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)(1)(iv) 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.

(xxxiii) 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 1/8-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 safety devices 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 safety devices 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:


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. 2012–2070 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 or phone: 202–418–0530 or TTY: 202–418–0432.
• Email: 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 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. 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 person’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, memorandum, 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.
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 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 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 proposed possible 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.2

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 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.” 3 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).” 4 Since FY 2009, Congress has directed the Commission to assess and collect regulatory fees under section 9(b)(1)(B)

2 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.


4 Id. 159(a)(2), (b)(1)(B).
in an amount equal to the entire amount appropriated.\footnote{5}

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.” FTEs for 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.”\footnote{6}\footnote{7}

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.\footnote{8} The Commission issues a report and order during the fourth quarter of each fiscal year.\footnote{9} 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 regulated in each fee category that 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 regulated, 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 bureau’s 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 Bureau, Media Bureau, and Wireline Competition Bureau—then the employee’s time is counted as a direct 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.\footnote{10}

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 shows 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
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.

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

### TABLE 1—HYPOTHETICAL $100 MILLION TARGET GOAL ALLOCATIONS

<table>
<thead>
<tr>
<th>Fee category</th>
<th>Starting point FTE allocation percentage (%)</th>
<th>Expected revenue amount by fee category</th>
</tr>
</thead>
<tbody>
<tr>
<td>PLMRS (Exclusive Use)</td>
<td>.14</td>
<td>$140,000</td>
</tr>
<tr>
<td>PLMRS (Shared use)</td>
<td>.67</td>
<td>670,000</td>
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<tr>
<td>Microwave</td>
<td>.66</td>
<td>660,000</td>
</tr>
<tr>
<td>218–219 MHz (Formerly IVDS)</td>
<td>.001</td>
<td>1,000</td>
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<tr>
<td>Marine (Ship)</td>
<td>.22</td>
<td>220,000</td>
</tr>
<tr>
<td>GMRS (Aircraft)</td>
<td>.08</td>
<td>80,000</td>
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<tr>
<td>Aviation (Aircraft)</td>
<td>.10</td>
<td>100,000</td>
</tr>
<tr>
<td>Marine (Coast)</td>
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<tr>
<td>Aviation (Ground)</td>
<td>.04</td>
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</tr>
<tr>
<td>Amateur Vanity Call Signs</td>
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<tr>
<td>AM Class B</td>
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<tr>
<td>AM Class C</td>
<td>.31</td>
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</tr>
<tr>
<td>AM Class D</td>
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<td>FM Classes A, B1 &amp; C3</td>
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<td>FM Classes B, C, C0, C1 &amp; C2</td>
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<td>AM Construction Permits</td>
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<td>FM Construction Permits</td>
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<td>Satellite TV Construction Permit</td>
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<td>VHF Markets 1–10</td>
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<td>UHF Construction Permits</td>
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<td>Broadcast Auxiliaries</td>
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<td>CARS Stations</td>
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<td>CMRS Messaging Services</td>
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<tr>
<td>BRS</td>
<td>.16</td>
<td>160,000</td>
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<tr>
<td>LMDS</td>
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<td>Per 64 kbps Int’l Bearer Circuits, Terrestrial (Common) &amp; Satellite (Common &amp; Non-Common)</td>
<td>.32</td>
<td>320,000</td>
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<td>Submarine Cable Providers</td>
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<td>Earth Stations</td>
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<td>Space Stations (Geostationary)</td>
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<tr>
<td>Space Stations (Non-Geostationary)</td>
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</tr>
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***** 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.
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.” 11 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 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 VoIP services 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.” 12 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 bureaus. 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


those bureaus.\textsuperscript{13} 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 distributed to the other 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.\textsuperscript{14} 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.\textsuperscript{15} 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.\textsuperscript{16} We will resolve this issue in this proceeding, and we will incorporate into the record of this proceeding relevant comments filed in prior proceedings.\textsuperscript{17}

29. Commenters previously addressing this issue advocated that we revise the FTE allocation percentages by using updated FTE data.\textsuperscript{18} 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.\textsuperscript{19} 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%).\textsuperscript{20} 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 licensees 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 licensees 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 licensees would be consistent with our goals of fairness

\textsuperscript{13} The International Bureau may be an exception to this expectation as discussed in Paragraphs 26—28 below.

\textsuperscript{14} 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.

\textsuperscript{15} 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, at paras. 27–30. We also released a Public Notice on September 3, 2008 providing information on FTEs, direct costs, and indirect costs. See, e.g., Order on This Notice of Proposed Rulemaking and Modifying Director Releases Data to Assist Commenters on Issues Presented in Further Notice of Proposed Rulemaking,” Adopted August 1, 2008, MD Docket No. 09–63, Public Notice, DA 08–2033 (September 3, 2008).

\textsuperscript{16} 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.

\textsuperscript{17} 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; TCA 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.

\textsuperscript{18} FY 2008 Further Notice of Proposed Rulemaking, supra n. 1, at paras. 27–30. 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; TCA 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.

\textsuperscript{19} FTEs are based on actual end of fiscal year 2011 figures, the most recent data that is currently available.

\textsuperscript{20} 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 regulators 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 segments 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 adjustment 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 (51.1%), 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 an 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.

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Initial Regulatory Flexibility Analysis

42. As required by the Regulatory Flexibility Act (RFA), 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). In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.

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.

23 5 U.S.C. 603(a).

24 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 regulations and correspondingly substantial reduction in the fees currently paid by Interstate and Media Bureau regulations would remain the same.

46. Third, we seek comment on how and whether the impact increased fees would have on International Bureau regulations. 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.24

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

49. The RFA directly 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.25 The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”26 In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.27 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.28

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

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.30 First, nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA.31 In addition, a “small organization” is generally “any for-profit enterprise which is independently owned and operated and is not dominant in its field.” 32 Nationwide, as of 2007, there were approximately 1,621,315 small organizations.33 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.”34 Census Bureau data for 2011 indicate that there were 89,476 local governmental jurisdictions in the United States.35 We estimate that, of this total, as many as 88, 506 entities may qualify as “small governmental jurisdictions.”36 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.37 Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,186 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.38 Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.

24 47 U.S.C. 154(i) and (j), 159, and 303(r).
27 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.” 15 U.S.C. 632.
30 See SBA, Office of Advocacy, “Frequently Asked Questions,” web.sba.gov/faqs [last visited May 6, 2011; figures are from 2009].
33 U.S. Census Bureau, 2011, Table 427 (2007).
34 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. According to the 89,746 small governmental organizations identified in the 2007 Census, the Division estimates that a substantial majority is small.
1,500 employees.39 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.40

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.43 Census Bureau data for 2007 show that there were 3,186 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 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.45 Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees.46 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.48 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 1,000.49 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, 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.55 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.56 According to Commission data, 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.57 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.58 According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.59 Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.60 Consequently, the
Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the NPRM. 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.63 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.64 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.64 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.65 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 1,000.66 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 the Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.67 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 1,000.67 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.68 Of these, all 193 have 1,500 or fewer employees and none have more than 1,500 employees.69 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.**

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.68 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 1,000.68 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 the Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.69 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 1,000.69 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.69 Of these, all 193 have 1,500 or fewer employees and none have more than 1,500 employees.69 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.

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.70 The second has a size standard of $25 million or less in annual receipts.71

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.”72 Census Bureau data for 2007 show that 512 Satellite Telecommunications firms that operated for that entire year. Of this total, 464 firms had annual receipts of under $10 million, and 18 firms had receipts of $10 million to $24,999,999.73 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.”74 For this category, Census Bureau data for 2007 shows that there were a total of 2,383 firms that operated for the entire year.75 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. Consequently, the Commission estimates that the majority

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63 CFR 121.201, NAICS code 517410.
64 13 CFR 121.201, NAICS code 517410.
65 U.S. Census Bureau, 2007 NAICS Definitions, 517410 Satellite Telecommunications.
70 See http://www.census.gov/sus/naics/517410.html.
73 13 CFR 121.201, NAICS code 517410.
74 13 CFR 121.201, NAICS code 517410.
75 13 CFR 121.201, NAICS code 517410.
76 13 CFR 121.201, NAICS code 517410.
77 13 CFR 121.201, NAICS code 517410.
78 13 CFR 121.201, NAICS code 517410.
79 13 CFR 121.201, NAICS code 517410.
80 13 CFR 121.201, NAICS code 517410.
81 13 CFR 121.201, NAICS code 517410.
82 13 CFR 121.201, NAICS code 517410.
83 13 CFR 121.201, NAICS code 517410.
84 13 CFR 121.201, NAICS code 517410.
85 13 CFR 121.201, NAICS code 517410.
86 13 CFR 121.201, NAICS code 517410.
87 13 CFR 121.201, NAICS code 517410.
88 13 CFR 121.201, NAICS code 517410.
89 13 CFR 121.201, NAICS code 517410.
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. 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. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had employment of 1,500 or fewer employees and 15 had employment of 1,000 employees or more. 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.

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 under, in the context of sales 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). 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. For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1,000 employees or more. 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.

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. 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. The SBA has approved this definition. An initial auction of Metropolitan Economic Area ("MEA") licenses was conducted in the year 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses. 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. 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 very small business status won 2,093 licenses. 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. The SBA approved these definitions. The Commission conducted an auction of geographic area licenses in the WCS service in 1997. In the auction, seven bidders that qualified as very small business entities won 31 licenses.
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.101 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).102 Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.103 Census data for 2007 shows that there were 1,383 firms that operated that year.104 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.105 Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees.106 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).

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.107 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.110 These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.111 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.112 On April 15, 1999, the Commission completed the re-auction of 347 C-, D-, E-, and F-Block licenses in Auction No. 22.113 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.114 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, 2003, 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.115 On May 21, 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction No. 71.116 Of the 14 winning bidders in that auction, six claimed small business status and won 18 licenses.117 On August 20, 2008, the Commission completed the auction of 20 C-, D-, E-, and F-Block licenses in Auction No. 78.118 Of the eight winning bidders for Broadband PCS licenses in that auction, six claimed small business status and won 14 licenses.119

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 66.120 For the AWS–1 bands, the Commission has defined a “small business” as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a “very small business” as an entity with average annual gross revenues for the preceding three years not exceeding $15 million.

103 13 CFR 121.201, NAICS code 517210.
105 See PCS Report and Order, 11 FCC Rcd at 7852 para. 60.
In 2006, the Commission conducted its first auction of AWS–1 licenses. In that initial AWS–1 auction, 31 winning bidders identified themselves as very small businesses and won 142 licenses. Twenty-six of the winning bidders identified themselves as small businesses, and three of the winning bidders identifying themselves as small businesses won five AWS–1 licenses.

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. Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses. 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.


- See id.
- See AWS–1 and Broadband PCS Procedures Public Notice, 23 FCC Rcd 7409. Auction 78 also included an auction of broadband PCS licenses.
- See Amendment 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).
- See “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).

- See id.
- See id., 17 FCC Rcd at 1088, para. 173.


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. 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. A “very small business” is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. 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. The SBA approved these small business size standards.

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. A second auction commenced on May 28, 2003, closed on June 13, 2003, and included 256 licenses. 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. 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. In 2007, the Commission reexamined its rules governing the 700 MHz band in the 700 MHz Second Report and Order. An auction of A, B and E block licenses in the Lower 700 MHz band was held in 2008. Twenty winning bidders claimed small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years). Thirty three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years). In 2011, the Commission conducted Auction 92, which offered 16 lower 700 MHz band licenses that had been made available in Auction 73 but either remained unsold or were licenses on which a winning bidder defaulted. Two of the seven winning bidders claimed very small business status.
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. 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.

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. A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. The SBA approval of these definitions is not required. An auction of these licenses was conducted in 2000. 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.

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. The SBA has approved these small business size standards for both the 800 MHz and 900 MHz SMR Service. 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. 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. 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.

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. 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. 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. 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 Licenses. 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 licenses. 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. For this service, the SBA uses the category of Wireless Telecommunications Carriers (except Satellite). Census data for 2007, which superseded data contained in the 2002

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144 See 700 MHz Second Report and Order, 22 FCC Rcd 15289.
147 See 700 MHz Guard Band Report and Order, 15 FCC Rcd at 5343, para. 108.
148 See id.
149 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).
152 See id. 90.810, 90.814(b), 90.912.
153 47 CFR 90.810, 90.814(b), 90.912.
160 See generally 13 CFR 121.201, NAICS code 517210.
161 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).
The SBA has approved these small size
220 MHz Radio Service—Phase II
licences.169 A third auction included
83. 220 MHz Radio Service—Phase II
four licenses: 2 BEA licenses and 2 EAG
Licenses. The 220 MHz service has
licenses in the 220 MHz Service. No
both Phase I and Phase II licenses. The
small or very small business won any of
Phase II 220 MHz service licenses are
these licenses.170 In 2007, the
assigned by auction, where mutually
Commission conducted a fourth auction
exclusive applications are accepted. In
of the 220 MHz licenses, designated as
the 220 MHz Third Report and Order,
Auction 72.171 Auction 72, which
and the Commission adopted a small
offered 94 Phase II 220 MHz Service
business size standard for defining
licenses, concluded in 2007.172 In this
“small” and “very small” businesses for
auction, five winning bidders won a
determination of whether a licensee of a
tpurposes of determining their eligibility
total of 76 licenses. Two winning
small business is an entity that, together
PLMR systems serve an
bidders identified themselves as very
business operations. For the purpose of
defined as an entity that, together with its
essential role in a range of industrial,
small businesses as those businesses that
size small business, the
and controlling principals, has average
economic, land transportation, and
identified themselves as a small
Commission notes that the
average gross revenues not exceeding $15
public safety activities. These radios are
small businesses won 56 of the 76
small business size standard, the
million for the preceding three years.164
used by companies of all sizes operating
licenses. One of the winning bidders
entities under this category and the
A “very small business” is defined as an
in all U.S. business categories, and are
therefore, it would also be helpful to
winning bidders and their affiliates,
and are often used in support of the licensee’s
winning bidders and their affiliates,
non-telecommunications
know that any entity engaged in a
business with respect to microwave
business that, together with its affiliates,
primary (non-telecommunications)
businesses that identified themselves as
Businesses and non-common carrier status.181
and controlling principals, has average
gross revenues not exceeding $15
businesses, land transportation, and
small business won 5 of the 76
The Commission has not yet defined a
good health for special provisions such as bidding
uses both by companies of all sizes operating
most of the 76
planners may choose between common carrier and
and controlling principals, has average
gross revenues that do not exceed $3
businesses, and public safety activities. These
small businesses that identified themselves as a
businesses, land transportation, and
million for the preceding three years.165
of the 220 MHz Service. No
businesses that identified themselves as small
high-speed Internet access.175
firms may be considered small. The
number of firms does not necessarily
for special provisions such as bidding
small. The Commission notes that the
220 MHz service licenses. No
licensees under this definition.
Commission adopted small business size
businesses for purposes of determining their eligibility
small. The Commission estimates that virtually all
small business size standard, and associated
licensees, and one of the winning bidders
with respect to microwave
licensees under this definition. We note that PLMR
facilities in support of other business activities, and
and determining whether a licensee of a
small business (except
licensees under the
small business size standard and the associated
Winning bidders and their affiliates, with the
non-telecommunications business operations. For the purpose of
defined as an entity that, together with its affiliates,
WBN
Phase II 220 MHz Service licenses, and one of the
non-telecommunications business operations. For the purpose of
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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.\footnote{184} 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.\footnote{185} The SBA has approved these small business size standards.\footnote{186} 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.\footnote{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.\footnote{187} 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.\footnote{188} 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.\footnote{189} The SBA has approved these small business size standards in the context of LMDS auctions.\footnote{190} 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 the auction.\footnote{89}

918. 218–219 MHz Service. The first auction of 218–219 MHz Service (previously referred to as the Interactive and Video Data Service or IVDS) resulted in 170 entities winning licenses for 594 Metropolitan Statistical Areas (“MSAs”).\footnote{191} 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.\footnote{192} 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.\footnote{193} The SBA has approved these definitions.\footnote{195}

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.\footnote{196} A “very small business” is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not exceeding $3 million for the preceding three years.\footnote{197} These definitions have been approved by the SBA.\footnote{198} 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.\footnote{199} A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (“BETRS”).\footnote{200} 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.\footnote{201} Census data for 2007 shows that there were 1,383 firms that operated that year.\footnote{202} 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. 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.\footnote{204} 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.\footnote{205} A “very
small business” is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $15 million.206 These definitions were approved by the SBA.207 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).208 which is 1,500 or fewer employees.209 Census data for 2007 shows that there were 1,383 firms that operated that year.210 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.211 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,212 Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.213 Census data for 2007 shows that there were 1,383 firms that operated that year.214 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.215 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.216 The SBA has approved these definitions.217 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.218 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.219 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 2007.220 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.221 Neither of the two winning bidders claimed small business status.222

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.223 To gauge small business prevalence for these cable services we must, however, use the most
current census data. Census data for 2007 shows that there were 1,383 firms that operated that year. 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 and TRW. 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. 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. A “very small business” in the 24 GHz band 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. Thus, 223 the SBA has approved these small business size standards. In a 2004 auction of 24 GHz licenses, three winning bidders won seven licenses. Two of the winning bidders were very small businesses that won five licenses.

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 access to transmission services (among other services). While BRS also includes licenses of stations authorized prior to 1972, for the purpose of determining eligibility for 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. The 2006 auction concluded in 2009 with the sale of 61 licenses. 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 licenses. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. 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...

224 Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to TRW in the 24 GHz band.
226 24 GHz Report and Order, 15 FCC Rcd at 16967 para. 77; see also 47 CFR 101.538(a)(2).
227 24 GHz Report and Order, 15 FCC Rcd at 16967 para. 77; see also 47 CFR 101.538(a)(1).
228 Letter from W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, to Gary M. Jackson, Assistant Administrator, SBA (July 28, 2000).
232 47 U.S.C. 309(j). (entreprenuer) will receive a 35 percent discount on its winning bid. The 2006 auction concluded in 2009 with the sale of 61 licenses. 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.
234 Id. at 8296.
236 The term “small entity” within SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. 601(a)–(6). We do not collect annual revenue data on EBS licenses.
television images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.”241 The SBA has created the following small business size standard for Television Broadcasting firms: those having $14 million or less in annual receipts.242 The Commission has estimated the number of licensed commercial television stations to be 1,387.243 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.244 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) affiliations245 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 396.246 These stations are non-profit, and therefore considered to be small entities.247

105. In addition, there are also 2,528 low power television stations, including Class A stations (LPTV).248 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.”249 The SBA has established a small business size standard for this category, which is: such firms having $7 million or less in annual receipts.250 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 qualifies as small under the above definition, business (control) affiliations 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.

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 licenses. The applicable definitions of small entities are those, noted previously, under the SBA rules applicable to radio broadcasting stations and television broadcasting stations.253

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

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

238 13 CFR 121.201, NAICS code 517110.
240 Id.
242 13 CFR 121.201, NAICS code 515120 (updated for inflation in 2010).
244 We recognize that BIA’s estimate differs slightly from the FCC total given supra.
245 “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both.” 13 CFR 21.103(a)(1).
248 13 CFR 121.201, NAICS code 515120 (updated for inflation in 2010).
251 13 CFR 121.201, NAICS code 515112 (updated for inflation in 2010).
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.”

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. 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.258 Under the Commission’s rules, a “small system” is one serving 15,000 or fewer subscribers.259 Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.260 In addition, under the Commission’s rules, a “small system” is a cable system serving 15,000 or fewer subscribers.261 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.262 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.” The Commission has determined that an operator serving more 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.263 Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.264 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 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.265 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.266 The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is “Wired Telecommunications Carriers.” 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.

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.270 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...
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.274 The category designated by the SBA for this industry is “Wired Telecommunications Carriers.”275 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.276 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.277

115. Multichannel Video Distribution and Data Service. MVDDS is a terrestrial fixed microwave service operating in the 12.2–12.7 GHz band. The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. It defines a very small business as an entity with average annual gross revenues not exceeding $3 million for the preceding three years; a small business as an entity with average annual gross revenues not exceeding $15 million for the preceding three years; and an entrepreneur as an entity with average annual gross revenues not exceeding $40 million for the preceding three years.278 These definitions were approved by the SBA.279 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.280 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.281

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.282 These services include Citizen Band Radio Service (“CB”), General Mobile Radio Service (“GMRS”), Radio Control Radio Service (“R/C”), Family Radio Service (“FRS”), Wireless Medical Telemetry Service (“WMTS”), Medical Implant Communications Service (“MICS”), Low Power Radio Service (“LPRS”), and Multi-Use Radio Service (“MURS”).283 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.284 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.285

276 13 CFR 121.201, NAICS code 517110.
277 http://factfinder.census.gov/servlet/IBQTable?_lang=en&_geo_id=0&skip=6000&ds_name=EC0751SSSZ5&-name=EC0751SSSZ5&-lang=en.
278 13 CFR 121.201, NAICS code 517110.
281 The public interest is further served by ensuring the availability of 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 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. 120. 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, 121 and (2) All Other Information Services. 122

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, 123 which has an SBA small business size standard of 1,500 or fewer employees. 124 These are also labeled “broadband.” The latter are within the category of All Other Telecommunications, 125 which has a size standard of annual receipts of $25 million or less. 126 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 which 159 had nine or fewer employees. 127 For the second category, the data show that 1,682 firms operated for the entire year. 128 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 and 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. 129 The SBA deems businesses in this industry with 500 or fewer employees small. 130 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. 131 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 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. 132

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. 133 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.

126. 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.

127. 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
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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