000 population .....	3,175	
1,200,001-3,000,000 population .....	5,075	
>3,000,000 population .....	6,350	
<b>5. AM Construction Permit .....</b>	<b>550</b>	<b>FCC, Radio, P.O. Box 979084, St. Louis, MO 63197-9000.</b>
<b>6. FM Classes A, B1 and C3:</b>		
< = 25,000 population .....	700	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197-9000.
25,001-75,000 population .....	1,425	
75,001-150,000 population .....	1,950	
150,001-500,000 population .....	3,025	
500,001-1,200,000 population .....	4,800	
1,200,001-3,000,000 population .....	7,800	
>3,000,000 population .....	9,950	
<b>7. FM Classes B, C, C0, C1 and C2:</b>		
< = 25,000 population .....	875	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197-9000.
25,001-75,000 population .....	1,550	
75,001-150,000 population .....	2,875	
150,001-500,000 population .....	3,750	
500,001-1,200,000 population .....	5,525	
1,200,001-3,000,000 population .....	8,850	
>3,000,000 population .....	11,500	
<b>8. FM Construction Permits .....</b>	<b>700</b>	<b>FCC, Radio, P.O. Box 979084, St. Louis, MO 63197-9000.</b>
<b>TV (47 CFR, part 73) VHF Commercial:</b>		
1. Markets 1 thru 10 .....	80,075	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197-9000.
2. Markets 11 thru 25 .....	73,475	
3. Markets 26 thru 50 .....	39,800	
4. Markets 51 thru 100 .....	20,925	
5. Remaining Markets .....	5,825	
6. Construction Permits .....	5,825	
<b>UHF Commercial:</b>		
1. Markets 1 thru 10 .....	35,350	FCC, UHF Commercial, P.O. Box 979084, St. Louis, MO 63197-9000.
2. Markets 11 thru 25 .....	32,625	
3. Markets 26 thru 50 .....	21,925	
4. Markets 51 thru 100 .....	12,750	
5. Remaining Markets .....	3,425	
6. Construction Permits .....	3,425	
<b>Satellite UHF/VHF Commercial:</b>		
1. All Markets .....	1,425	FCC Satellite TV, P.O. Box 979084, St. Louis, MO 63197-9000.
2. Construction Permits .....	895	
Low Power TV, Class A TV, TV/FM Translator, & TV/FM Booster (47 CFR part 74).	385	FCC, Low Power, P.O. Box 979084, St. Louis, MO 63197-9000.
Broadcast Auxiliary .....	10	FCC, Auxiliary, P.O. Box 979084, St. Louis, MO 63197-9000.

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

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

	Fee amount	Address
Radio Facilities:		

	Fee amount	Address
1. Microwave (Domestic Public Fixed) (Electronic Filing) (FCC Form 601 & 159). Carriers: 1. Interstate Telephone Service Providers (per interstate and international end-user revenues (see FCC Form 499-A)).	\$20.00  .00375	FCC, P.O. Box 97097, St. Louis, MO 63197-9000.  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 .....	\$475	FCC, Cable, P.O. Box 979084, St. Louis, MO 63197-9000.
2. Cable TV System (per subscriber) .....	.95	

■ 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) .....	\$132,875	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000.
Space Stations (Non-Geostationary Orbit) .....	143,150	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000.
Earth Stations: Transmit/Receive & Transmit only (per authorization or registration).	275	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, 2011)	Fee amount	Address
Terrestrial Common Carrier Satellite Common Carrier Satellite Non-Common Carrier.	\$0.26 per 64 KB Circuit .....	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000.

(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, 2011)	Fee amount	Address
<2.5 Gbps .....	\$13,300	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000.
2.5 Gbps or greater, but less than 5 Gbps .....	26,600	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000.
5 Gbps or greater, but less than 10 Gbps .....	53,200	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000.
10 Gbps or greater, but less than 20 Gbps .....	106,375	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000.
20 Gbps or greater .....	212,750	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 111207737-2141-02]

RIN 0648-XC142

#### Fisheries of the Economic Exclusive Zone Off Alaska; Deep-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the third seasonal apportionment of the Pacific halibut bycatch allowance specified for the deep-water species fishery in the GOA has been reached.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), August 1, 2012, through 1200 hrs, A.l.t., September 1, 2012.

**FOR FURTHER INFORMATION CONTACT:** Obren Davis, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-

Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The third seasonal apportionment of the Pacific halibut bycatch allowance specified for the deep-water species fishery in the GOA is 400 metric tons (mt) as established by the final 2012 and 2013 harvest specifications for groundfish of the GOA (77 FR 15194, March 14, 2012), for the period 1200 hrs, A.l.t., July 1, 2012, through 1200 hrs, A.l.t., September 1, 2012. This apportionment is reduced to 208 mt after allocating 192 mt to vessels participating in cooperatives in the Central GOA Rockfish Program. Rockfish Program allocations are established annually once NMFS receives information about the vessel composition of each cooperative. The 2012 Central GOA Rockfish Program allocations are available at <http://www.alaskafisheries.noaa.gov/sustainablefisheries/rockfish/>.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS, has determined that the third seasonal apportionment of the Pacific halibut bycatch allowance specified for the trawl deep-water species fishery in the GOA has been reached. Consequently, NMFS is prohibiting directed fishing for the deep-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the deep-water species fishery include sablefish, rockfish, deep-water flatfish, rex sole, and arrowtooth flounder. This closure does not apply to fishing by vessels participating in the cooperative fishery in the Rockfish Program for the Central GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

#### Classification

This action responds to the best available information recently obtained from the fishery. The Acting Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the deep-water species fishery by vessels using trawl gear in the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 27, 2012.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: July 30, 2012.

**Lindsay Fullenkamp,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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