

communicate with individual landing stations during hoist use.

(xv) When sinking shafts 75 feet (22.86 m) or less in depth, cages, skips, and buckets that may swing, bump, or snag against shaft sides or other structural protrusions shall be guided by fenders, rails, ropes, or a combination of those means.

(xvi) When sinking shafts more than 75 feet (22.86 m) in depth, all cages, skips, and buckets shall be rope or rail guided to within a rail length from the sinking operation.

(xvii) Cages, skips, and buckets in all completed shafts, or in all shafts being used as completed shafts, shall be rope or rail-guided for the full length of their travel.

(xviii) Wire rope used in load lines of material hoists shall be capable of supporting, without failure, at least five times the maximum intended load or the factor recommended by the rope manufacturer, whichever is greater.

Refer to § 1926.552(c)(14)(iii) of this part for design factors for wire rope used in personnel hoists. The design factor shall be calculated by dividing the breaking strength of wire rope, as reported in the manufacturer's rating tables, by the total static load, including the weight of the wire rope in the shaft when fully extended.

(xix) A competent person shall visually check all hoisting machinery, equipment, anchorages, and hoisting rope at the beginning of each shift and during hoist use, as necessary.

(xx) Each safety device shall be checked by a competent person at least weekly during hoist use to ensure suitable operation and safe condition.

(xxi) In order to ensure suitable operation and safe condition of all functions and safety devices, each hoist assembly shall be inspected and load-tested to 100 percent of its rated capacity: at the time of installation; after any repairs or alterations affecting its structural integrity; after the operation of any safety device; and annually when in use. The employer shall prepare a certification record which includes the date each inspection and load-test was performed; the signature of the person who performed the inspection and test; and a serial number or other identifier for the hoist that was inspected and tested. The most recent certification record shall be maintained on file until completion of the project.

(xxii) Before hoisting personnel or material, the operator shall perform a test run of any cage or skip whenever it has been out of service for one complete shift, and whenever the assembly or components have been repaired or adjusted.

(xxiii) Unsafe conditions shall be corrected before using the equipment.

(4) *Additional requirements for personnel hoists.* (i) Hoist drum systems shall be equipped with at least two means of stopping the load, each of which shall be capable of stopping and holding 150 percent of the hoist's rated line pull. A broken-rope safety, safety catch, or arrestment device is not a permissible means of stopping under this paragraph.

(ii) The operator shall remain within sight and sound of the signals at the operator's station.

(iii) All sides of personnel cages shall be enclosed by one-half inch (12.70 mm) wire mesh (not less than No. 14 gauge or equivalent) to a height of not less than 6 feet (1.83 m). However, when the cage or skip is being used as a work platform, its sides may be reduced in height to 42 inches (1.07 m) when the conveyance is not in motion.

(iv) All personnel cages shall be provided with a positive locking door that does not open outward.

(v) All personnel cages shall be provided with a protective canopy. The canopy shall be made of steel plate, at least  $\frac{3}{16}$ -inch (4.763 mm) in thickness, or material of equivalent strength and impact resistance. The canopy shall be sloped to the outside, and so designed that a section may be readily pushed upward to afford emergency egress. The canopy shall cover the top in such a manner as to protect those inside from objects falling in the shaft.

(vi) Personnel platforms operating on guide rails or guide ropes shall be equipped with broken-rope safety devices, safety catches or arrestment devices that will stop and hold 150 percent of the weight of the personnel platform and its maximum rated load.

(vii) During sinking operations in shafts where guides and safeties are not yet used, the travel speed of the personnel platform shall not exceed 200 feet (60.96 m) per minute. Governor controls set for 200 feet (60.96 m) per minute shall be installed in the control system and shall be used during personnel hoisting.

(viii) The personnel platform may travel over the controlled length of the hoistway at rated speeds up to 600 feet (182.88 m) per minute during sinking operations in shafts where guides and safeties are used.

(ix) The personnel platform may travel at rated speeds greater than 600 feet (182.88 m) per minute in completed shafts.

\* \* \* \* \*

## Subpart T—Demolition

3. Revise the authority citation for subpart T of 29 CFR part 1926 to read as follows:

**Authority:** 40 U.S.C. 3701; 29 U.S.C. 653, 655, 657; and Secretary of Labor's Orders 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), 6-96 (62 FR 111), 5-2007 (72 FR 31159), or 1-2012 (77 FR 3912), as applicable.

4. Amend § 1926.856 by revising paragraph (c) to read as follows:

### § 1926.856 Removal of walls, floors, and material with equipment.

\* \* \* \* \*

(c) Cranes, derricks, and other mechanical equipment used must meet the requirements specified in subparts N, O, and CC of this part.

5. Amend § 1926.858 by revising paragraph (b) to read as follows:

### § 1926.858 Removal of steel construction.

\* \* \* \* \*

(b) Cranes, derricks, and other hoisting equipment used must meet the requirements specified in subparts N and CC of this part.

\* \* \* \* \*

## Subpart DD—[Removed]

6. Remove subpart DD.

[FR Doc. 2012-20170 Filed 8-16-12; 8:45 am]

BILLING CODE 4510-26-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 1

[MD Docket No. 12-201; FCC 12-77]

### Procedures for Assessment and Collection of Regulatory Fees; Assessment and Collection of Regulatory Fees for Fiscal Year 2008

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission seeks comment on proposals to reform the Commission's policies and procedures for assessing and collecting regulatory fees. Extensive changes have occurred in the communications marketplace, and in the Commission's regulatory efforts, since the Schedule of Regulatory Fees was enacted by Congress in 1994. In the period directly following enactment of the Telecommunications Act of 1996, industry development and Commission regulation centered primarily on wireline local and long distance communications.

Subsequently, however, the mobile wireless industry has grown exponentially, shifting Commission resources to, among other things, the wireless industry, while the costs of implementing the 1996 Telecommunications Act decreased. These changes have produced corresponding shifts in the Commission's regulatory activity. These shifts in the cost of the Commission's activities are not always reflected in our current regulatory fees. Although the Commission has made a number of discrete changes to the regulatory fee program since 1994, we have not revised the data on which our fees are based since 1998, nor have we undertaken a comprehensive analysis of all the substantive and procedural aspects of our regulatory fee program in light of the current state of the communications industry. This proceeding will serve as the means by which we will seek comment on the issues related to how the Commission should allocate its regulatory costs among different segments of the communications industry.

**DATES:** Comments are due September 17, 2012 and reply comments are due October 16, 2012.

**ADDRESSES:** You may submit comments, identified by MD Docket No. 12–201, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site:* <http://www.fcc.gov/cgb/ecfs>. Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202–418–0530 or TTY: 202–418–0432.

- *Email:* [ecfs@fcc.gov](mailto:ecfs@fcc.gov). Include MD Docket No. 12–201 in the subject line of the message.

- *Mail:* Commercial overnight mail (other than U.S. Postal Service Express Mail, and Priority Mail, must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street SW., Washington DC 20554.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

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

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM), FCC 12–77, MD Docket No. 12–201, adopted on July 13, 2012 and released on July 17, 2012. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street SW., Room CY–A257, Portals II, Washington, DC 20554, and may also be purchased from the Commission's copy contractor, BCPI, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI, Inc. via their Web site, <http://www.bcpi.com>, or call 1–800–378–3160. This document is available in alternative formats (computer diskette, large print, audio record, and braille). Persons with disabilities who need documents in these formats may contact the FCC by email: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202–418–0530 or TTY: 202–418–0432.

## I. Procedural Matters

### A. Ex Parte Information

1. The proceeding this NPRM initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission's *ex parte* rules.<sup>1</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by

rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

### B. Comment Filing Procedures

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

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

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

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

<sup>1</sup> 47 CFR 1.1200 *et seq.*

■ U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.

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

#### 3. Availability of Documents.

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

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

#### C. Initial Paperwork Reduction Act of 1995 Analysis

5. This document solicits possible proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the possible proposed information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

#### D. Initial Regulatory Flexibility Analysis

6. An initial regulatory flexibility analysis ("IRFA") is contained in the Initial Regulatory Flexibility Analysis section. Comments to the IRFA must be identified as responses to the IRFA and filed by the deadlines for comments on this NPRM. The Commission will send a copy of this NPRM, including the

IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

## II. Introduction

7. Today we seek comment on proposals to reform the Commission's policies and procedures for assessing and collecting regulatory fees. Extensive changes have occurred in the communications marketplace, and in the Commission's regulatory efforts, since the Schedule of Regulatory Fees was enacted by Congress in 1994. In the period directly following enactment of the Telecommunications Act of 1996, industry development and Commission regulation centered primarily on wireline local and long distance communications. Subsequently, however, the mobile wireless industry has grown exponentially, shifting Commission resources to, among other things, the wireless industry, while the costs of implementing the 1996 Telecommunications Act decreased. Meanwhile, digital and Internet protocol (IP)-based technologies have enabled wired and wireless companies, satellite companies, broadcasters, and cable television companies to engage in increased intermodal competition.

8. These changes have produced corresponding shifts in the Commission's regulatory activity. These shifts in the cost of the Commission's activities are not always reflected in our current regulatory fees. Although the Commission has made a number of discrete changes to the regulatory fee program since 1994, we have not revised the data on which our fees are based since 1998, nor have we undertaken a comprehensive analysis of all the substantive and procedural aspects of our regulatory fee program in light of the current state of the communications industry. This proceeding will serve as the means by which we will undertake that comprehensive analysis.<sup>2</sup>

9. This Notice of Proposed Rulemaking (NPRM) seeks comment on the issues related to how the Commission should allocate its regulatory costs among different segments of the communications industry. In particular, we seek comment on:

- *What the Overarching Goals of the Regulatory Fee Program Should Be.* We

<sup>2</sup> A number of comments on revising the regulatory fee program were received in MD Docket No. 08-65. *See Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, MD Docket No. 08-65, Report and Order and Further Notice of Proposed Rulemaking, 73 FR 50285 (August 26, 2008) ("FY 2008 Further Notice of Proposed Rulemaking"). We will incorporate those comments into the record of this proceeding.

propose three goals to guide our regulatory fee policymaking—fairness, administrability, and sustainability—and we seek comment on these goals and invite commenters to propose others.

- *Regulatory Costs Should Be Allocated.* Section 9 of the Communications Act requires that regulatory fees be derived by determining the number of full-time equivalent employees (FTEs) performing certain activities. We propose to change the way we allocate "direct" and "indirect" FTEs to calculate regulatory fees. The proposals on which we seek comment are based on aggregated bureau-level FTE data, and would allocate all FTEs in the Wireless Telecommunications, Media, Wireline Competition, and International Bureaus as "direct" and all FTEs in the support bureaus and offices as "indirect."

- *How Current Cost Allocation Percentages Should Be Revised.* We then look at the cost allocation percentages that we use now and propose to update these percentages using current FTE data derived from the reallocation of FTEs described above. We set out the adjustments projected to result from these updates, examine the impact of these adjustments on the categories of fee payors, ask whether and how we should mitigate the impact of any substantial fee increases that would result, and ask whether any other changes are necessary to ensure an equitable result.

## III. Background

### A. Statutory Framework

10. Section 9(a)(1) of the Communications 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 Appropriations Acts," and must "be established in amounts that will result in collection, during each fiscal year, of an amount that can reasonably be expected to equal the amount appropriated for such fiscal year for the performance of the activities described in subsection (a)."<sup>4</sup> Since FY 2009, Congress has directed the Commission to assess and collect regulatory fees under section 9(b)(1)(B)

<sup>3</sup> 47 U.S.C. 159(a)(1).

<sup>4</sup> *Id.* 159(a)(2), (b)(1)(B).

in an amount equal to the entire amount appropriated.<sup>5</sup>

11. Section 9(b) states in general terms how regulatory fees are to be derived. Section 9(b)(1)(A) states that fees are to be calculated by determining the full-time equivalent number of employees (FTEs) performing the activities enumerated in section 9(a)(1) “within the three licensing bureaus as they existed at that time and that formed the core of our regulatory fee assessment program, i.e. the Private Radio Bureau, Mass Media Bureau, and Common Carrier Bureau.<sup>6</sup> FTEs in the other offices of the Commission are also calculated, and the fees that result are adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission’s activities, including such factors as service area coverage, shared use versus exclusive use, and other factors that the Commission determines are necessary in the public interest.”<sup>7</sup> The Commission issues a notice of proposed rulemaking (NPRM) in the third quarter of each fiscal year, stating how it derives the fees for that fiscal year and proposing the amounts that the payors in each fee category will be required to pay in order to offset the amount of the Commission’s appropriation for that fiscal year.<sup>8</sup> The Commission issues a report and order

during the fourth quarter of each fiscal year.<sup>9</sup> The report and order sets the amounts to be paid by all fee payors, discusses any issues raised in response to the NPRM and sets out the procedures for payment of fees.

#### B. Historic Regulatory Approach

12. Section 9(b)(1)(A) states that regulatory fees are to recover the costs of the FTEs performing the regulatory activities set forth in section 9(a)(1). Consistent with this statutory requirement, the Commission’s cost assessment methodology uses FTEs as the starting point in determining the fees regulatees in each fee category will pay each fiscal year.

13. Although the statute specifies that FTEs are the basis for calculating regulatory fees, it does not specify the precise type of FTE data that must be used; e.g., whether the Commission must use employees’ time cards to tally the time each employee reports as having been spent on regulating specific licensees or regulatees, or whether the Commission may aggregate the work of FTEs in some other way. In FYs 1997–1998, the Commission based its FTE calculations on employee time cards. This method involved employees’ tracking time by regulatory fee category, and regulatory fees were then allocated based on a core bureaus’ relative share of employee time, both direct (employees within a core bureau working on matters related to regulatory fee categories within that bureau) and indirect (employees from all bureaus and offices providing support functions related to multiple, perhaps even all, regulatory fee categories). The Commission abandoned this approach in FY 1999 because not only did time card entries prove subjective and unreliable, but they also resulted in unpredictable and substantial shifts in regulatory fees from year to year.

14. The allocations of direct and indirect FTEs we currently use are taken from FTE data compiled in FY 1998. The Commission allocates FTEs according to the nature of the employees’ work. If the work performed by an employee can be assigned to a regulatory fee category in one of the four core licensing bureaus—Wireless Telecommunications, Media, Wireline Competition, and International, — that employee’s time is counted as a direct FTE. If the work cannot be assigned to one of the bureau’s designated fee categories, the employee’s time is

counted as an indirect FTE. Indirect FTEs are allocated proportionally across the four core bureaus. Therefore, under our current system, the total FTEs for each fee category includes the direct FTEs associated with that category, plus proportional allocations of indirect FTEs from inside and outside the bureau. The total number of FTEs for each of the bureau’s fee categories was then divided by the combined FTE numbers for all four core bureaus to produce an allocation percentage for each fee category, e.g., the percentage of total regulatory fee revenues that must be recovered from each fee category in order to collect the total amount specified by Congress.<sup>10</sup>

15. Although the Commission has used the same allocation percentages every fiscal year since FY 1998, each year the Commission reviews the projected number of fee payors in each service category. These payors are referred to generically as “units,” because the fees for payors in different service categories reflect characteristics appropriate to each service, such as the number of licenses or number of subscribers the fee payor has. We look for changes in the industry, changes in industry segments, and various other issues as explained in each year’s regular regulatory fee NPRM. Finally, the fee rate for each fee category is determined by dividing the revenue amount to be collected from each fee category by its projected number of units.

16. Table 1 illustrates the process using this methodology. Each fiscal year Congress reviews the Commission’s budget submission and determines the appropriation for that year. The amount Congress appropriates becomes the target for the aggregate amount of regulatory fees to be collected. Table 1 uses a hypothetical appropriation of \$100,000,000 as the target amount of regulatory fees to be collected. Column 1 represents the various fee categories in which a regulatee will pay a fee. Column 2 shows the allocation percentages that are applied. And Column 3 represents the multiplication of the target amount by each allocation percentage.

17. The Commission first multiplies the \$100,000,000 target amount by the

<sup>5</sup> See, e.g., Consolidated Appropriations Act, 2012, Public Law 112–74 (Dec. 23, 2011) (appropriating \$339,844,000 and providing “[t]hat \$339,844,000 of offsetting collections shall be assessed and collected pursuant to section 9 of title I of the Communications Act of 1934, [and] shall be retained and used for necessary expenses in this appropriation”). In prior years (FY 2004 through FY 2008), Congress directed the Commission to offset all but \$1 million of its appropriation. See Consolidated Appropriations Act, 2004, Public Law 108–99, 118 Stat. 3 (2004), Consolidated Appropriations Act, 2005, Public Law 108–447, 118 Stat. 2809, 2908 (2004); Science, State, Justice, Commerce and Related Agencies Appropriation Act, 2006, Public Law 109–108, 199 Stat. 2290, 2329–30 (2005); Continuing Appropriations Resolution, 2007, Public Law 110–5, 121 Stat. 8 (2007); and Consolidated Appropriations Act, 2008, Public Law 110–161, 121 Stat. 1844, 1998 (2007). In the Omnibus Appropriations Act, 2009, Public Law 111–8, 123 Stat. 524, 657 (2009) Congress required, for the first time that the Commission collect fees in the full amount of its appropriation.

<sup>6</sup> Subsequent to the enactment of section 9 the Commission reorganized and renamed the Private Radio Bureau, Mass Media Bureau, and Common Carrier Bureaus as the Wireless Telecommunications Bureau, Media Bureau, and Wireline Competition Bureau respectively. Regulation of international telecommunications was transferred from these Bureaus and consolidated into a new International Bureau. For simplicity and ease of reference, in this NPRM we will refer to these four bureaus as the “core” bureaus or the “core licensing” bureaus.

<sup>7</sup> 47 U.S.C. 159(b)(1)(A).

<sup>8</sup> See, e.g., *Assessment and Collection of Regulatory Fees for Fiscal Year 2011*, Notice of Proposed Rulemaking, 26 FCC Rcd 7068 (2011) (“FY 2011 Notice of Proposed Rulemaking”).

<sup>9</sup> See, e.g., *Assessment and Collection of Regulatory Fees for Fiscal Year 2011*, Report and Order, 26 FCC Rcd 10812 (2011) (“FY 2011 Report and Order”).

<sup>10</sup> The Schedule of Regulatory Fees enacted as section 9(g) in 1994 contained the fees to be paid by different categories of regulatees in the (then) three named bureaus. Section 9(g) specified that the Commission was to use this fee schedule until the Commission adjusted it pursuant to section 9(b). The Commission has made substantial adjustments to this fee schedule since 1994, adding fee categories and altering others. The 46 categories of fee payors listed in the original fee schedule had grown to 86 in 2011.

current FTE allocation percentages in Column 2 to determine the amount of revenue to be collected from each fee category in Column 3. To determine the regulatory fee rate, the amounts in Column 3 are divided by their

respective unit counts (the number of payors) to determine the fee amount that each regulatee will pay in that fee category prior to rounding pursuant to section 9(b)(2)(B). Thus, each year the regulatory fee rate is a function of (1)

changes in the appropriation amount from one year to the next, and (2) changes in the unit count from the prior year for each respective fee category.

TABLE 1—HYPOTHETICAL \$100 MILLION TARGET GOAL ALLOCATIONS

Fee category Column One	Starting point FTE allocation percentage (%) Column Two	Expected revenue amount by fee category Column Three
PLMRS (Exclusive Use) .....	.14	\$140,000
PLMRS (Shared use) .....	.67	670,000
Microwave .....	.66	660,000
218–219 MHz (Formerly IVDS) .....	.001	1,000
Marine (Ship) .....	.22	220,000
GMRS .....	.08	80,000
Aviation (Aircraft) .....	.10	100,000
Marine (Coast) .....	.04	40,000
Aviation (Ground) .....	.04	40,000
Amateur Vanity Call Signs .....	.06	60,000
AM Class A .....	.07	70,000
AM Class B .....	.87	870,000
AM Class C .....	.31	310,000
AM Class D .....	1.03	1,030,000
FM Classes A, B1 & C3 .....	2.13	2,130,000
FM Classes B, C, C0, C1 & C2 .....	2.62	2,620,000
AM Construction Permits .....	.01	10,000
FM Construction Permits .....	.1	100,000
Satellite TV .....	.05	50,000
Satellite TV Construction Permit .....	.001	1,000
VHF Markets 1–10 .....	.95	950,000
VHF Markets 11–25 .....	.97	970,000
VHF Markets 26–50 .....	.82	820,000
VHF Markets 51–100 .....	.79	790,000
VHF Remaining Markets .....	.35	350,000
VHF Construction Permits .....	.01	10,000
UHF Markets 1–10 .....	.6	600,000
UHF Markets 11–25 .....	.49	490,000
UHF Markets 26–50 .....	.41	410,000
UHF Markets 51–100 .....	.35	350,000
UHF Remaining Markets .....	.11	110,000
UHF Construction Permits .....	.07	70,000
Broadcast Auxiliaries .....	.08	80,000
LPTV/Translators/Boosters/Class A TV .....	.40	400,000
CARS Stations .....	.05	50,000
Cable TV Systems .....	16.55	16,550,000
Interstate Telecommunication Service Providers .....	46.66	46,660,000
CMRS Mobile Services (Cellular/Public Mobile) .....	14.33	14,330,000
CMRS Messaging Services .....	.32	320,000
BRS .....	.16	160,000
LMDS .....	.03	30,000
Per 64 kbps Int'l Bearer Circuits, Terrestrial (Common) & Satellite (Common & Non-Common) .....	.32	320,000
Submarine Cable Providers .....	2.28	2,280,000
Earth Stations .....	.25	250,000
Space Stations (Geostationary) .....	3.23	3,230,000
Space Stations (Non-Geostationary) .....	.24	240,000
***** Total Estimated Revenue To Be Collected .....	100.00	100,022,000

### C. The Problems of the Current Approach

18. As noted previously, the changes that have occurred since 1998 in the communications industry have caused significant shifts in the amount of time the Commission devotes to specific industry segments and activities.

Therefore, FY 1998 FTE data may no longer accurately reflect the allocation of Commission employees' time across different parts of the industry. However, simply substituting current FTE data for the 1998 FTE data would cause fees for some classes of fee payors to increase significantly, so we seek to examine how best to address in a fair and

equitable manner any significant shifts. In addition, new technologies have caused an exponential increase in intermodal competition across formerly distinct industry platforms. This has made it even more common today than in 1998 that a Commission employee's work may be attributed to more than one fee category. For example, the cost

of an employee's work in designing incentive auctions might be attributable to several fee categories within the media sector, but it would also potentially benefit providers of mobile broadband services who would ultimately use the reclaimed spectrum. The practical difficulties we would encounter today in parsing out an employee's time among all of the industry groups affected by his or her work would produce unpredictable annual changes in regulatory fees. Proposals to address these and related problems are presented below.

#### IV. Issues Raised For Comment

##### A. Setting Goals To Guide Our Approach to Regulatory Fees

19. First, we seek comment on setting goals for regulatory fee collection that will guide the reforms that result from this NPRM and adjustments that the Commission will need to make from time to time afterwards. We are of course guided first and foremost by Congress's direction in section 9. At the same time, Congress has left us flexibility in setting the fees to take into account a variety of factors, including "factors that the Commission determines are necessary in the public interest."<sup>11</sup> We propose three overarching goals for the regulatory fees program, and we invite parties to propose other goals for consideration.

20. *Fairness.* Allocation of regulatory fee burdens among regulatees should be fair. All regulatees interact with and benefit from the work of the Commission, but not in equal measure. For example, a very large company with hundreds of licenses and authorizations is likely to engage much more frequently with the Commission than a local company or cooperative. Similarly, regulatees' ability to pay varies with their size and revenues—imposing the same fee on a Fortune 500 company and a local family business would have very different effects on those entities. And over time, as similar services are provided over different technologies, regulatees may be paying different fees while providing similar services, not because there is a meaningful difference in their relationship with the Commission but simply because their services fall into different fee categories (or fall outside our established categories altogether). We propose establishing fairness as a goal of our regulatory fee program, so that the burdens of regulatory fees are borne in an equitable manner that does not

distort the marketplace. We seek comment on this goal.

21. *Administrability.* Section 9 directs that fees be set by reference to the number of FTEs performing enforcement activities, policy and rulemaking activities, user information services, and international activities within the Wireless Telecommunications, Media, Wireline Competition, and International Bureaus. A fee system that strictly aligned FTEs with these activities and Bureaus on an ongoing basis would require a complex time and accounting system like the one the Commission tried in 1997 and 1998 and abandoned in 1999 due in part to the unpredictability and rapid shifts in fee rates that it created for fee payors. Keeping the fee schedule up to date could result in large shifts in fees from year to year, as the Commission's priorities and areas of focus change. For example, if in one year the Public Safety and Homeland Security Bureau handles rulemakings related to broadcasting, but in the following year focuses on wireless services, the resulting shift in FTE allocations could have a substantial impact on the size of regulatory fees, which could then shift significantly again the very next year. We believe that the regulatory fee system should be administrable, both for the Commission and for payors. We seek comment on this goal.

22. *Sustainability.* The methodology for regulatory fees should be flexible enough to adapt to changes in technology and marketing that affect how our regulatees do business. In 2007, the Commission extended regulatory fee obligations to providers of interconnected voice over Internet protocol services (VoIP), noting "the many and increasing resources the Commission now dedicates to VoIP" and that "[i]nterconnected VoIP service is increasingly used to replace traditional telephone service and . . . the interconnected VoIP service industry continues to grow and to attract customers who previously relied on traditional voice service."<sup>12</sup> The concern the Commission addressed in 2007 will continue to arise as service platforms and models change and converge. As video, voice, and data services are provided in new ways, our regulatory fee system must also evolve to ensure that the fee burden remains equitably distributed among regulatees. We seek comment on this goal.

23. Our goals must work within the statute, not against it. Section 9 requires

that the Commission collect fees by determining "the full-time equivalent number of employees" performing specified activities in the Bureaus and Offices. We intend that the proposed goals guide our interpretation of section 9, and we seek comment on the best ways to take the goals into account as we assign FTEs to the statutory categories and establish specific fee amounts.

##### B. Changing the Current Cost Allocation Methodology

24. As explained more fully below, the cost allocation data we currently use were derived in FY 1998 by totaling employees' time cards entries to arrive at the aggregate number of FTEs engaged in each feeable activity. The first question that arises is whether the Commission should aggregate employee time card entries to derive its FTE allocations, or whether aggregating data on a less granular basis would be accurate and workable. For the reasons discussed below, we seek comment on whether we should simplify the way direct and indirect FTEs are aggregated and update the FTE data that we use. We invite interested parties to share their views with respect to the issues set forth below.

##### 1. Reallocation of FTEs Among Bureaus

25. Although not required by section 9, our current cost assignment methodology is based on the presumption that work of employees in the four core bureaus should be treated differently depending on whether an employee is "directly" involved in a feeable activity or "indirectly" involved, as in a support capacity. The costs of FTEs directly working on projects corresponding to a regulatory fee category are directly assigned to that category. By contrast, the costs of all FTEs in the core bureaus indirectly involved, or providing support functions, are treated as indirect costs and are currently distributed proportionally across the four core bureau. The proportional allocation of indirect FTEs corresponds to each core bureau's actual percentage of direct FTEs. The indirect work performed by FTEs within a core bureau, therefore, may not be attributable to a specific fee category in their core bureau. Nevertheless, it is clear that the work of *all* the FTEs in a core bureau, whether direct or indirect, contributes to the cost of regulating licensees of that bureau. Therefore, we may reasonably expect that the work of the FTEs in the core bureaus would remain focused on the industry segment regulated by each of

<sup>12</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, Report and Order, 22 FCC Rcd 15712, 15717–18 paras. 12–13 (2007).

<sup>11</sup> 47 U.S.C. 159(b)(1)(A).

those bureaus.<sup>13</sup> We seek comment on whether we should change the way FTEs are allocated within a bureau, and we propose that all the FTEs in each of the core bureaus should be considered direct FTE costs for that bureau.

26. Most of the work of the bureaus and offices outside the four core licensing bureaus is currently considered as indirect FTE costs because the work does not focus on any one industry segment; rather, these bureaus and offices support the work of all of the core bureaus. As with the indirect FTEs within the core bureaus, the work of FTEs in non-core bureaus that cannot be directly assigned to a regulatory fee category is treated as indirect costs and distributed proportionally across the core bureaus according to these bureaus' respective percentages of the Commission's total direct FTE costs. As in the case of our allocation of direct FTEs, we believe that it would serve the public interest to find a more consistent and workable way to allocate indirect FTEs. Any attempt to redistribute these indirect costs on a task-by-task basis would be neither consistent nor workable, requiring us to assign more costs to certain divisions of support bureaus or offices for certain licensees at a given point in time, and then reassign these costs as the work of that division changes from month to month, week to week, or even day to day.<sup>14</sup> This would be far more complicated and subjective than our current approach, requiring constant recalculations as FTEs within a bureau are given different job assignments.<sup>15</sup> Unlike the case of the FTEs in the core bureaus, the work of the FTEs in the support bureaus and offices is not primarily focused on any one bureau or regulatory fee category, but instead serves the needs of all four core bureaus.

27. Just as section 9 contains no requirement that we classify FTEs as

“direct” and “indirect,” it does not prescribe how the Commission should account for the FTE costs of its support bureaus and offices. Consistent with our finding in paragraph 19 above that the work of the employees in the core bureaus and offices is primarily focused on the industry segment regulated by each bureau and that the work—and the costs—of all the employees of those bureaus would correctly be considered direct FTE costs of their respective bureaus, we seek comment on whether, because the work of employees in the non-core bureaus supports the work of all the core bureaus, the FTE costs of these non-core bureaus and offices should all be treated as indirect costs and allocated among each of the core bureaus in the same percentage as that bureau's direct FTE percentage is to the total direct FTE costs of all the core bureaus.

## 2. Updating and Adjusting the Allocation Percentages Among Bureaus

28. We have previously sought comment on whether and how to update our current FTE allocation percentages to reflect changes in the industry and in the Commission's workload that have occurred since they were adopted.<sup>16</sup> We will resolve this issue in this proceeding, and we will incorporate into the record of this proceeding relevant comments filed in prior proceedings.<sup>17</sup>

29. Commenters previously addressing this issue advocated that we revise the FTE allocation percentages by using updated FTE data.<sup>18</sup> They argued that it is inequitable to burden the licensees in the core bureaus with a larger share of regulatory fees than their respective percentage share of FTE staffing at the Commission. We seek comment on whether the FY 1998 FTE allocation percentages should be

replaced with allocation percentages using up-to-date FY 2012 FTE data.

30. Reallocation of direct and indirect FTEs using aggregated FTE data involves counting the number of FTEs in each of the agency's four core licensing bureaus to determine what percentage each comprises of the total number of FTEs in all the core bureaus.<sup>19</sup> The tentative results of this recalculation, using current FTE staffing levels, produces the following numbers and percentages of direct FTEs in the four core licensing bureaus: International Bureau, 122 FTEs (22.0% of total FTEs in the four core bureaus); Media Bureau, 183 (32.9%); Wireline Competition Bureau, 154 (27.7%); and Wireless Telecommunications Bureau, 97 (17.4%).<sup>20</sup> These 556 FTEs constitute 36 percent of the Commission's total FTEs and we would treat them as direct FTE costs for purposes of allocating regulatory fees. There are currently 1,000 FTEs in the support bureaus and offices. As proposed in paragraph 20 above, these would all be treated as indirect FTEs and allocated proportionately across the four core bureaus. This produces the following adjusted FTE totals for each of the core bureaus: International Bureau, 221 FTEs; Media Bureau, 329 FTEs; Wireline Competition Bureau, 276 FTEs; and Wireless Telecommunications Bureau, 174 FTEs.

31. A comparison of the allocation percentages currently in use with the allocation percentages that result from the use of updated FTE figures produces mixed results. The percentage of regulatory fees currently collected from regulatees in the Wireless Telecommunications Bureau would remain unchanged at 17.4 percent. The allocation percentage would increase only slightly for fee payors in Media Bureau service categories, from 31.9 percent to 32.9 percent. However, use of the updated FTE figures would reduce the percentage of regulatory fees allocated to regulatees in the Wireline Competition Bureau from 44.0 percent to 27.7 percent and increase the percentage of fees allocated to payors in the International Bureau from 6.7 percent to 22.0 percent.

32. We seek comment on whether the projected increase in fees for International Bureau regulatees would be consistent with our goals of fairness

<sup>13</sup> The International Bureau may be an exception to this expectation as discussed in Paragraphs 26–28 below.

<sup>14</sup> For example, under this approach the work of attorneys and support staff in Litigation and Administrative Law Divisions of the Office of General Counsel would fluctuate, and the corresponding costs would have to be continually reassigned, depending on how much of their work is being devoted to media, wireless, wireline and other matters.

<sup>15</sup> For example, the Satellite Industry Association (SIA) states that certain divisions in the Enforcement Bureau may not be relevant to regulating satellite licensees. SIA reply comments at 8, *FY 2008 Further Notice of Proposed Rulemaking*, *supra* n. 1. While that may be true at a given point in time, at another time all members of that division may be engaged in an investigation involving satellite providers, or certain members engaged in investigations or other activity affecting satellite providers, either directly or indirectly.

<sup>16</sup> *FY 2008 Further Notice of Proposed Rulemaking*, *supra* n. 1, at paras. 27–30. We also released a Public Notice on September 3, 2008 providing information on FTEs, direct costs, and indirect costs. See “Office of Managing Director Releases Data to Assist Commenters on Issues Presented in Further Notice of Proposed Rulemaking,” Adopted August 1, 2008, MD Docket No. 08–65, Public Notice, DA 08–2033 (September 3, 2008).

<sup>17</sup> To assure that all previous comments are considered, parties that have previously commented on any of these issues are requested to attach or cite their prior comments in their filings in this proceeding.

<sup>18</sup> See, e.g., USTA Comments at 2; AT&T Comments at 3; FIT Reply Comments at 5; EWA Reply Comments at 1–2; Sprint Reply Comments at 2; NTCA Reply Comments at 2; MetroPCS Reply Comments at 2; CTIA Reply Comments at 3; AT&T Reply Comments, *FY 2008 Further Notice of Proposed Rulemaking*, *supra* n. 1.

<sup>19</sup> FTEs are based on actual end of fiscal year 2011 figures, the most recent data that is currently available.

<sup>20</sup> These totals represent only the number of direct FTEs funded by regulatory fees. They do not include direct FTEs funded by other revenues, e.g., by auction or USF proceeds, nor do they include indirect FTEs.



and sustainability. In this regard we note that much of the work within the Strategic Analysis and Negotiations Division of the International Bureau covers services outside of the Bureau's direct regulatory activities. For example, this Division has primary responsibility for leading the Commission's international representation in bilateral meetings, multilateral meetings, and cross-border spectrum negotiations with Canada and Mexico on spectrum sharing arrangements, and notifications to the International Telecommunications Union (ITU), as well as participation in ITU Study Groups. Though focused on the international community, this international work covers the entire gamut of the Commission's regulatory responsibilities.

33. If such work benefits all classes of providers, should the associated FTEs be excluded from the International Bureau's direct costs and, instead, be allocated as indirect costs like a support bureau? Is this situation unique to the International Bureau? The International Bureau has estimated that as much as one half of the FTEs in the Bureau work on matters covering services other than international services. Reallocation of 50% of the FTEs in the International Bureau proportionately to the other core bureaus would result in the following allocation: International Bureau, 61 FTEs, representing 10.97% of total FTEs in the four core bureaus; Media Bureau, 208.72 (37.54%); Wireline Competition Bureau, 175.64 (31.59%); and Wireless Telecommunications Bureau, 110.64 (19.9%).

34. We ask commenters to address all the issues regarding how to ameliorate the effect of using updated FTE data on regulatees paying fees in the International Bureau's service categories. Would this reallocation be equitable?

35. Are there analogous groups within the other core bureaus whose work covers services outside of the core bureau's direct regulatory activities? If so, how should those FTEs be allocated, or should adjustments be made to our proposed allocation of FTEs for those core bureaus to account for such broadly cross-cutting work in a core bureau? We also seek comment on whether further adjustments of the allocation of FTEs should be made. Should adjustments be made whenever, as discussed above, the work of one bureau supports the work of one or more other bureaus? Would this be a workable and sufficient way to allocate regulatory fees fairly between industry sectors consistent with section 9, or is there a more equitable way, consistent with statute, to allocate

regulatory fees between and/or within industry sectors? For example, should regulatory fee categories in section 9 be combined or eliminated, given the change in the telecommunications landscape since 1998? Should additional regulatory fee categories such as broadband be added to the regulatory fee schedule set forth in section 9? We seek comment on whether the Commission has authority, under section 9, to include broadband as a fee category. If additional fee categories are created, how should their costs be assessed? To the extent that licensees offer services that are regulated by more than one core bureau, how would the addition of new fee categories affect the allocation of FTEs by core bureau?

36. We note that section 9(b)(1)(A) allows the Commission to adjust regulatory fees "to take into account factors that are reasonably related to the benefits provided the payor of the fee by the Commission's activities, including such factors as service area coverage, shared use versus exclusive use, and other factors that the Commission determines to be in the public interest." How should "benefits provided to the payor" be determined? Should such benefit be measured by the level of regulation of such payor, or by some measure of the amount of regulatory activity attributable to a specific payor in a given year? Or should "benefits provide the payor" be found to include all benefits received as a result of the Commission's work, even benefit from efforts to reduce regulation of a particular industry sector? How does one measure such benefit? Is relative market share, or total revenues, a good measure of the benefit the payor receives from the work of the Commission to promote competition and remove barriers to market entry? If so, should all payors be assessed based on revenues? Is it technically feasible to assess all regulatory fee categories based on revenues? How could the Commission ensure such assessment is based on accurate, reliable revenue information from all industry sectors? What additional reporting requirements would be necessary to obtain the information necessary to assess all payors on a revenues basis?

37. Are there other factors the Commission should consider in rebalancing regulatory fees in order to achieve the goals discussed above? For example, does section 9 allow the Commission to mitigate the effects of fee increases to a particular industry segment by providing interim adjustments, by phasing in the new fees over a period of time, or by providing relief in some other way? How would

the Commission administer any recommended mitigation?

38. Finally, how often should the Commission revisit the allocation resulting from this rulemaking? Should this reexamination be undertaken at regular intervals, or in response to comments by fee payors in the annual regulatory fee collection NPRM? If such reexamination is done at regular intervals, for example, annually, how can we ensure continued predictability and collectability of fees? Would it be appropriate to simply update the Commission's FTE allocation each year, without regard to the impact of significant increases of regulatory fees on certain regulatory fee categories? Would such fluctuations be especially problematic for small service providers who are likely least able to absorb unpredictable changes in fees from year to year?

### 3. Reallocation of FTEs Within Bureaus

39. As noted previously, our current FTE allocations and the resulting allocation percentages were first used in FY 1999 and are based on FY 1998 FTE data. We request comment on updating and reallocating FTEs among the fee categories within each of the core bureaus. For example, within the International Bureau, there are five fee categories: Bearer Circuits, Submarine Cable Providers, Earth Stations, Space Stations (Geostationary), and Space Stations (Non-Geostationary). Regulatory fees are currently allocated among these five fee categories as follows: Bearer Circuits (5.1%), Submarine Cable Providers (36.1%), Earth Stations (3.9%), Space Stations (Geostationary) (51.1%), and Space Stations (Non-Geostationary) (3.8%).

40. Although one option would be to continue using these relative allocation percentages among the fee categories in each of the core bureaus, we seek comment on whether it would better serve the public interest for management in each of the core bureaus to revise their internal FTE allocation percentages based on management's assessment of the current distribution of work within the bureau. We also seek comment on whether they should do such analysis and update of the FTE allocation among fee categories within the bureau every three years unless a substantial shift in the nature or extent of a bureau's duties warrants reexamination in the interim. Commenters advocating alternatives or modifications to this proposed approach should describe in specific detail how the suggested alternative or modification would work and why it would be preferable to allocation based



on assessment of the current distribution of work within the bureau described herein.

**V. Conclusion**

41. Fundamental to this NPRM is the Commission’s desire to assure that the methodology we use to derive

regulatory fees is consistent with statutory requirements, fair, efficiently administered, and sustainable. This NPRM proposes a number of innovative alternatives designed to achieve those goals. Interested parties are invited to comment on the suitability of these

goals, the effectiveness of the alternatives proposed in this NPRM in meeting these or other appropriate goals, and the Commission’s jurisdiction to adopt any of the alternatives discussed in the NPRM or proposed in response to it.

TABLE 2—LIST OF COMMENTERS

Commenter	Abbreviated name
American Association of Paging Carriers .....	AAPC.
AT&T, Inc .....	AT&T.
DirecTV, Inc. and DISH Network LLC .....	DirecTV and DISH.
Enterprise Wireless Alliance .....	EWA.
Independent Telephone and Telecommunications Alliance .....	ITTA.
National Cable and Telecommunications Association .....	NCTA.
Personal Radio Steering Group, Inc .....	PRSG.
PCIA—The Wireless Infrastructure Association .....	PCIA.
United States Telecom Association .....	USTA.
Verizon Communications, Inc .....	Verizon.

LIST OF COMMENTERS—REPLY COMMENTS

Commenter	Abbreviated name
American Cable Association .....	ACA.
AT&T, Inc .....	AT&T.
CTIA—The Wireless Association® .....	CTIA.
DirecTV, Inc. and DISH Network LLC .....	DirecTV and DISH.
Enterprise Wireless Alliance .....	EWA.
Forest Industries Telecommunications .....	FIT.
MetroPCS Communications, Inc .....	MetroPCS.
National Telecommunications Cooperative Association .....	NTCA.
Satellite Industry Association .....	SIA.
Sprint Nextel Corporation .....	Sprint.
Verizon Communications, Inc .....	Verizon.
Wireless Cable Coalition .....	WCC.

**Initial Regulatory Flexibility Analysis**

42. As required by the Regulatory Flexibility Act (RFA),<sup>21</sup> the Commission prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed on or before the dates indicated on the first page of this Notice of Proposed Rulemaking. The Commission will send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>22</sup> In addition, the NPRM and

IRFA (or summaries thereof) will be published in the **Federal Register**.<sup>23</sup>

*I. Need for, and Objectives of, the NPRM*

43. In this NPRM we seek public comment on approaches to update and reform the process by which the Commission calculates and assesses regulatory fees under section 9 of the Communications Act. We propose to be guided in this examination by the goals of fairness, administrability, and sustainability, and we seek comment on these goals. We seek comment on four key areas regarding the regulatory fee process: (1) revising the way in which direct and indirect FTEs (full-time [employee]equivalents) are allocated; (2) using the current number of FTEs as the basis for calculating regulatory fee allocation percentages; (3) ameliorating the impact of fee increases that would otherwise result from using current FTE percentages, especially on entities providing international communication services; and (4) asking whether and how the current number of regulatory

fee categories can be changed, for example, by adding broadband and/or by reducing the number of fee categories.

44. Section 9 of the Act states that the basis for calculating regulatory costs is the number of FTEs performing enforcement, policy and rulemaking, and international activities, as well as providing user information services. The Commission has historically regarded the costs generated by individuals working specifically on those activities as “direct” costs, whereas the cost of employees providing support efforts have been considered “indirect” costs. The NPRM first seeks comment on whether to revise this approach. In order to provide a more consistent and workable way to allocate FTEs, we propose that all the direct and indirect FTEs in each of the four core licensing bureaus—The Wireless Telecommunications, Wireline Competition, Media, and International Bureaus—be allocated to the Bureau in which they work. Indirect FTEs outside the core bureaus would be allocated

<sup>21</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>22</sup> 5 U.S.C. 603(a).

<sup>23</sup> *Id.*

among the four core licensing bureaus in the percentage of each core bureau's direct FTEs to the total FTEs in the Commission.

45. Second, we seek comment on updating the current FTE allocation percentages to reflect the changes in the telecommunications industry and in the Commission's workload since the current percentages were developed in FY 1998. Using current FTE data to calculate regulatory fees instead of FY 1998 FTE data would produce substantial increases in the fees paid by International Bureau regulates and correspondingly substantial reduction in the fees currently paid by Interstate Telecommunications Service Providers (ITSPs, or wireline service providers), whereas fees paid by Wireless Bureau regulates would remain the same and Media Bureau regulatees would increase only slightly.

46. Third, we seek comment on whether and how we should ameliorate the impact increased fees would have on International Bureau regulatees. We ask whether the fact that FTEs in the International Bureau devote half their time to working on matters that directly benefit licensees in the remaining three core licensing bureaus would make it equitable to reallocate and redistribute half of the fee increases to those other bureaus. We also ask if there are other bureaus in which such a reallocation would be equitable.

47. Finally, we seek comment on whether the current number of fee categories in the Schedule of Regulatory fees should be expanded to include new services such as broadband, or reduced to reflect the state of the telecommunications market and to simplify the administration of the fee program. Because the statute directs the Commission to consider the benefits the payors receive from Commission regulation in setting regulatory fees, we seek comment on how better to measure the benefits on which licensees currently pay fees. For example, we seek comment on whether total revenues, or relative market share, would be good measures of the benefit payors receive from the work of the Commission to promote competition and remove barriers to market entry. Finally, we specifically seek comment on the Commission's statutory authority to implement any of these changes.

## Background

### II. Legal Basis

48. This action, including publication of proposed rules, is authorized under Sections (4)(i) and (j), 9, and 303(r) of

the Communications Act of 1934, as amended.<sup>24</sup>

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

49. 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>25</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>26</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>27</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>28</sup>

50. *Small Businesses.* Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.<sup>29</sup>

51. *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>30</sup> First, nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA.<sup>31</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>32</sup> Nationwide, as of 2007, there were approximately 1,621,315 small organizations.<sup>33</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>34</sup> Census Bureau data for 2011 indicate that there were 89,476 local governmental jurisdictions in the United States.<sup>35</sup> We estimate that, of this total, as many as 88,506 entities may qualify as "small governmental jurisdictions."<sup>36</sup> Thus, we estimate that most governmental jurisdictions are small.

52. *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>37</sup> Census Bureau data for 2007, which now supersede data 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>38</sup> Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than

<sup>24</sup> 5 U.S.C. 601(5).

<sup>25</sup> U.S. Census Bureau, Statistical Abstract of the United States: 2011, Table 427 (2007)

<sup>26</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 a 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.

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

<sup>28</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>24</sup> 47 U.S.C. 154(i) and (j), 159, and 303(r).

<sup>25</sup> 5 U.S.C. 603(b)(3).

<sup>26</sup> 5 U.S.C. 601(6).

<sup>27</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>28</sup> 15 U.S.C. 632.

<sup>29</sup> See SBA, Office of Advocacy, "Frequently Asked Questions," <http://web.sba.gov/faqs> (accessed Jan. 2009).

<sup>30</sup> See 5 U.S.C. 601(3)-(6).

<sup>31</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>32</sup> 5 U.S.C. 601(4).

<sup>33</sup> Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2010).

1,500 employees.<sup>39</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>40</sup>

53. *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>41</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>42</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>43</sup> Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees.<sup>44</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>45</sup> In addition, 72 carriers have reported that they are Other Local Service Providers.<sup>46</sup> Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees.<sup>47</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.

54. *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>48</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>49</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>50</sup> Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees.<sup>51</sup> Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to this NPRM.

55. *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>52</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>53</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>54</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.

56. *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>55</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>56</sup> According to Commission data,<sup>57</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.

57. *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>58</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>59</sup> According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.<sup>60</sup> Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.<sup>61</sup> Consequently, the

<sup>39</sup> See *id.*

<sup>40</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>41</sup> 13 CFR 121.201, NAICS code 517110.

<sup>42</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>43</sup> See *Trends in Telephone Service*, at Table 5.3.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

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

<sup>48</sup> 13 CFR 121.201, NAICS code 517911.

<sup>49</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>50</sup> See *Trends in Telephone Service*, at Table 5.3.

<sup>51</sup> *Id.*

<sup>52</sup> 13 CFR 121.201, NAICS code 517911.

<sup>53</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>54</sup> *Trends in Telephone Service*, at Table 5.3.

<sup>55</sup> 13 CFR 121.201, NAICS code 517110.

<sup>56</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>57</sup> *Trends in Telephone Service*, at table 5.3.

<sup>58</sup> 13 CFR 121.201, NAICS code 517110.

<sup>59</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>60</sup> See *Trends in Telephone Service*, at Table 5.3.

<sup>61</sup> *Id.*

Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the NPRM.

58. *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>62</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>63</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>64</sup> Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed rules.

59. *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>65</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>66</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>67</sup> Of these, all 193 have 1,500 or fewer employees and none have more than 1,500 employees.<sup>68</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 this NPRM.

60. *800 and 800-Like Service Subscribers*.<sup>69</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>70</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>71</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>72</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.

61. *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>73</sup> The second has a size standard of \$25 million or less in annual receipts.<sup>74</sup>

62. 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>75</sup> Census Bureau data for 2007 show that 512 Satellite Telecommunications firms that operated for that entire year.<sup>76</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>77</sup> Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

63. 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>78</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>79</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>80</sup> Consequently, the Commission estimates that the majority

<sup>73</sup> 13 CFR 121.201, NAICS code 517410.

<sup>74</sup> 13 CFR 121.201, NAICS code 517919.

<sup>75</sup> U.S. Census Bureau, 2007 NAICS Definitions, 517410 Satellite Telecommunications.

<sup>76</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>77</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>78</sup> <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517919&search=2007%20NAICS%20Search>.

<sup>79</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>80</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>62</sup> 13 CFR 121.201, NAICS code 517110.

<sup>63</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>64</sup> *Trends in Telephone Service*, at Table 5.3.

<sup>65</sup> 13 CFR 121.201, NAICS code 517911.

<sup>66</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>67</sup> See *Trends in Telephone Service*, at Table 5.3.

<sup>68</sup> *Id.*

<sup>69</sup> We include all toll-free number subscribers in this category, including those for 888 numbers.

<sup>70</sup> 13 CFR 121.201, NAICS code 517911.

<sup>71</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>72</sup> *Trends in Telephone Service*, at Tables 18.4, 18.5, 18.6, 18.7.

of All Other Telecommunications firms are small entities that might be affected by our action.

64. *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>81</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>82</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>83</sup> For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year.<sup>84</sup> Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1,000 employees or more.<sup>85</sup> Thus under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by our proposed action.<sup>86</sup>

65. *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.

66. *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>87</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>88</sup> For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year.<sup>89</sup> Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1,000 employees or more.<sup>90</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>91</sup>

67. 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>92</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>93</sup> The SBA has approved this definition.<sup>94</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>95</sup> Fifty-seven companies claiming small business status won 440 licenses.<sup>96</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>97</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>98</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.

68. *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>99</sup> The SBA approved these definitions.<sup>100</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

<sup>81</sup> <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517210&search=2007%20NAICS%20Search>.

<sup>82</sup> 13 CFR 121.201, NAICS code 517210.

<sup>83</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>84</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>85</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>86</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>87</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>88</sup> U.S. Census Bureau, 2007 NAICS Definitions, “517210 Wireless Telecommunications Categories (Except Satellite)”.

<sup>89</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>90</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>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> *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>93</sup> *Paging Second Report and Order*, 12 FCC Rcd at 2811, para. 179.

<sup>94</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>95</sup> See “929 and 931 MHz Paging Auction Closes,” Public Notice, 15 FCC Rcd 4858 (WTB 2000).

<sup>96</sup> See *id.*

<sup>97</sup> See “Lower and Upper Paging Band Auction Closes,” Public Notice, 16 FCC Rcd 21821 (WTB 2002).

<sup>98</sup> See “Lower and Upper Paging Bands Auction Closes,” Public Notice, 18 FCC Rcd 11154 (WTB 2003). The current number of small or very small business entities that hold wireless licenses may differ significantly from the number of such entities that won in spectrum auctions due to assignments and transfers of licenses in the secondary market over time. In addition, some of the same small business entities may have won licenses in more than one auction.

<sup>99</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>100</sup> See *Alvarez Letter 1998*.

licenses, and one bidder that qualified as a small business entity won a license.

69. *1670–1675 MHz Services.* This service can be used for fixed and mobile uses, except aeronautical mobile.<sup>101</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.

70. *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>102</sup> Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.<sup>103</sup> Census data for 2007 shows that there were 1,383 firms that operated that year.<sup>104</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. According to Trends in Telephone Service data, 434 carriers reported that they were engaged in wireless telephony.<sup>105</sup> Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees.<sup>106</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>107</sup> Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.<sup>108</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.

71. *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>109</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>110</sup> These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.<sup>111</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>112</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>113</sup> Of the 57 winning

bidders in that auction, 48 claimed small business status and won 277 licenses.

72. 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>114</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>115</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>116</sup> Of the 14 winning bidders in that auction, six claimed small business status and won 18 licenses.<sup>117</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>118</sup> Of the eight winning bidders for Broadband PCS licenses in that auction, six claimed small business status and won 14 licenses.<sup>119</sup>

73. *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>120</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

<sup>107</sup> See *Trends in Telephone Service*, at Table 5.3.

<sup>108</sup> See *id.*

<sup>109</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>110</sup> See *PCS Report and Order*, 11 FCC Rcd at 7852 para. 60.

<sup>111</sup> See Alvarez Letter 1998.

<sup>112</sup> See *Broadband PCS, D, E and F Block Auction Closes*, Public Notice, Doc. No. 89838 (released Jan. 14, 1997).

<sup>113</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>114</sup> See *C and F Block Broadband PCS Auction Closes; Winning Bidders Announced*, Public Notice, 16 FCC Rcd 2339 (2001).

<sup>115</sup> See *Broadband PCS Spectrum Auction Closes; Winning Bidders Announced for Auction No. 58*, Public Notice, 20 FCC Rcd 3703 (2005).

<sup>116</sup> See *Auction of Broadband PCS Spectrum Licenses Closes; Winning Bidders Announced for Auction No. 71*, Public Notice, 22 FCC Rcd 9247 (2007).

<sup>117</sup> *Id.*

<sup>118</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>119</sup> *Id.*

<sup>120</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>101</sup> 47 CFR 2.106; see generally 47 CFR 27.1–.70.

<sup>102</sup> 13 CFR 121.201, NAICS code 517210.

<sup>103</sup> *Id.*

<sup>104</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>105</sup> *Trends in Telephone Service*, at Table 5.3.

<sup>106</sup> *Id.*

million.<sup>121</sup> In 2006, the Commission conducted its first auction of AWS-1 licenses.<sup>122</sup> In that initial AWS-1 auction, 31 winning bidders identified themselves as very small businesses won 142 licenses.<sup>123</sup> Twenty-six of the winning bidders identified themselves as small businesses and won 73 licenses.<sup>124</sup> In a subsequent 2008 auction, the Commission offered 35 AWS-1 licenses.<sup>125</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>126</sup>

**74. 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 million.<sup>127</sup> Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses.<sup>128</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>129</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>130</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>131</sup> The SBA has approved these small business size standards.<sup>132</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>133</sup> Three of the winning bidders claimed status as a small or very small entity and won 311 licenses.

**75. 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>134</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>135</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>136</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>137</sup> The SBA approved these small size standards.<sup>138</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>139</sup> A second auction commenced on May 28, 2003, closed on June 13, 2003, and included 256 licenses.<sup>140</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>141</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.

76. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order.*<sup>142</sup> An auction of A, B and E block licenses in the Lower 700 MHz band was held in 2008.<sup>143</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

<sup>121</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>122</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>123</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>124</sup> See *id.*

<sup>125</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>126</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>127</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>128</sup> See “Announcing the High Bidders in the Auction of Ten Nationwide Narrowband PCS Licenses, Winning Bids Total \$617,006,674,” Public Notice, PNWL 94-004 (released Aug. 2, 1994); “Announcing the High Bidders in the Auction of 30 Regional Narrowband PCS Licenses; Winning Bids Total \$490,901,787,” Public Notice, PNWL 94-27 (released Nov. 9, 1994).

<sup>129</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>130</sup> *Narrowband PCS Second Report and Order*, 15 FCC Rcd at 10476, para. 40.

<sup>131</sup> *Id.*

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

<sup>133</sup> See “Narrowband PCS Auction Closes,” Public Notice, 16 FCC Rcd 18663 (WTB 2001).

<sup>134</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>135</sup> See *Channels 52-59 Report and Order*, 17 FCC Rcd at 1087-88, para. 172.

<sup>136</sup> See *id.*

<sup>137</sup> See *id.*, 17 FCC Rcd at 1088, para. 173.

<sup>138</sup> See Letter from Aida Alvarez, Administrator, SBA, to Thomas Sugrue, Chief, WTB, FCC (Aug. 10, 1999) (“*Alvarez Letter 1999*”).

<sup>139</sup> See “Lower 700 MHz Band Auction Closes,” Public Notice, 17 FCC Rcd 17272 (WTB 2002).

<sup>140</sup> See *Lower 700 MHz Band Auction Closes, Public Notice*, 18 FCC Rcd 11873 (WTB 2003).

<sup>141</sup> See *id.*

<sup>142</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>143</sup> See *Auction of 700 MHz Band Licenses Closes, Public Notice*, 23 FCC Rcd 4572 (WTB 2008).



winning bidders in Auction 92 claimed very small business status, winning a total of four licenses.

77. *Upper 700 MHz Band Licenses.* In the 700 MHz Second Report and Order, the Commission revised its rules regarding Upper 700 MHz licenses.<sup>144</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>145</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.

78. *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>146</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>147</sup> Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.<sup>148</sup> SBA approval of these definitions is not required.<sup>149</sup> An auction of these licenses was conducted in 2000.<sup>150</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>151</sup>

79. *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>152</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>153</sup> The SBA has approved these small business size standards for both the 800 MHz and 900 MHz SMR Service.<sup>154</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>155</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>156</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>157</sup>

80. 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>158</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>159</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.

81. 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 1500 or fewer employees.<sup>160</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.

82. *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>161</sup> For this service, the SBA uses the category of Wireless Telecommunications Carriers (except Satellite). Census data for 2007, which supersedes data contained in the 2002

<sup>144</sup> 700 MHz Second Report and Order, 22 FCC Rcd 15289.

<sup>145</sup> See *Auction of 700 MHz Band Licenses Closes*, Public Notice, 23 FCC Rcd 4572 (WTB 2008).

<sup>146</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>147</sup> See *700 MHz Guard Band Report and Order*, 15 FCC Rcd at 5343, para. 108.

<sup>148</sup> See *id.*

<sup>149</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>150</sup> See “700 MHz Guard Bands Auction Closes: Winning Bidders Announced,” *Public Notice*, 15 FCC Rcd 18026 (2000).

<sup>151</sup> See “700 MHz Guard Bands Auction Closes: Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 4590 (WTB 2001).

<sup>152</sup> 47 CFR 90.810, 90.814(b), 90.912.

<sup>153</sup> 47 CFR 90.810, 90.814(b), 90.912.

<sup>154</sup> See *Alvarez Letter 1999*.

<sup>155</sup> See 900 MHz Specialized Mobile Radio Service Spectrum Auction Closes: Winning Bidders Announced,” *Public Notice*, 19 FCC Rcd. 3921 (WTB 2004).

<sup>156</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>157</sup> See “Multi-Radio Service Auction Closes,” *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

<sup>158</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>159</sup> See, “800 MHz SMR Service Lower 80 Channels Auction Closes; Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 1736 (2000).

<sup>160</sup> See generally 13 CFR 121.201, NAICS code 517210.

<sup>161</sup> 13 CFR 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 C.F.R. citations were 13 CFR 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

Census, show that there were 1,383 firms that operated that year.<sup>162</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.

83. *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>163</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>164</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>165</sup> The SBA has approved these small size standards.<sup>166</sup> Auctions of Phase II licenses commenced on and closed in 1998.<sup>167</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>168</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>169</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>170</sup> In 2007, the Commission conducted a fourth auction of the 220 MHz licenses, designated as Auction 72.<sup>171</sup> Auction 72, which offered 94 Phase II 220 MHz Service licenses, concluded in 2007.<sup>172</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.

84. *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>173</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>174</sup>

85. 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.

86. *Fixed Microwave Services.* Microwave services include common carrier,<sup>175</sup> private-operational fixed,<sup>176</sup> and broadcast auxiliary radio services.<sup>177</sup> They also include the Local Multipoint Distribution Service (“LMDS”),<sup>178</sup> the Digital Electronic Message Service (“DEMS”),<sup>179</sup> and the 24 GHz Service,<sup>180</sup> where licensees can choose between common carrier and non-common carrier status.<sup>181</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>182</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>183</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.

87. *39 GHz Service.* The Commission adopted small business size standards for 39 GHz licenses. A “small business”

<sup>162</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>163</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>164</sup> *Id.* at 11068 para. 291.

<sup>165</sup> *Id.*

<sup>166</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>167</sup> See generally *220 MHz Service Auction Closes*, Public Notice, 14 FCC Rcd 605 (WTB 1998).

<sup>168</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>169</sup> See *Phase II 220 MHz Service Spectrum Auction Closes*, Public Notice, 14 FCC Rcd 11218 (WTB 1999).

<sup>170</sup> See *Multi-Radio Service Auction Closes*, Public Notice, 17 FCC Rcd 1446 (WTB 2002).

<sup>171</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>172</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>173</sup> See 13 CFR 121.201, NAICS code 517210.

<sup>174</sup> See generally 13 CFR 121.201.

<sup>175</sup> See 47 CFR Part 101, subparts C and I.

<sup>176</sup> See *id.* subparts C and H.

<sup>177</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>178</sup> See 47 CFR part 101, subpart L.

<sup>179</sup> See *id.* subpart G.

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

<sup>181</sup> See 47 CFR 101.533, 101.1017.

<sup>182</sup> 13 CFR 121.201, NAICS code 517210.

<sup>183</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).

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>184</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>185</sup> The SBA has approved these small business size standards.<sup>186</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.

**88. 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>187</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>188</sup> An additional small business size standard for “very small business” was added as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three years.<sup>189</sup> The SBA has approved these small business size standards in the context of LMDS auctions.<sup>190</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.

**89. 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>191</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>192</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>193</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>194</sup> The SBA has approved these definitions.<sup>195</sup>

**90. 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>196</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>197</sup> These

definitions have been approved by the SBA.<sup>198</sup> An auction of LMS licenses was conducted in 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses.

**91. Rural Radiotelephone Service.** The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.<sup>199</sup> A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (“BETRS”).<sup>200</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>201</sup> Census data for 2007 shows that there were 1,383 firms that operated that year.<sup>202</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.

**92. Air-Ground Radiotelephone Service.**<sup>203</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>204</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>205</sup> A “very

<sup>184</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>185</sup> *Id.*

<sup>186</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>187</sup> See Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission’s Rules to Redesignate the 27.5–29.5 GHz Frequency Band, Reallocate the 29.5–30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, *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>188</sup> See *LMDS Second Report and Order*, 12 FCC Rcd at 12689–90, para. 348.

<sup>189</sup> See *id.*

<sup>190</sup> See Alvarez to Phythyon Letter 1998.

<sup>191</sup> See “*Interactive Video and Data Service (IVDS) Applications Accepted for Filing*,” Public Notice, 9 FCC Rcd 6227 (1994).

<sup>192</sup> *Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, Fourth Report and Order, 9 FCC Rcd 2330 (1994).

<sup>193</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>194</sup> *Id.*

<sup>195</sup> See Alvarez to Phythyon Letter 1998.

<sup>196</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>197</sup> *Automatic Vehicle Monitoring Systems Second Report and Order*, 13 FCC Rcd at 15192, para. 20; see also 47 CFR 90.1103.

<sup>198</sup> See Alvarez Letter 1998.

<sup>199</sup> The service is defined in section 22.99 of the Commission’s rules, 47 CFR 22.99.

<sup>200</sup> BETRS is defined in sections 22.757 and 22.759 of the Commission’s rules, 47 CFR 22.757 and 22.759.

<sup>201</sup> 13 CFR 121.201, NAICS code 517210.

<sup>202</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>203</sup> The service is defined in section 22.99 of the Commission’s rules, 47 CFR 22.99.

<sup>204</sup> 13 CFR 121.201, NAICS codes 517210.

<sup>205</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*

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>206</sup> These definitions were approved by the SBA.<sup>207</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.

93. *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>208</sup> Census data for 2007 shows that there were 1,383 firms that operated that year.<sup>209</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.

94. *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>210</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>211</sup> Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.<sup>212</sup> Census data for 2007 shows that there were 1,383 firms that operated that year.<sup>213</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.

95. *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>214</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>215</sup> The SBA has approved these definitions.<sup>216</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>217</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.

96. 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>218</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.

97. *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>219</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>220</sup> Neither of the two winning bidders claimed small business status.<sup>221</sup>

98. *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>222</sup> To gauge small business prevalence for these cable services we must, however, use the most

*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>206</sup> *Id.*

<sup>207</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>208</sup> 13 CFR 121.201, NAICS code 517210.

<sup>209</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=&-ds\\_name=EC0700A1&-skip=700&-ds\\_name=EC0751SSSZ5&-lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-ds_name=EC0700A1&-skip=700&-ds_name=EC0751SSSZ5&-lang=en).

<sup>210</sup> This service is governed by subpart I of part 22 of the Commission’s rules. See 47 CFR 22.1001–22.1037.

<sup>211</sup> 13 CFR 121.201, NAICS code 517210.

<sup>212</sup> *Id.*

<sup>213</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=&-ds\\_name=EC0700A1&-skip=700&-ds\\_name=EC0751SSSZ5&-lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-ds_name=EC0700A1&-skip=700&-ds_name=EC0751SSSZ5&-lang=en).

<sup>214</sup> See *Amendment of the Commission’s Rules Regarding Multiple Address Systems*, Report and Order, 15 FCC Rcd 11956, 12008, para. 123 (2000).

<sup>215</sup> *Id.*

<sup>216</sup> See Alvarez Letter 1999.

<sup>217</sup> See “Multiple Address Systems Spectrum Auction Closes,” Public Notice, 16 FCC Rcd 21011 (2001).

<sup>218</sup> See 13 CFR 121.201, NAICS code 517210.

<sup>219</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>220</sup> Auction No. 69 Closing PN, Attachment C.

<sup>221</sup> See Auction No. 69 Closing PN.

<sup>222</sup> 13 CFR 121.201, NAICS code 517210.

current census data. Census data for 2007 shows that there were 1,383 firms that operated that year.<sup>223</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>224</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.

99. *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>225</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>226</sup> A "very small business" in the 24 GHz band is defined as an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding \$3 million for the preceding three years.<sup>227</sup> The SBA has approved these small business size standards.<sup>228</sup> In a 2004 auction of 24 GHz licenses, three

winning bidders won seven licenses.<sup>229</sup> Two of the winning bidders were very small businesses that won five licenses.

100. *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>230</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>231</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>232</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>233</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>234</sup> Auction 86 concluded in 2009 with the sale of 61 licenses.<sup>235</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.

101. 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>236</sup> Thus, we estimate that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of

<sup>223</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>224</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>225</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>226</sup> *24 GHz Report and Order*, 15 FCC Rcd at 16967 para. 77; see also 47 CFR 101.538(a)(2).

<sup>227</sup> *24 GHz Report and Order*, 15 FCC Rcd at 16967 para. 77; see also 47 CFR 101.538(a)(1).

<sup>228</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>229</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>230</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>231</sup> 47 CFR 21.961(b)(1).

<sup>232</sup> 47 U.S.C. 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard of 1500 or fewer employees.

<sup>233</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>234</sup> *Id.* at 8296.

<sup>235</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>236</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.

technologies.”<sup>237</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>238</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>239</sup> Of this total, 939 firms employed 999 or fewer employees, and 16 firms employed 1,000 employees or more.<sup>240</sup> Thus, the majority of these firms can be considered small.

102. *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>241</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>242</sup> The Commission has estimated the number of licensed commercial television stations to be 1,387.<sup>243</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 of \$14 million or less.<sup>244</sup> We therefore estimate that the majority of commercial television broadcasters are small entities.

103. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations<sup>245</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.

104. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 396.<sup>246</sup> These stations are non-profit, and therefore considered to be small entities.<sup>247</sup>

105. In addition, there are also 2,528 low power television stations, including Class A stations (LPTV).<sup>248</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.

106. *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>249</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>250</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.

107. We note, however, that in assessing whether a business concern

to control the other or a third party or parties controls or has to power to control both.” 13 CFR 21.103(a)(1).

<sup>246</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>247</sup> See generally 5 U.S.C. 601(4), (6).

<sup>248</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>249</sup> U.S. Census Bureau, 2007 NAICS Definitions, “515112 Radio Stations”; <http://www.census.gov/naics/2007/def/ND515112.HTM#N515112>.

<sup>250</sup> 13 CFR 121.201, NAICS code 515112 (updated for inflation in 2010).

qualifies as small under the above size standard, business affiliations must be included.<sup>251</sup> In addition, to be determined to be a “small business,” the entity may not be dominant in its field of operation.<sup>252</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.

108. *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>253</sup>

109. The Commission estimates that there are approximately 6,099 FM translators and boosters.<sup>254</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>255</sup>

110. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad

<sup>251</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>252</sup> 13 CFR 121.102(b) (an SBA regulation).

<sup>253</sup> 13 CFR 121.201, NAICS codes 515112 and 515120.

<sup>254</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>255</sup> See 15 U.S.C. 632.

<sup>237</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>238</sup> 13 CFR 121.201, NAICS code 517210.

<sup>239</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>240</sup> *Id.*

<sup>241</sup> U.S. Census Bureau, 2007 NAICS Definitions, “515120 Television Broadcasting” (partial definition); <http://www.census.gov/naics/2007/def/ND515120.HTM#N515120>.

<sup>242</sup> 13 CFR 121.201, NAICS code 515120 (updated for inflation in 2010).

<sup>243</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>244</sup> We recognize that BIA’s estimate differs slightly from the FCC total given *supra*.

<sup>245</sup> “[Business concerns] are affiliates of each other when one concern controls or has the power



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>256</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>257</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.

111. *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>258</sup> Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.<sup>259</sup> In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.<sup>260</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>261</sup> Thus,

under this second size standard, most cable systems are small.

112. *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>262</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>263</sup> Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.<sup>264</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>265</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.

113. *Open Video Systems.* Open Video Service (OVS) systems provide subscription services.<sup>266</sup> The open video system ("OVS") framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers.<sup>267</sup> The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,<sup>268</sup> OVS falls within the SBA small business size

standard covering cable services, which is "Wired Telecommunications Carriers."<sup>269</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>270</sup> In addition, we note that the Commission has certified some OVS operators, with some now providing service.<sup>271</sup> Broadband service providers ("BSPs") are currently the only significant holders of OVS certifications or local OVS franchises.<sup>272</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>273</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 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

<sup>256</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>257</sup> U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (released 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>258</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>259</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>260</sup> 47 CFR 76.901(c).

<sup>261</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>262</sup> 47 U.S.C. 543(m)(2); see 47 CFR 76.901(f) & nn. 1–3.

<sup>263</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>264</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>265</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>266</sup> See 47 U.S.C. 573.

<sup>267</sup> 47 U.S.C. 571(a)(3)–(4). See *13th Annual Report*, 24 FCC Rcd at 606, para. 135.

<sup>268</sup> See 47 U.S.C. 573.

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

<sup>270</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>271</sup> A list of OVS certifications may be found at <http://www.fcc.gov/mb/ovs/csovscer.html>.

<sup>272</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>273</sup> See <http://www.fcc.gov/mb/ovs/csovscer.html> (current as of February 2007).



affected by the rules and policies adopted herein.

114. *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>274</sup> The category designated by the SBA for this industry is "Wired Telecommunications Carriers."<sup>275</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>276</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-interconnected VoIP, or both in this category, are small.<sup>277</sup>

115. *Multichannel Video Distribution and Data Service.* MVDDS is a terrestrial

<sup>274</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>275</sup> 13 CFR 121.201, NAICS code 517110.

<sup>276</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).

<sup>277</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 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 as thorough an analysis of the impact on small entities as we can at this time.

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>278</sup> These definitions were approved by the SBA.<sup>279</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>280</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>281</sup>

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

117. *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>282</sup> These services include Citizen Band Radio Service ("CB"), General Mobile Radio

<sup>278</sup> *Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2–12.7 GHz Band by Direct Broadcast Satellite Licenses and their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. to provide A Fixed Service in the 12.2–12.7 GHz Band*, ET Docket No. 98–206, Memorandum Opinion and Order and Second Report and Order, 17 FCC Rcd 9614, 9711, para. 252 (2002).

<sup>279</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>280</sup> See "Multichannel Video Distribution and Data Service Auction Closes," Public Notice, 19 FCC Rcd 1834 (2004).

<sup>281</sup> See "Auction of Multichannel Video Distribution and Data Service Licenses Closes; Winning Bidders Announced for Auction No. 63," Public Notice, 20 FCC Rcd 19807 (2005).

<sup>282</sup> 47 CFR part 90.

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>283</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>284</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.

118. *Public Safety Radio Services.* Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.<sup>285</sup>

<sup>283</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>284</sup> 13 CFR 121.201, NAICS Code 517210.

<sup>285</sup> With the exception of the special emergency service, these services are governed by subpart B of part 90 of the Commission's rules, 47 CFR 90.15–90.27. The police service includes approximately 27,000 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes approximately 23,000 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service 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

There are a total of approximately 127,540 licensees in these services. Governmental entities<sup>286</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>287</sup>

119. *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>288</sup> and (2) All Other Information Services.<sup>289</sup>

120. *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>290</sup> which has an SBA small business size standard of 1,500 or fewer employees.<sup>291</sup> These are also labeled "broadband." The latter are within the category of All Other Telecommunications,<sup>292</sup> which has a size standard of annual receipts of \$25 million or less.<sup>293</sup> These are labeled non-broadband.

121. 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

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>286</sup> 47 CFR 1.1162.

<sup>287</sup> 5 U.S.C. 601(5).

<sup>288</sup> 13 CFR 121.201, NAICS code 519130 (establishing a \$500,000 revenue ceiling).

<sup>289</sup> 13 CFR 121.201, NAICS code 519190 (establishing a \$6.5 million revenue ceiling).

<sup>290</sup> U.S. Census Bureau, 2007 NAICS Definitions, 517110 Wired Telecommunications Carriers, <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

<sup>291</sup> 13 CFR 121.201, NAICS code 517110.

<sup>292</sup> U.S. Census Bureau, 2007 NAICS Definitions, "517919 All Other Telecommunications," <http://www.census.gov/naics/2007/def/ND517919.HTM#N517919>.

<sup>293</sup> 13 CFR 121.201, NAICS code 517919 (updated for inflation in 2008).

which 159 had nine or fewer employees.<sup>294</sup> For the second category, the data show that 1,682 firms operated for the entire year.<sup>295</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.

122. *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>296</sup> The SBA deems businesses in this industry with 500 or fewer employees small.<sup>297</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 999 employees.<sup>298</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:

123. This *Notice of Proposed Rulemaking* does not propose any changes to the Commission's current compliance rules, but may include

<sup>294</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>295</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>296</sup> <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=519130&search=2007%20NAICS%20Search>

<sup>297</sup> [http://www.sba.gov/sites/default/files/Size\\_Standards\\_Table.pdf](http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf).

<sup>298</sup> [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-skip=1000&-ds\\_name=EC0751SSSZ5&-lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-skip=1000&-ds_name=EC0751SSSZ5&-lang=en).

possible proposed information collection, reporting, and recordkeeping requirements.

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

124. 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>299</sup>

125. In Section I of this *NPRM*, we seek comment on whether and how the Commission should adjust the revised cost allocation percentages that would otherwise result from using updated FTE data and implementing the new cost allocation proposals.

126. In particular, as stated *supra* in Section I, our concern with minimizing any adverse economic impact of our proposed rules on small entities is guided by our goals of fairness, administrability, and sustainability. Accordingly, we believe that adjustments to fees paid by fee payors should be consistent with those goals. Specifically, we intend to mitigate any inequities that might result from imposition of substantial fee increases.

127. In keeping with the requirements of the Regulatory Flexibility Act, we have considered certain alternative means of mitigating the effects of fee increases to a particular industry segment. One option is to make all or most fee adjustments at one time. Another option is to provide interim adjustments, by phasing in the new fees over a period of time.

128. On the issue of revisiting the allocation resulting from this rulemaking, the Commission is considering undertaking this reexamination at regular intervals. Alternatively, such reexamination could be undertaken in response to comments by fee payors in the annual regulatory fee collection *NPRM*. Regardless of the method chosen, one underlying concern we have is to mitigate any adverse economic impact on small service providers who are likely least able to

<sup>299</sup> 5 U.S.C. 603.

absorb unpredictable changes in fees from year to year.

129. In light of our stated goals, the Commission seeks comment on the abovementioned, and any other, means and methods that would minimize any significant economic impact of our proposed rules on small entities.

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

130. None.

**VI. Ordering Clauses**

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

42. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of

this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

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