FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 03–83; FCC 03–184]

Assessment and Collection of Regulatory Fees For Fiscal Year 2003

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission will revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress has required it to collect for fiscal year 2003. Section 9 of the Communications Act of 1934, as amended, provides for the annual assessment and collection of regulatory fees under sections 9(b)(2) and 9(b)(3), respectively, for annual ''Mandatory Adjustments'' and ''Permitted Amendments'' to the Schedule of Regulatory Fees.

DATES: Effective September 11, 2003.

FOR FURTHER INFORMATION CONTACT: Roland Helvajian, Office of Managing Director at (202) 418–0444 or Rob Fream, Office of Managing Director at (202) 418–0408.

SUPPLEMENTARY INFORMATION:

Adopted: July 21, 2003.

Released: July 25, 2003.

By the Commission: Commissioners Copps and Adelstein concurring and issuing separate statements.

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I. Introduction

1. In this *Report and Order (''R&O'')*, the Commission concludes a proceeding to collect $269,000,000 in regulatory fees for Fiscal Year (FY) 2003. These fees are mandated by Congress and are collected to recover the regulatory costs associated with the Commission's enforcement, policy and rulemaking, user information, and international activities.[1]

II. Discussion

A. Development of FY 2003 Fees

i. Calculation of Revenue and Fee Requirements

2. Each fiscal year, the Commission proportionally allocates the total amount that must be collected via regulatory fees (Attachment C).[2] For FY 2003, this allocation was done using FY 2002 revenues as a base. From this base, a revenue amount for each fee category was calculated. Each fee category was then adjusted upward by 23 percent to reflect the increase in regulatory fees from FY 2002 to FY 2003. These FY 2003 amounts were then divided by the number of payment units in each fee category to determine the unit fee.[3] In instances of small fees, such as licenses that are renewed over a multiyear term, the resulting unit fee was also divided by the term of the license. These unit fees were then rounded in accordance with 47 U.S.C. 159 (b) (2).

ii. Further Adjustments to Payment Units

3. In calculating the FY 2003 regulatory fees for each service in Attachment D, the Commission adjusted the FY 2002 list of payment units (Attachment B) based upon licensee data bases and industry and trade group projections. Whenever possible, the Commission verified these estimates from multiple sources to ensure accuracy of these estimates.

4. The *R&O* also adjusts the payment units for FY 2003 by expanding the AM and FM Radio Station Regulatory Fees Grid. Since FY 1998, the Commission has used a grid that divides broadcast station regulatory fees by class of service, population, and type of service (AM/FM).[4] This grid was originally

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

[2] The costs assigned to each service category are based upon the regulatory activities (enforcement, policy and rulemaking, user information, and international activities) undertaken by the Commission on behalf of units in each service category. It is important to note that the required increase in regulatory fee payments of approximately 23 percent in FY 2003 is reflected in the revenue that is expected to be collected from each service category. Because this expected revenue is adjusted each year by the number of units in a service category, the actual fee itself is sometimes increased by a number other than 23 percent. For example, in industries where the number of units is declining and the expected revenue is increasing, the impact on the fee increase may be greater.

[3] In most instances, the fee amount is a flat fee per licensee or regulatee. However, in some instances the fee amount represents a unit subscriber fee (such as for Cable, Commercial Mobile Radio Service (CMRS) Cellular/Mobile and CMRS Messaging), a per unit fee (such as for International Bearer Circuits), or a fee factor per revenue dollar (Interstate Telecommunications Service Provider fee).

[4] *Assessment and Collection of Regulatory Fees for Fiscal Year 1998,* Report and Order, 63 FR 35847, July 1, 1998, paragraph 37.

adopted to provide equity and fairness among radio stations with varying signal strengths and market reach. However, in recent years, modifications to radio stations, a trend toward more powerful stations, and increases in the overall general population have resulted in an ever-increasing number of stations grouped in the one million-plus category of the grid. This trend necessitated the need to review the grid. In its *Fiscal Year 2003 Regulatory Fee Notice of Proposed Rulemaking (''NPRM''),* adopted March 24, 2003 (68 FR 17577, April 10, 2003), the Commission proposed to revise the grid to include a population category of ''greater than three million people'' and to change the population threshold amounts to reflect slightly wider population fields.

5. The Commission received no comments concerning this matter. Therefore, beginning in Fiscal Year 2003 we will use the revised grid, as proposed in the NPRM, to assess regulatory fees for AM and FM commercial radio stations. The current and revised radio station grids follow:

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FY 2002 RADIO STATION REGULATORY FEE GRID (Six by Six)						
Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C1 & C2
<=20,000						
20,001 - 50,000						
50,001 - 125,000						
125,001 - 400,000						
400,001 - 1,000,000						
>1,000,000						

REVISED RADIO STATION REGULATORY FEE GRID (Six by Seven)						
Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C0, C1 & C2
<=25,000						
25,001 - 75,000						
75,001 - 150,000						
150,001 - 500,000						
500,001 - 1,200,000						
1,200,001 – 3,000,000						
> 3,000,000						

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iii. Classification of LMDS

6. In our *NPRM*, we sought comment on how to classify Local Multipoint Distribution Service (''LMDS'') for regulatory fees purposes, which since FY 2000 has been classified in the fee category of Multipoint Distribution Service (''MDS''). We received several comments from respondents suggesting that the LMDS fee category be reclassified in the microwave category. For example, Blooston, Mordkofsky, Dickens, Duffy & Prendergast (''BMDDP'') argue that LMDS and the microwave fee category are regulated similarly, and therefore should be classified together. LMDS is regulated in part 101 of the Commission's rules as is the microwave category, whereas MDS is regulated under part 21. LMDS operates in the 28 GHz and 31 GHz bands and is most similar to the ''upper band'' of microwave services category. BMDDP argues that both the microwave and LMDS services have similar propagation limitations, and each of these services compete (or could compete) for the same subscriber base within the same geographic market area.[5]

7. In their comments, Bennet & Bennet also argue that LMDS should be classified in the microwave category, noting that the present classification of LMDS with MDS places LMDS at a competitive disadvantage without any rational basis.[6] Bennet & Bennet argue that by the Commission's own admission in its *Fixed Wireless Report*, it recognizes that the lower (MDS) and upper (LMDS, microwave) band services have significantly different propagation characteristics and generally serve two distinct markets.[7] As a result, Bennet & Bennet conclude that although LMDS and MDS share some similarities, these two fee categories are regulated under different rules, utilize different network equipment configurations, and serve different markets.[8]

8. The Commission received a reply comment that addressed the distinctions between MDS and LMDS. The Martin Group, on behalf of its Local Multipoint Distribution Service clients, concurs with the arguments raised by respondents Bennet & Bennet, and BMDDP that LMDS should be reclassified in the microwave fee category. The Martin Group also notes that MDS and LMDS are not similar in technologies or usage.[9] While LMDS and MDS share the same ''Multipoint Distribution Service'' designation, the technologies involved are radically different—MDS systems, for the most part, use one-way multichannel video systems, while LMDS systems deliver megabytes of data to customers. The Martin Group is not aware of any point-to-point applications of MDS equipment, but point-to-point systems have been successfully deployed using the LMDS spectrum in a manner operationally similar to microwave technology.[10]

9. The three commenters on this issue have raised substantive arguments addressing the technological characteristics of MDS, LMDS, and the microwave fee category. Based on these distinctions, the respondents advocate that LMDS be reclassified as a microwave service for regulatory fee purposes. From the comments we have received, we concur that substantive distinctions exist between MDS and LMDS and that they should not be placed in the same fee category. However, we are unpersuaded that LMDS should be moved to the microwave service category. Recent technological and commercial applications using LMDS service indicate that this service may develop on a separate track from current microwave services. LMDS offers significant potential in offering a broad range of one-way and two-way voice, video, and data service capability, and substantially more capacity than other wireless services. We conclude that the best resolution at this time is to move LMDS administratively into a separate fee category, while maintaining its current fee structure, and initiate a specific proceeding that addresses the policies and fee structure governing LMDS and other wireless services. All other rules and regulations governing LMDS at this time will continue to apply.

10. We note that although we have separated MDS and LMDS into separate fee categories, the regulatory fee amounts for both services this fiscal year will be $265 per license. This is a reduction of more than 38 percent from last year's fee and is a significantly reduced financial obligation for LMDS licensees.[11]

iv. Adjustment of Fee Waiver Policies

11. In our NPRM, we addressed the policies applicable to granting fee waivers based on financial hardship.[12] We emphasized that under existing policy, although evidence of bankruptcy or receivership is generally sufficient to establish financial hardship, case-by-case review of fee waiver requests is necessary to determine whether a waiver would be in the public interest, even in bankruptcy cases. We also sought comment on whether we should set a cap on the amount of fees that we will generally waive in circumstances involving bankruptcy and otherwise. We tentatively proposed a cap of either $500,000 or $1 million on the amount of fees that would be waived for a single entity and its affiliates.

12. Only one commenter, the Verizon telephone companies (Verizon),[13] responded to this proposal. Verizon asserts that the Commission should not grant fee waivers based on bankruptcy. According to Verizon, doing so unfairly shifts the cost of the bankrupt's failure to the Commission and to the bankrupt's competitors, who will have to pay higher fees and suffer competitive disadvantage. Verizon maintains that granting waivers to bankrupts may significantly reduce the revenues from fees. In this regard, Verizon estimates that the current upsurge in bankruptcies may affect companies accounting for up to 20 percent of revenues from large telecommunications firms and 30 percent of large interexchange carriers. Moreover, Verizon observes that companies in bankruptcy may nevertheless have sufficient funds to pay regulatory fees and that especially companies undergoing Chapter 11 reorganization should be expected to pay applicable fees on a going-forward basis.[14] In Verizon's view, the bankrupt entity's liability for regulatory fees should be left to bankruptcy law, which will set the priority of the fees relative to other obligations and discount the bankrupt's liability as appropriate.[15] Verizon agrees with our proposal to cap all other fee waivers at $500,000 to $1 million.

13. Although we share Verizon's concern over the impact that bankruptcies may have on our ability to collect fees, we find that Verizon's proposals go too far. We continue to

[5] Comments of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, pages 1–2.

[6] Comments of Bennet & Bennet, PLC on behalf of its LMDS clients, page 1.

[7] Ibid., page 2.

[8] Ibid., pages 2, 4, and 5.

[9] Comments of Martin Group on behalf of its LMDS clients, page 2.

[10] Ibid., pages 2 and 3.

[11] The regulatory fee amount for the MDS/LMDS service category was $450 per license held in FY 2001, and $430 per license held in FY 2002.

[12] *Notice of Proposed Rulemaking*, 68 FR 17577, April 10, 2003, paragraphs 10–12.

[13] The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications, Inc.

[14] *See* 11 U.S.C. 503, 507(a)(1) (allowance of debtor's administrative expenses).

[15] *See* 11 U.S.C. 507, 726 (regarding priorities).

believe that in appropriate circumstances the public is served by assisting financially distressed telecommunications companies, especially small entities, by granting them relief or partial relief from Section 8 and Section 9 fees, and thereby assisting them in remaining effective competitors in the telecommunications marketplace. We also believe that bankruptcy generally represents sufficient evidence of financial hardship to warrant granting a waiver. Our concerns in this regard are distinct from those taken into account by a bankruptcy court in setting the respective priorities of various types of obligations and discounting them where appropriate.[16] Bankruptcy law does not limit our ability to forego collecting fees [17] where the public interest warrants, and we therefore act independently of the bankruptcy law to this extent. On the other hand, we continue to believe that very large waivers would excessively impair our ability to comply with our statutory fee collection responsibilities. Even under existing policy, we might decline a request for such a waiver on a case-by-case basis.

14. Additionally, we believe that a cap on waivers would be a useful means of implementing our policy concerns.[18] We adopt a cap of $500,000 applicable both to bankrupt and other regulates asserting financial hardship, and we will amend the rules accordingly. We believe that granting fee waivers of greater than this amount would tend to have a negative impact on our ability to meet our statutory responsibilities. Fees owed above the cap would be subject to the provisions of the Bankruptcy Act in cases of bankruptcy. In other cases of asserted financial hardship, we may consider waiver, partial waiver, or deferral of fees above the cap on a case-by-case basis. As noted in the *NPRM*, in computing the cap we will aggregate all subsidiaries and other affiliated entities of a particular regulatee. Additionally, in computing the cap we will aggregate the total Section 8 application fees and Section 9 regulatory fees for a given fiscal year, including Section 9 fees due in a fiscal year but paid prior to the due date. The cap will apply to all waiver requests pending as of the effective date of the new rule. Adoption of the fee waiver cap does not limit our ability to grant or deny any current pending waiver requests. We anticipate that we will revisit the amount of the cap in subsequent fee rulemakings as warranted by changing conditions. We may also give further consideration to Verizon's proposals if our further experience suggests that this would be desirable.

v. Procedural Changes and Future Streamlining of the Regulatory Fee Assessment and Collection Process

15. In our *NPRM*, we sought comment on a broad range of options for streamlining and otherwise improving the Commission's fee assessment and collection processes and procedures.[19] While no comments were received with specific regards to future streamlining efforts, the Industrial Telecommunications Association, Inc. (''ITA'') objects to the Commission's proposal to discontinue its annual mailing of regulatory fee public notices to licensees. ITA states that small wireless and radio services providers, without adequate notification, may unintentionally miss the deadline for payment of fees.[20] In his reply comment, Kenneth J. Brown, a retired broadcast engineer, contends that the annual mailing of regulatory fee public notices is a waste of federal resources with regard to large radio station group owners.[21] Mr. Brown asserts that his former employer was able to obtain the public notice and payment information from the Commission's Internet site each year, long before public notice mailings for each of the employer's holdings arrived in the mail.[22]

16. In responding to ITA, we first note that the Commission's smallest regulatory fees—generally paid by smaller businesses and entities—are attached to Section 8 application fees and are paid upfront by entities at the time of their initial application or renewal of their multi-year license. Also, because governmental and public safety entities are exempt from regulatory fees, it is not necessary to give notice to these entities. In addition, each year the Regulatory Fee Schedule is established in a *R&O* promulgated by the Commission. This *R&O*, along with our regulatory fee public notices, are published in the **Federal Register** as a means of providing official public notice.[23]

17. As in previous years, we will also continue to make our regulatory fee public notices available on the FCC's Web site (*http://www.fcc.gov/fees*). In our *NPRM*, we proposed no longer to disseminate public notices through surface mail because of the wide availability of the Internet.[24] We believe that today use of the Internet among the vast majority of businesses is ubiquitous and even those entities without computers or Internet access on their premises can still obtain the public notices via Internet access at their local public library. The Internet serves as the most convenient source for licensees to obtain regulatory fee information.

18. We also note that our initiative to mail regulatory fee assessment postcards to media services entities is underway, and that if this pilot program is successful we will consider expanding this method to other services.[25] We iterate that our broader interest is to move towards disseminating actual regulatory fee bills to entities. To do so, we may consider various methods in the future, including ''e-billing'' through the Internet.

19. For the reasons stated above, the Commission adopts its proposal no longer to disseminate regulatory fee public notices to the majority of its regulatees. An exception to this policy will be made for Interstate Telecommunication Service Providers (''ITSPs''), as the Commission will continue to generate and mail to them a customized Regulatory Fee Worksheet attached to the general regulatory fee public notice.

[16] Verizon notes that in our NPRM we stated with respect to fees in excess of the proposed cap: ''By leaving the ultimate disposition of these large fees to bankruptcy law, rather than waiving them, we believe that we would be giving due regard to our congressionally-mandated obligation to collect regulatory fees. Moreover, we believe that we would also be giving due regard to our practice, approved by the courts, of reconciling our regulatory responsibilities with the goals of the Bankruptcy Act.'' Verizon contends that we should treat all fees from companies in bankruptcy consistent with this approach. We believe, however, that smaller fees warrant a different public interest balancing than larger fees and that we should continue to grant waivers for smaller amounts.

[17] *See* 11 U.S.C. 501, 502(a), 726 (claims have priority only upon creditor's timely filing of a proof of claim).

[18] The fee waiver cap we adopt is intended to limit the circumstances in which financial hardship will be considered as a basis for granting a fee waiver. It does not affect the procedures for processing waiver requests.

[19] *Assessment and Collection of Regulatory Fees for Fiscal Year 2003, Notice of Proposed Rulemaking*, 68 FR 17577, April 10, 2003, paragraph 16.

[20] Comments of the Industrial Telecommunications Association, Inc., page 4.

[21] Reply Comments of Kenneth J. Brown, page 1.

[22] Reply Comments of Kenneth J. Brown, page 1.

[23] Moreover, we will continue to mail public notices and other relevant materials free of charge to entities upon request.

[24] *Assessment and Collection of Regulatory Fees for Fiscal Year 2003, Notice of Proposed Rulemaking*, 68 FR 17577, April 10, 2003, paragraph 13.

[25] For FY 2003, assessment postcards will be mailed to all media services entities (radio and television station licensees) with the exception of broadcast auxiliary station licensees. Entities receiving assessments will continue to pay their regulatory fees via the Commission's established procedures; i.e., payments must still be accompanied by FCC Form 159 and be submitted via the Commission's traditional methods for collection of regulatory fees each year.

vi. Commercial Mobile Radio Service (CMRS) Messaging

20. Arch Wireless; Allied National Paging Association; American Association of Paging Carriers; Metrocall Holdings, Inc.; and WebLink Wireless I, L.P. (''Joint Commenters''), as joint commenters, urge the Commission to reduce the regulatory fee amount per subscriber, contending that because the messaging industry is not expanding, the Commission is probably expending fewer resources in the messaging industry than in other wireless services.[26] Joint Commenters note that the Commission is required to relate its regulatory fee assessments to the cost of regulating each industry segment. American Mobile Telecommunications Association, Inc. (''AMTA'' or ''Association'') also argues that a declining CMRS messaging services base should result in a decrease in the cost of regulation, and adds that spectrum-limited and geographically localized services such as CMRS messaging are very fee sensitive and therefore not able to pass on increases in costs very easily.[27] In their reply comments, Blooston, Mordkofsky, Dickens, Duffy & Prendergast (''BMDD&P'') concurs that over the past several years, the Commission's level of regulatory and enforcement activity has probably decreased, and as a result, there should be a corresponding decrease in regulatory fees.[28] Finally, the Industrial Telecommunications Association, Inc. (''ITA'') asks whether small SMR operators are still categorized in the CMRS Messaging Service fee category.[29]

21. First, we confirm that with respect to SMR operators under the 10 MHz bandwidth, the Commission continues to classify these operators as part of the CMRS Messaging fee category. Turning to the issue pertaining to the CMRS fee, a cogent argument has been presented that there has been a significant decline in CMRS Messaging units—from 40.8 million in FY 1997 to 19.7 million in FY 2003—a decline of 51.7 percent. Commenters have persuasively argued that this decline in subscribership may not be just a temporary phenomenon, but a more long-lasting one, and because the messaging industry is spectrum-limited, geographically localized, and very cost sensitive, it is very difficult for this industry to pass on increases in costs to its subscribers.[30] In these unique circumstances, we believe it is appropriate to provide a measure of relief.[31]

22. For the reasons stated above, we will not increase the regulatory fee of CMRS messaging services to $0.11, but will maintain it at its FY 2002 level of $.08 per subscriber unit.

vii. Broadcast Television Stations With Single Channel Allotments

23. Sky Television, L.L.C. (''WSKY–TV'') urges the Commission to create an additional regulatory fee service category for single-channel National Television System Committee (NTSC) full-service broadcast television stations and to assess a fee for this category that is 50 percent of the fee assessed against stations that have paired NTSC/DTV allotments. WSKY–TV states that because much of the Commission's current regulatory activities concerning the broadcast industry benefits only television stations with paired NTSC/DTV allotments, the costs of these activities should not be allocated to single-channel NTSC stations.

24. For background, WSKY–TV is a relatively new broadcast station, having been licensed by the Commission on December 26, 2001 to operate on a single NTSC channel. This license condition is congruent with Commission policy in that initial DTV licenses were limited to full service broadcast television station permittees and licensees as of April 3, 1997,[32] and that new NTSC permittees are not to be awarded a second channel to convert to DTV, but may convert to DTV on their single 6 MHz channel.[33]

25. The Commission's broadcast television regulatory fees are already designed to only capture the costs of analog broadcast activities. Although DTV licensees are subject to Section 8 application fees, the Commission does not yet assess Section 9 regulatory fees to recover the costs of the agency's DTV-related activities. Therefore, there is no need for the Commission to take action on this matter, because the analog-only regulatory fee category that WSKY–TV requests is already in effect.

viii. Amateur Radio Vanity Call Signs

26. Several amateur radio licensees commented concerning the Commission's practice of assessing regulatory fees for amateur vanity call signs. Some commenters assert that no regulatory fees should be assessed for vanity call signs. Other commenters support the payment of a regulatory fee for the administrative costs incurred by the Commission when it initially issues a vanity call sign, but question why a regulatory fee is assessed when renewing the amateur vanity call sign. Of these commenters, some assert that the fee assessed for vanity call signs at the license renewal process should simply be eliminated; others propose that the fee should be eliminated and offset by a higher upfront fee assessed at the time of initial application. Finally, Keven Hemsley states that in instances where the Commission denies an applicant's request for a vanity call sign, the Commission should refund the money automatically rather than requiring the applicant to request a refund.[34]

27. First, we address the issue of requests for refunds of regulatory fees. Our rules state that the Commission will not process refunds of regulatory fees without a written request from the applicant, permittee, licensee or agent in question.[35] We uphold the requirement for a written request for a refund of regulatory fees. The written request serves as documentation when cross-referencing each unique file number that may be entitled to a refund. This documentation is essential for all applications, and particularly so for amateur radio vanity call sign applications, because filing trends indicate that some applicants file several vanity call sign applications per day, for several days on end. When one particular vanity call sign is granted to a filer, all of that filer's other applications are thereby dismissed. Certifying which fees are to be refunded for which dismissed applications would be much more labor intensive without the aid of any refund request documentation from prospective payees—thereby increasing the

[26] Comments provided by Arch Wireless; Allied National Paging Association; American Association of Paging Carriers; Metrocall Holdings, Inc.; and WebLink Wireless I, L.P., pages 4–6.

[27] Comments by the American Mobile Telecommunications Association, Inc., pages 2 and 5.

[28] Comments by Blooston, Mordkofsky, Dickens, Duffy & Prendergast, page 4.

[29] Comments by the Industrial Telecommunications Association, Inc., page 4.

[30] Comments from American Mobile Telecommunications Association, Inc., pages 2 and 5; comments from Arch Wireless Operating Company, Inc., Allied National Paging Association, American Association of Paging Carriers, Metrocall Holdings, Inc., and WebLink Wireless I, L.P. (collectively known as, ''Joint Commenters''), page 6.

[31] The Commission is completing design work on a new cost accounting system. As part of this process, we are evaluating methodologies for capturing data relevant to the regulatory fee setting process.

[32] *Advanced Television Systems and Their Impact Upon Existing Television Broadcast Service*, Fifth Report and Order, 12 FCC Rcd 12809, 12816 (1997).

[33] *Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order*, 13 FCC Rcd 6860, 6865 (1998).

[34] Comments of Kevin Hemsley, page 1.

[35] *See* 47 CFR 1.1160(d) Refunds of regulatory fees.

Commission's costs in this service category and leading to higher regulatory fees here, as well. More importantly, the many processors of the myriad applications and filings submitted to the Commission's various Bureaus and Offices are not granted the authority to issue refunds without proper documentation. We cannot relax this filing requirement because maintaining a file of written requests for refunds that are paid to applicants is a sound accounting practice, and is necessary to ensure the integrity of the Commission's financial management and accounting systems.

28. Next, we address comments concerning our general regulatory fee assessment policy with regards to amateur radio vanity call signs. Pursuant to Section 9 of the Telecommunications Act of 1934, as amended, the assessment of regulatory fees is not applicable to amateur radio operator licenses.[36] This exemption applies only to the actual license to operate, and does not extend to the vanity call sign component of Amateur Radio Service. Vanity call signs are voluntarily requested by licensees, and an entity that operates under a vanity call sign enjoys a value-added benefit not afforded to all licensees. Therefore, it is reasonable to conclude that those entities holding amateur vanity call signs should be assessed regulatory fees by the Commission to cover its processing and enforcement costs for making the vanity call sign service available.

29. Rather than assess entities a significant up-front vanity call sign fee that lasts the life of the call sign, the Commission chose instead to assess a nominal fee at the time of initial application and a continuance of the nominal fee at subsequent ten-year vanity call sign and license renewals. The Commission believes that this approach allows greater consumer access to vanity call signs. A high one-time-only fee would be cost prohibitive for many entities wishing to obtain a vanity call sign. This approach is also consistent with the fact that the Commission incurs costs in managing each vanity call sign throughout its existence, not merely the first 10 years of its initial license period. This approach also makes the cost of holding any given vanity call sign equitable among all holders throughout the existence of each call sign, providing by example that holding a vanity call sign for 30 years will cost three times the amount to hold such a call sign for 10 years.[37]

30. For the reasons detailed above, the Commission upholds its fee assessment policy for amateur radio vanity call signs and the payment methodology employed throughout the life-cycle of a vanity call sign authorization.

B. Procedures for Payment of Regulatory Fees

i. *De minimis* Fee Payment Liability

31. Regulatees whose *total* regulatory fee liability, including all categories of fees for which payment is due by an entity, amounts to less than $10 are exempt from payment of regulatory fees in FY 2003.

ii. Standard Fee Calculations and Payment Dates

32. As in prior years, the responsibility for payment of fees by service category is as follows:

(a) Media services—fees must be paid for any license or permit issued on or before October 1, 2002. However, in instances where a license or permit is transferred or assigned after October 1, 2002, responsibility for payment rests with the holder of the license or permit at the time payment is due.

(b) Wireline (Common Carrier) and Cable Services (fees are not based on a subscriber, unit, or circuit count)—fees must be paid for any authorization issued on or before October 1, 2002. However, where a license or permit is transferred or assigned after October 1, 2002, responsibility for payment rests with the holder of the license or permit at the time payment is due.

(c) Cable Subscriber Services and Commercial Mobile Radio Service (CMRS) cellular, mobile, and messaging services (fees based upon a subscriber, unit or circuit count)—the number of subscribers, units or circuits on December 31, 2002 will be used as the basis from which to calculate the fee payment.[38] For facilities-based common carriers with active international bearer circuits, the fee is based on the circuit count as of December 31, 2002. Also, as stated previously, in instances where a license or permit is transferred or assigned after October 1, 2002, responsibility for payment rests with the holder of the license or permit at the time payment is due.

33. The Commission strongly recommends that entities submitting more than twenty-five (25) Form 159–C's use the electronic fee filer program when sending in their regulatory fee payment. The Commission will, for the convenience of payers, accept fee payments made in advance of the normal formal window for the payment of regulatory fees.

C. Enforcement

34. As required in 47 U.S.C. 159(c), an additional charge shall be assessed as a penalty for late payment of any regulatory fee. A late payment penalty of 25 percent of the amount of the required regulatory fee will be assessed on the first day following the deadline date for filing of these fees. Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including the provisions set forth in the Debt Collection Improvement Act of 1996 (''DCIA''). The Commission also assesses administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the related debt pursuant to the DCIA and § 1.1940(d) of the Commission's Rules. These administrative processing charges will be assessed on any delinquent regulatory fee, in addition to the 25 percent late charge penalty. Partial underpayments of regulatory fees are treated in the following manner. The licensee will be given credit for the amount paid, but if it is later determined that the fee paid is incorrect or was submitted after the deadline date, the 25 percent late charge penalty will be assessed on the portion that is submitted after the filing window. Failure to pay regulatory fees can result in the initiation of a proceeding to revoke any and all authorizations held by the delinquent payer.[39]

III. Procedural Matters

35. Authority for this proceeding is contained in sections 4(i) and (j), 8, 9, and 303(r) of the Communications Act of 1934, as amended.[40] It is ordered that the rule changes specified herein be adopted. It is further ordered that the rule changes made herein will become effective September 11, 2003, which is no less than 30 days after publication in

[36] *See* 47 U.S.C. 149(h).

[37] Assuming a consistent time-value of money, and barring future Congressionally mandated changes in the amount of regulatory fees to be collected.

[38] Cable system operators are to compute their subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Cable system operators may base their count on ''a typical day in the last full week'' of December 2002, rather than on a count as of December 31, 2002.

[39] *See* 47 CFR 1.1164.

[40] *See* 47 U.S.C. 154(i)–(j), 159, and 303(r).

the **Federal Register**. A Final Regulatory Flexibility Analysis (FRFA) has been performed and is found in Attachment A, and it is ordered that the Commission's Consumer And Governmental Affairs Bureau, Reference Information Center, send this to the Chief Counsel for Advocacy of the Small Business Administration (SBA). Finally, it is ordered that this proceeding is terminated.

36. Further information about this proceeding may be obtained by contacting the Fees Hotline at (888) 225–5322.

Federal Communications Commission.

Willaim F. Caton,

Deputy Secretary.

Attachment A.—Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA),[41] the Commission prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules and incorporated it into the *Notice of Proposed Rulemaking, In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2003*.[42] Written public comments were sought on the FY 2003 fees proposal, including comments on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[43]

I. Need for, and Objectives of, the Proposed Rules

2. This rulemaking proceeding is initiated to amend the Schedule of Regulatory Fees in the amount of $269,000,000, the amount that Congress has required the Commission to recover. The Commission seeks to collect the necessary amount through its revised Schedule of Regulatory Fees in the most efficient manner possible and without undue public burden.

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

3. None.

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

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[44] The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''[45] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[46] 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 Small Business Administration (SBA).[47] Nationwide, there are approximately 22.4 million small businesses.[48] In addition, a small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.''[49] Nationwide, as of 1992, there were approximately 275,801 small organizations.[50] The term ''small governmental jurisdiction'' is defined as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.''[51] As of 1997, there were about 87,453 governmental jurisdictions in the United States.[52] This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

Cable Services or Systems

5. *Cable and Other Program Distribution.* The SBA has developed a small business size standard for cable and other program distribution services, which includes all such companies generating $12.5 million or less in revenue annually.[53] This category includes, among others, cable operators, direct broadcast satellite (''DBS'') services, home satellite dish (''HSD'') services, multipoint distribution services (''MDS''), multichannel multipoint distribution service (''MMDS''), Instructional Television Fixed Service (''ITFS''), local multipoint distribution service (''LMDS''), satellite master antenna television (''SMATV'') systems, and open video systems (''OVS''). According to the Census Bureau data, there are 1,311 total cable and other pay television service firms that operate throughout the year of which 1,180 have less than $10 million in revenue.[54] We address below each service individually to provide a more precise estimate of small entities.

6. *Cable Operators.* The Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide.[55] We last estimated that there were 1,439 cable operators that qualified as small cable companies.[56] Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by our action.

7. The Communications Act, as amended, also contains a size standard for a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% 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.''[57] The Commission has determined that there are 67,500,000 subscribers in the United States. Therefore, an operator serving fewer than 675,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate.[58] Based on available data, we find that the number of cable operators serving 675,000 subscribers or less totals approximately 1,450.[59] Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

8. *Direct Broadcast Satellite (''DBS'') Service.* Because DBS provides subscription services, DBS falls within the SBA-recognized definition of cable and other

[41] 5 U.S.C. 603. The RFA, 5 U.S.C. 601–612 has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[42] 68 FR 17577, April 10, 2003.

[43] 43 *See* 5 U.S.C. 604.

[44] 5 U.S.C. 603(b)(3).

[45] 5 U.S.C. 601(6).

[46] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to the RFA, 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**.'' 5 U.S.C. 601(3).

[47] Small Business Act, 15 U.S.C. 632 (1996).

[48] *See* SBA, *Programs and Services,* SBA pamphlet no. CO–0028, at page 40 (July 2002).

[49] 5 U.S.C. 601(4).

[50] U.S. Bureau of the Census, 1992 Economic Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[51] 5 U.S.C. 601(5).

[52] U.S. Census Bureau, Statistical Abstract of the United States: 2000, Section 9, pages 299–300, Tables 490 and 492.

[53] 13 CFR 121.201, NAICS code 517510 (formerly 513220). This NAICS code applies to all services listed in this paragraph.

[54] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Subject Series—Establishment and Firm Size, Information Sector 51, Table 4 at 50 (2000). The amount of $10 million was used to estimate the number of small business firms because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $12.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[55] 47 CFR 76.901(e). The Commission developed this definition based on its determinations that a small cable system operator is one with annual revenues of $100 million or less. Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd. 7393 (1995).

[56] Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[57] 47 U.S.C. 543(m)(2).

[58] 47 CFR 76.1403(b).

[59] Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

program distribution services.[60] This definition provides that a small entity is one with $12.5 million or less in annual receipts.[61] There are four licensees of DBS services under Part 100 of the Commission's Rules. Three of those licensees are currently operational. Two of the licensees that are operational have annual revenues that may be in excess of the threshold for a small business.[62] The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. DBS service requires a great investment of capital for operation, and we acknowledge, despite the absence of specific data on this point, that there are entrants in this field that may not yet have generated $12.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

9. *Home Satellite Dish (''HSD'') Service.* Because HSD provides subscription services, HSD falls within the SBA-recognized definition of cable and other program distribution services.[63] This definition provides that a small entity is one with $12.5 million or less in annual receipts.[64] The market for HSD service is difficult to quantify.[65] Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled.[66] HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming package. Thus, HSD users include: (1) Viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion.[67]

10. *Satellite Master Antenna Television (''SMATV'') Systems.* The SBA definition of small entities for cable and other program distribution services includes SMATV services and, thus, small entities are defined as all such companies generating $12.5 million or less in annual receipts.[68] Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December 1995.[69] Other estimates indicate that SMATV operators serve approximately 1.5 million residential subscribers as of July 2001.[70] The best available estimates indicate that the largest SMATV operators serve between 15,000 and 55,000 subscribers each. Most SMATV operators serve approximately 3,000–4,000 customers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we believe that a substantial number of SMATV operators qualify as small entities.

11. *Open Video Systems (''OVS'').* Because OVS operators provide subscription services,[71] OVS falls within the SBA-recognized definition of cable and other program distribution services.[72] This definition provides that a small entity is one with $ 12.5 million or less in annual receipts.[73] The Commission has certified 25 OVS operators with some now providing service. Affiliates of Residential Communications Network, Inc. (''RCN'') received approval to operate OVS systems in New York City, Boston, Washington, D.C. and other areas. RCN has sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

12. *Electronics Equipment Manufacturers.* Rules adopted in this proceeding could apply to manufacturers of DTV receiving equipment and other types of consumer electronics equipment. The SBA has developed definitions of small entity for manufacturers of audio and video equipment[74] as well as radio and television broadcasting and wireless communications equipment.[75] These categories both include all such companies employing 750 or fewer employees. The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment used by consumers, as compared to industrial use by television licensees and related businesses. Therefore, we will utilize the SBA definitions applicable to manufacturers of audio and visual equipment and radio and television broadcasting and wireless communications equipment, since these are the two closest NAICS Codes applicable to the consumer electronics equipment manufacturing industry. However, these NAICS categories are broad and specific figures are not available as to how many of these establishments manufacture consumer equipment. According to the SBA's regulations, an audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern.[76] Census Bureau data indicates that there are 554 U.S. establishments that manufacture audio and visual equipment, and that 542 of these establishments have fewer than 500 employees and would be classified as small entities.[77] The remaining 12 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. Under the SBA's regulations, a radio and television broadcasting and wireless communications equipment manufacturer must also have 750 or fewer employees in order to qualify as a small business concern.[78] Census Bureau data indicates that there 1,215 U.S. establishments that manufacture radio and television broadcasting and wireless communications equipment, and that 1,150 of these establishments have fewer than 500 employees and would be classified as small entities.[79] The remaining 65 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. We therefore conclude that there are no more than 542 small manufacturers of audio and visual electronics equipment and no more than 1,150 small manufacturers of radio and television broadcasting and wireless communications equipment for consumer/household use.

Wireline Competition Services and Related Entities

13. In this section, we further describe and estimate the number of small entity licensees

[60] 13 CFR 121.201, NAICS code 517510 (formerly 513220).

[61] Id.

[62] Id.

[63] 63 13 CFR 121.201, NAICS code 517510 (formerly 513220).

[64] Id.

[65] See, however, the census data for Cable and Other Program Distribution, supra.

[66] Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, 12 FCC Rcd 4358, 4385 (1996) (''Third Annual Report'').

[67] Id. at 4385.

[68] 13 CFR 121.201, NAICS code 517510 (formerly 513220).

[69] *See Third Annual Report,* 12 FCC Rcd at 4403–4.

[70] *See Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming,* 17 FCC Rcd 1244, 1281 (2001) (''Eighth Annual Report'').

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

[72] 13 CFR 121.201, NAICS code 517510 (formerly 513220).

[73] Id.

[74] 13 CFR 121.201, NAICS code 334310.

[75] 13 CFR 121.201, NAICS code 334220.

[76] 13 CFR 121.201, NAICS code 334310.

[77] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Industry Series—Manufacturing, Audio and Video Equipment Manufacturing, Table 4 at 9 (1999). The amount of 500 employees was used to estimate the number of small business firms because the relevant Census categories stopped at 499 employees and began at 500 employees. No category for 750 employees existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[78] 13 CFR 121.201, NAICS code 334220.

[79] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Industry Series—Manufacturing, Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, Table 4 at 9 (1999). The amount of 500 employees was used to estimate the number of small business firms because the relevant Census categories stopped at 499 employees and began at 500 employees. No category for 750 employees existed. Thus, the number is as accurate as it is possible to calculate with the available information.

and regulatees that may be affected by rules adopted herein. The most reliable source of information regarding the total number of certain common carriers and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the Commission publishes in its Trends in Telephone Service report.[80] The SBA has developed small business size standards for wireline and wireless small businesses with three commercial census categories of Wired Telecommunications Carriers,[81] Paging,[82] and Cellular and Other Wireless Telecommunications.[83] Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimate numbers of small businesses that might be affected by our actions.

14. We have included small incumbent local exchange carriers (LECs) in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' [84] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope.[85] We have therefore included small incumbent LECs in this present RFA analysis, although we emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

15. *Wired Telecommunications Carriers*. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.[86] According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year.[87] Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more.[88] Thus, under this size standard, the majority of firms can be considered small.

16. *Incumbent Local Exchange Carriers (ILECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[89] According to Commission data, 1,329 carriers reported that they were engaged in the provision of local exchange services.[90] Of these 1,329 carriers, an estimated 1,024 have 1,500 or fewer employees and 305 have more than 1,500 employees.[91] Consequently, the Commission estimates that most providers of local exchange service are small businesses that may be affected by the rules and policies adopted herein.

17. *Competitive Local Exchange Carriers (CLECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive local exchange services or to competitive access providers or to ''Other Local Exchange Carriers,'' all of which are discrete categories under which Telecommunications Relay Service (TRS) data are collected. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[92] According to Commission data,[93] 532 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 532 companies, an estimated 411 have 1,500 or fewer employees and 121 have more than 1,500 employees.[94] In addition, 55 carriers reported that they were ''Other Local Exchange Carriers.'' Of the 55 ''Other Local Exchange Carriers,'' an estimated 53 have 1,500 or fewer employees and two have more than 1,500 employees.[95] Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, and ''Other Local Exchange Carriers'' are small entities that may be affected by the rules and policies adopted herein.

18. *Local Resellers*. The SBA has developed a size standard for small businesses within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees.[96] According to Commission data, 134 companies reported that they were engaged in the provision of local resale services.[97] Of these 134 companies, an estimated 131 they have 1,500 or fewer employees and three, alone or in combination with affiliates, have more than 1,500 employees.[98] Consequently, the Commission estimates that there are 131 or fewer local resellers that are small entities that may be affected by the rules and policies proposed herein.

19. *Toll Resellers*. The SBA has developed a size standard for small businesses within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees.[99] According to Commission data, 576 companies reported that they were engaged in the provision of toll resale services.[100] Of these 576 companies, an estimated 538 have 1,500 or fewer employees and 38, alone or in combination with affiliates, have more than 1,500 employees.[101] Consequently, the Commission estimates that there are 538 or fewer toll resellers that are small entities that may be affected by the rules and policies proposed herein.

20. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[102] According to Commission data, 229 companies reported that their primary telecommunications service activity was the provision of interexchange services.[103] Of these 229 companies, an estimated 181 have 1,500 or fewer employees and 48 have more than 1,500 employees.[104] Consequently, the Commission estimates that the majority of interexchange carriers are small entities that may be affected by the rules and policies adopted herein.

21. *Payphone Service Providers (PSPs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to payphone service providers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[105] According to Commission data, 936 companies reported that they were engaged in the provision of payphone services.[106] Of these 936 payphone service providers, an estimated 933 have 1,500 or fewer employees

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[80] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service, Table 5.3 (May 2002) (hereinafter Telephone Trends Report).

[81] 13 CFR 121.201, North American Industry Classification System (NAICS) code 513310 (changed to 517110 in October of 2002).

[82] 13 CFR 121.201, NAICS code 513321 (changed to 517211 in October of 2002).

[83] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October of 2002).

[84] 5 U.S.C. 601(3).

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

[86] 13 CFR 121.201, NAICS code 513310 (changed to 517110 in October 2002).

[87] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 5, NAICS code 513310 (issued October 2000).

[88] Id. The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1,000 employees or more.''

[89] 13 CFR 121.201, NAICS code 513310 (changed to 517110 in October of 2002).

[90] Telephone Trends Report at Table 5.3.

[91] Id.

[92] 13 CFR 121.201, NAICS code 513310 (changed to 517110 in October of 2002).

[93] Telephone Trends Report at Table 5.3.

[94] Id.

[95] Id.

[96] 96 13 CFR 121.201, NAICS code 513330 (changed to 517310 in October of 2002).

[97] Telephone Trends Report at Table 5.3.

[98] Id.

[99] 13 CFR 121.201, NAICS code 513330 (changed to 517310 in October of 2002).

[100] Telephone Trends Report at Table 5.3.

[101] 101 Id.

[102] 13 CFR 121.201, NAICS code 513310 (changed to 517110 in October of 2002).

[103] Telephone Trends Report at Table 5.3.

[104] Id.

[105] 13 CFR 121.201, NAICS code 513310 (changed to 517110 in October of 2002).

[106] Telephone Trends Report at Table 5.3.

and three have more than 1,500 employees.[107] Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by the rules and policies adopted herein.

22. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to operator service providers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[108] According to Commission data, 22 companies reported that they were engaged in the provision of operator services.[109] Of these 22 companies, an estimated 20 have 1,500 or fewer employees and two have more than 1,500 employees.[110] Consequently, the Commission estimates that the majority of operator service providers are small entities that may be affected by the rules and policies adopted herein.

23. *Prepaid Calling Card Providers.* The SBA has developed a size standard for a small business within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees.[111] According to Commission data, 32 companies reported that they were engaged in the provision of prepaid calling cards.[112] Of these 32 companies, an estimated 31 have 1,500 or fewer employees and one had more than 1,500 employees.[113] Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by the rules and policies adopted herein.

24. *Satellite Service Carriers.* The SBA has developed a size standard for small businesses within the category of Satellite Telecommunications. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees.[114] According to Commission data, 31 carriers reported that they were engaged in the provision of satellite services.[115] Of these 31 carriers, an estimated 25 have 1,500 or fewer employees and 6, alone or in combination with affiliates, have more than 1,500 employees.[116] Consequently, the Commission estimates that there are 31 or fewer satellite service carriers which are small businesses that may be affected by the rules and policies proposed herein.

25. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to ‘‘Other Toll Carriers.’’ This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[117] According to Commission data, 42 companies reported that their primary telecommunications service activity was the provision of ‘‘Other Toll Services.’’ [118] Of these 42 companies, an estimated 37 have 1,500 or fewer employees and 5 have more than 1,500 employees.[119] Consequently, the Commission estimates that most ‘‘Other Toll Carriers’’ are small entities that may be affected by the rules and policies adopted herein.

International Services

26. The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC).[120] This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts.[121] According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than $10.0 million.[122] The Census report does not provide more precise data.

27. *International Broadcast Stations.* Commission records show that there are approximately 19 international high frequency broadcast station authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of international high frequency broadcast stations that would constitute a small business under the SBA definition. However, the Commission estimates that only six international high frequency broadcast stations are subject to regulatory fee payments.

28. *International Public Fixed Radio (Public and Control Stations).* There is one licensee in this service subject to payment of regulatory fees, and the licensee does not constitute a small business under the SBA definition.

29. *Fixed Satellite Transmit/Receive Earth Stations.* There are approximately 3,149 earth station authorizations, a portion of which are Fixed Satellite Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and are unable to estimate the number of the earth stations that would constitute a small business under the SBA definition.

30. *Fixed Satellite Small Transmit/Receive Earth Stations.* There are approximately 3,149 earth station authorizations, a portion of which are Fixed Satellite Small Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and are unable to estimate the number of fixed small satellite transmit/receive earth stations that would constitute a small business under the SBA definition.

31. *Fixed Satellite Very Small Aperture Terminal (VSAT) Systems.* These stations operate on a primary basis, and frequency coordination with terrestrial microwave systems is not required. Thus, a single ‘‘blanket’’ application may be filed for a specified number of small antennas and one or more hub stations. There are 485 current VSAT System authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of VSAT systems that would constitute a small business under the SBA definition.

32. *Mobile Satellite Earth Stations.* There are 21 licensees. We do not request nor collect annual revenue information, and are unable to estimate the number of mobile satellite earth stations that would constitute a small business under the SBA definition.

33. *Radio Determination Satellite Earth Stations.* There are four licensees. We do not request nor collect annual revenue information, and are unable to estimate the number of radio determination satellite earth stations that would constitute a small business under the SBA definition.

34. *Space Stations (Geostationary).* There are presently an estimated 75 Geostationary Space Station authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of geostationary space stations that would constitute a small business under the SBA definition.

35. *Space Stations (Non-Geostationary).* There are presently seven Non-Geostationary Space Station authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of non-geostationary space stations that would constitute a small business under the SBA definition.

36. *Direct Broadcast Satellites.* Because DBS provides subscription services, DBS falls within the SBA-recognized definition of ‘‘Cable and Other Pay Television Services.’’[123] This definition provides that a small entity is one with $11.0 million or less in annual receipts.[124] Currently, there are nine DBS authorizations, though there are only two DBS companies in operation at this time. We do not request nor collect annual revenue information for DBS services, and are unable to determine the number of DBS operators that would constitute a small business under the SBA definition.

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[107] Id.

[108] 13 CFR 121.201, NAICS code 513310 (changed to 517110 in October of 2002).

[109] Telephone Trends Report at Table 5.3.

[110] Id.

[111] 13 CFR 121.201, NAICS code 513330 (changed to 517310 in October of 2002).

[112] Telephone Trends Report at Table 5.3.

[113] Id.

[114] 13 CFR 121.201, NAICS code 513340 (changed to 517410 in October of 2002).

[115] Telephone Trends Report at Table 5.3.

[116] Id.

[117] 13 CFR 121.201, NAICS code 513310 (changed to 517110 in October of 2002).

[118] Telephone Trends Report at Table 5.3.

[119] Id.

[120] An exception is the Direct Broadcast Satellite (DBS) Service, *infra.*

[121] 13 CFR 121.201, NAICS codes 48531, 513322, 51334, and 51339.

[122] *1992 Economic Census Industry and Enterprise Receipts Size Report*, Table 2D, NAICS codes 48531, 513322, 51334, and 513391 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

[123] 13 CFR 121.201, NAICS codes 51321 and 51322.

[124] Id.

Media Services

37. *Television Broadcasting.* The Small Business Administration defines a television broadcasting station that has no more than $12 million in annual receipts as a small business.[125] Business concerns included in this industry are those ''primarily engaged in broadcasting images together with sound.''[126] According to Commission staff review of the BIA Publications, Inc. Master Access Television Analyzer Database as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States have revenues of $12 million or less. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations [127] 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. There are also 2,127 low power television stations (LPTV).[128] Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA definition.

38. 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 do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

[125] *See* OMB, North American Industry Classification System: United States, 1997 at 509 (1997) (NAICS code 513120, which was changed to code 515120 in October 2002).

[126] OMB, North American Industry Classification System: United States, 1997, at 509 (1997) (NAICS code 513120, which was changed to code 51520 in October 2002). This category description continues, ''These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources.'' Separate census categories pertain to businesses primarily engaged in producing programming. *See id.* at 502–05, NAICS code 51210. Motion Picture and Video Production: code 512120, Motion Picture and Video Distribution, code 512191, Teleproduction and Other Post-Production Services, and code 512199, Other Motion Picture and Video Industries.

[127] ''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 121.103(a)(1).

[128] FCC News Release, ''Broadcast Station Totals as of September 30, 2002.''

39. *Radio Broadcasting.* The SBA defines a radio broadcast entity that has $6 million or less in annual receipts as a small business.[129] Business concerns included in this industry are those ''primarily engaged in broadcasting aural programs by radio to the public.[130] According to Commission staff review of the BIA Publications, Inc., Master Access Radio Analyzer Database, as of May 16, 2003, about 10,427 of the 10,945 commercial radio stations in the United States have revenue of $6 million or less. We note, however, that many radio stations are affiliated with much larger corporations with much higher revenue, and that in assessing whether a business concern qualifies as small under the above definition, such business (control) affiliations [131] are included.[132] Our estimate, therefore likely overstates the number of small businesses that might be affected by our action.

40. *Auxiliary, Special Broadcast and Other Program Distribution Services.* This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. The applicable definitions of small entities are those, noted previously, under the SBA rules applicable to radio broadcasting stations and television broadcasting stations.[133]

41. The Commission estimates that there are approximately 3,790 translators and boosters. 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 ($5 million for a radio station or $10.5 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.[134]

[129] *See* OMB, North American Industry Classification System: United States, 1997, at 509 (1997) (Radio Stations) (NAICS code 513111, which was changed to code 515112 in October 2002).

[130] *Id.*

[131] ''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 121.103(a)(1).

[132] ''SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern's size.'' 13 CFR 121(a)(4).

[133] 13 CFR 121.201, NAICS codes 513111 and 513112.

[134] 15 U.S.C. 632.

Wireless and Commercial Mobile Services

42. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of Paging [135] or Cellular and Other Wireless Telecommunications.[136] Under both of those SBA size standards, such a business is small if it has 1,500 or fewer employees.[137] For the census category of Paging, Census Bureau data for 1997 show that there were 1320 firms in this category, total, that operated for the entire year.[138] Of this total, 1303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more.[139] Thus, under this category and associated small business size standard, the great majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications firms, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year.[140] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[141] Thus, under this second category and size standard, the great majority of firms can, again, be considered small.

43. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years.[142] For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[143] These

[135] 13 CFR 121.201, NAICS code 513321 (changed to 517211 in October of 2002).

[136] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October of 2002).

[137] *Id.*

[138] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Employment Size of Firms Subject to Federal Income Tax: 1997,'' Table 5, NAICS code 513321 (issued Oct. 2000).

[139] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1,000 employees or more.''

[140] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Employment Size of Firms Subject to Federal Income Tax: 1997,'' Table 5, NAICS code 513322 (issued Oct. 2000).

[141] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1,000 employees or more.''

[142] *See* Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96–59, Report and Order, 11 FCC Rcd 7824 paragraphs 57–60 (1996), 61 FR 33859 (July 1, 1996); see also 47 CFR 24.720(b).

[143] *See* Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive

Continued

standards defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA.[144] No small businesses within the SBA-approved small business size standard bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.[145] On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Based on this information, the Commission concludes that the number of small broadband PCS licensees will include the 90 winning C Block bidders, the 93 qualifying bidders in the D, E, and F Block auctions, the 48 winning bidders in the 1999 re-auction, and the 29 winning bidders in the 2001 re-auction, for a total of 260 small entity broadband PCS providers, as defined by the SBA small business size standards and the Commission's auction rules. Consequently, the Commission estimates that 260 broadband PCS providers are small entities that may be affected by the rules and policies adopted herein.

44. *Narrowband Personal Communications Services.* To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order.[146] A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards.[147] In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future actions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission's Rules. The Commission assumes, for purposes of this analysis that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

45. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to ''Cellular and Other Wireless Telecommunications'' companies. This standard provides that such a company is small if it employs no more than 1,500 persons.[148] According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year.[149] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[150] If this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard.

46. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz Third Report and Order, we adopted a small business size standard for ''small'' and ''very small'' businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[151] This small business size standard indicates that a ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[152] A ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small business size standards.[153] Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.[154] In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) licenses, and 875 Economic Area (EA) licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.[155]

47. *800 MHz and 900 MHz Specialized Mobile Radio Licensees.* The Commission awards ''small entity'' and ''very small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years, or that had revenues of no more than $3 million in each of the previous calendar years, respectively.[156] These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning

Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96–59, Report and Order, 11 FCC Rcd 7824 paragraphs 57–60 (1996), 61 FR 33859 (July 1, 1996).

[144] *See, e.g.,* Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5532, 5581–84 paragraphs 115–17 (1994), 59 FR 37566 (July 22, 1994).

[145] FCC News, Broadband PCS, D, E and F Block Auction Closes, No. 71744 (rel. Jan. 14, 1997). See also Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, WT Docket No. 97–82, Second Report and Order, 12 FCC Rcd 16436 (1997), 62 FR 55348 (Oct. 24, 1997).

[146] Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS, Docket No. ET 92–100, Docket No. PP 93–253, Second Report and Order and Second Further Notice of Proposed Rulemaking, 15 FCC RCD 10456 (2000), 65 FR 35875 (June 6, 2000).

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

[148] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October of 2002).

[149] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Employment Size of Firms Subject to Federal Income Tax: 1997,'' Table 5, NAICS code 513322 (issued Oct. 2000).

[150] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1,000 employees or more.''

[151] 220 MHz Third Report and Order, 12 FCC Rcd 10943, 11068–70, at paras. 291–295 (1997), 62 FR 16004 (Apr. 3, 1997).

[152] *Id.,* 12 FCC Rcd 10943, 11068–70, at paras. 291.

[153] *See* letter to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Jan. 6, 1998).

[154] *See* generally Public Notice, ''220 MHz Service Auction Closes,'' 14 FCC Rcd 605 (1998).

[155] Public Notice, ''Phase II 220 MHz Service Spectrum Auction Closes,'' 14 FCC Rcd 11218 (1999).

[156] 47 CFR 90.814(b)(1).

bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities. Consequently, the Commission estimates that there are 301 or fewer small entity SMR licensees in the 800 MHz and 900 MHz bands that may be affected by the rules and policies adopted.

48. *Common Carrier Paging.* In the Paging Third Report and Order, we developed a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[157] 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. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000.[158] Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. At present, there are approximately 24,000 Private-Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to Commission data, 471 carriers reported that they were engaged in the provision of either paging and messaging services or other mobile services.[159] Of those, the Commission estimates that 450 are small, under the SBA business size standard specifying that firms are small if they have 1,500 or fewer employees.[160]

49. *700 MHz Guard Band Licensees.* In the 700 MHz Guard Band Order, we adopted a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[161] 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. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.[162] Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 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.[163]

50. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small entities specific to the Rural Radiotelephone Service.[164] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).[165] The Commission uses the SBA's size standard applicable to ''Cellular and Other Wireless Telecommunications,'' *i.e.*, an entity employing no more than 1,500 persons.[166] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA's size standard. Consequently, we estimate that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

51. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service.[167] We will use SBA's small business size standard applicable to ''Cellular and Other Wireless Telecommunications,'' *i.e.*, an entity employing no more than 1,500 persons.[168] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard.

52. *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 ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees.[169] Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a ''very small'' business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars.[170] There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the above special small business size standards.

53. *Fixed Microwave Services.* Microwave services include common carrier,[171] private-operational fixed,[172] and broadcast auxiliary radio services.[173] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees.[174] The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to

[157] 220 MHz Third Report and Order, 12 FCC Rcd 10943, 11068–70, at paras. 291–295 (1997), 62 FR 16004 (Apr. 3, 1997).

[158] Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, WT Docket No. 96–18, Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, at paras. 98 (1999), 64 FR 33762 (June 24, 1999).

[159] Trends in Telephone Service at Table 5.3.

[160] *Id.* The SBA size standard is that of Paging, 13 CFR 121.201, NAICS code 517211.

[161] *See* Service Rules for the 746–764 MHz Bands, and Revisions to part 27 of the Commission's Rules, WT Docket No. 99–168, Second Report and Order, 15 FCC Rcd 5299 (2000), 65 FR 17599 (Apr. 4, 2000).

[162] *See* generally Public Notice, ''220 MHz Service Auction Closes,'' Report No. WT 98–36 (Wireless Telecommunications Bureau, Oct. 23, 1998).

[163] Public Notice, ''700 MHz Guard Band Auction Closes,'' DA 01–478 (rel. Feb. 22, 2001).

[164] The service is defined in 22.99 of the Commission's Rules, 47 CFR 22.99.

[165] BETRS is defined at 47 CFR 22.757, 22.759.

[166] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October of 2002).

[167] The service is defined in 22.99 of the Commission's Rules, 47 CFR 22.99.

[168] 13 CFR 121.201, NAICS codes 513322 (changed to 517212 in October of 2002).

[169] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October of 2002).

[170] Amendment of the Commission's Rules Concerning Maritime Communications, PR Docket No. 92–257, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853 (1998), 63 FR 40059 (July 27, 1998).

[171] *See* 47 CFR 101, *et seq.* (formerly Part 21 of the Commission's Rules) for common carrier fixed microwave services (except Multipoint Distribution Service).

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

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

[174] 13 CFR 121.201, NAICS codes 513322 (changed to 517212 in October of 2002).

estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed microwave licensees and up to 61,670 private operational-fixed microwave licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

54. *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.[175] There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for ''Cellular and Other Wireless Telecommunications'' services.[176] Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.[177]

55. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A ''small business'' is an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' is an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these small business size standards.[178] The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as ''very small business'' entities, and one that qualified as a ''small business'' entity. We conclude that the number of geographic area WCS licensees affected by this analysis includes these eight entities.

56. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years.[179] An additional size standard for ''very small business'' is: an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[180] The SBA has approved these small business size standards.[181] The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and policies adopted herein.

57. *Multipoint Distribution Service and Instructional Television Fixed Service.* Multipoint Distribution Service (MDS) systems, often referred to as ''wireless cable,'' transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS).[182] In connection with the 1996 MDS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years.[183] The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating $12.5 million or less in annual receipts.[184] According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year.[185] Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. This SBA small business size standard also appears applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities.[186] Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

58. *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.[187] The auction of the 1,030 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[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 calendar years.[189] The SBA has approved these small business size standards in the context of LMDS auctions.[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. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses consists of the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers.

59. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was 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.[191] In the 218–219 MHz Report and Order and Memorandum Opinion and Order, we established a small business size standard for 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 to exceed $15 million for the preceding three years.[192] 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 to exceed $3 million for the preceding three years.[193] We cannot

[175] This service is governed by 47 CFR 22.1001–22.1037.

[176] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October of 2002).

[177] *Id.*

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

[179] *See* Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands, ET Docket No. 95–183, Report and Order, 12 FCC Rcd 18600 (1997), 63 FR 6079 (Feb. 6, 1998).

[180] Id.

[181] *See* Letter to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Feb. 4, 1998).

[182] Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, MM Docket No. 94–131 and PP Docket No. 93–253, Report and Order, 10 FCC Rcd 9589, 9593 paragraph 7 (1995), 60 FR 36524 (July 17, 1995).

[183] 47 CFR 21.961(b)(1).

[184] 13 CFR 121.201, NAICS code 513220 (changed to 517510 in October of 2002).

[185] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization)'', Table 4, NAICS code 513220 (issued October 2000).

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

[187] *See* Local Multipoint Distribution Service, Second Report and Order, 12 FCC Rcd 12545 (1997), 62 FR 23148 (Apr. 29, 1997).

[188] Id.

[189] Id.

[190] *See* Letter to Dan Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Jan. 6, 1998).

[191] Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, Fourth Report and Order, 9 FCC Rcd 2330 (1994), 59 FR 24947 (May 13, 1994).

[192] Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service, WT Docket No. 98–169, Report and Order and Memorandum Opinion and Order, 15 FCC Rcd 1497 (1999), 64 FR 59656 (Nov. 3, 1999).

[193] Id.

estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218–219 MHz spectrum.

60. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of ''Cellular and Other Wireless Telecommunications'' companies. This category provides that such a company is small if it employs no more than 1,500 persons.[194] According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year.[195] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[196] Thus, under this size standard, the great majority of firms can be considered small. These broader census data notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent[197] and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

61. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for ''small business'' is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million.[198] ''Very small business'' in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years.[199] The SBA has approved these small business size standards.[200] These size standards will apply to the future auction, if held.

62. *Internet Service Providers.* While internet service providers (ISPs) are only indirectly affected by our present actions, and ISPs are therefore not formally included within this present RFA, we have addressed them informally to create a fuller record and to recognize their participation in this proceeding. The SBA has developed a small business size standard for Online Information Services, which consists of all such companies having $21 million or less in annual receipts.[201] According to Census Bureau data for 1997, there were 2,751 firms in this category, total, that operated for the entire year.[202] Of this total, 2,659 firms had annual receipts of $9,999,999 or less, and an additional 67 had receipts of $10 million to $24,999,999.[203] Thus, under this size standard, the great majority of firms can be considered small.

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

63. With certain exceptions, the Commission's Schedule of Regulatory Fees applies to all Commission licensees and regulatees. Most licensees will be required to count the number of licenses or call signs authorized, complete and submit an FCC Form 159 (''FCC Remittance Advice''), and pay a regulatory fee based on the number of licenses or call signs.[204] Interstate telephone service providers must compute their annual regulatory fee based on their interstate and international end-user revenue using information they already supply to the Commission in compliance with the Form 499–A, Telecommunications Reporting Worksheet, and they must complete and submit the FCC Form 159. Compliance with the fee schedule will require some licensees to tabulate the number of units (*e.g.*, cellular telephones, pagers, cable TV subscribers) they have in service, and complete and submit an FCC Form 159. Licensees ordinarily will keep a list of the number of units they have in service as part of their normal business practices. No additional outside professional skills are required to complete the FCC Form 159, and it can be completed by the employees responsible for an entity's business records.

64. Each licensee must submit the FCC Form 159 to the Commission's lockbox bank after computing the number of units subject to the fee. Licensees may also file electronically to minimize the burden of submitting multiple copies of the FCC Form 159. Applicants who pay small fees in advance and provide fee information as part of their application must use FCC Form 159.

65. Licensees and regulatees are advised that failure to submit the required regulatory fee in a timely manner will subject the licensee or regulatee to a late payment penalty of 25 percent in addition to the required fee.[205] If payment is not received, new or pending applications may be dismissed, and existing authorizations may be subject to rescission.[206] Further, in accordance with the Debt Collection Improvement Act of 1996, federal agencies may bar a person or entity from obtaining a federal loan or loan insurance guarantee if that person or entity fails to pay a delinquent debt owed to any federal agency.[207] Nonpayment of regulatory fees is a debt owed the United States pursuant to 31 U.S.C. 3711 *et seq.*, and the *Debt Collection Improvement Act of 1996,* Public Law 194–134. Appropriate enforcement measures as well as administrative and judicial remedies, may be exercised by the Commission. Debts owed to the Commission may result in a person or entity being denied a federal loan or loan guarantee pending before another federal agency until such obligations are paid.[208]

66. The Commission's rules currently provide for relief in exceptional circumstances. Persons or entities may request a waiver, reduction or deferment of payment of the regulatory fee.[209] However, timely submission of the required regulatory fee must accompany requests for waivers or reductions. This will avoid any late payment penalty if the request is denied. The fee will be refunded if the request is granted. In exceptional and compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in reduction of service to a community or other financial hardship to the licensee), the Commission will defer payment in response to a request filed with the appropriate supporting documentation.

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

67. The RFA requires an agency to describe any significant alternatives that it has

[194] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October of 2002).

[195] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Employment Size of Firms Subject to Federal Income Tax: 1997,'' Table 5, NAICS code 513322 (issued Oct. 2000).

[196] Id. The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1,000 employees or more.''

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

[198] Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules to License Fixed Services at 24 GHz, Report and Order, 15 FCC Rcd 16934, 16967 (2000), 65 FR 59350 (Oct. 5, 2000); *see also* 47 CFR 101.538(a)(2).

[199] Id.

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

[201] 13 CFR 121.201, NAICS code 514191 (changed to 518111 in October of 2002).

[202] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Receipts Size of Firms Subject to Federal Income Tax: 1997,'' Table 4, NAICS code 514191 (issued October 2000).

[203] Id.

[204] The following categories are exempt from the Commission's Schedule of Regulatory Fees: Amateur radio licensees (except applicants for vanity call signs) and operators in other non-licensed services (*e.g.,* Personal Radio, part 15, ship and aircraft). Governments and non-profit (exempt under section 501(c) of the Internal Revenue Code) entities are exempt from payment of regulatory fees and need not submit payment. Non-commercial educational broadcast licensees are exempt from regulatory fees as are licensees of auxiliary broadcast services such as low power auxiliary stations, television auxiliary service stations, remote pickup stations and aural broadcast auxiliary stations where such licenses are used in conjunction with commonly owned non-commercial educational stations. Emergency Alert System licenses for auxiliary service facilities are also exempt as are instructional television fixed service licensees. Regulatory fees are automatically waived for the licensee of any translator station that: (1) Is not licensed to, in whole or in part, and does not have common ownership with, the licensee of a commercial broadcast station; (2) does not derive income from advertising; and (3) is dependent on subscriptions or contributions from members of the community served for support. Receive only earth station permittees are exempt from payment of regulatory fees. A regulatee will be relieved of its fee payment requirement if its total fee due, including all categories of fees for which payment is due by the entity, amounts to less than $10.

[205] 47 CFR 1.1164.

[206] 47 CFR 1.1164(c).

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

[208] 31 U.S.C. 7701(c)(2)(B).

[209] 47 CFR 1.1166.

considered in reaching its proposed approach, which may include the following four alternatives: (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. As described in Section III of this FRFA, *supra,* we have created procedures in which all fee-filing licensees and regulatees use a single form, FCC Form 159, and have described in plain language the general filing requirements. We have sought comment on other alternatives that might simplify our fee procedures or otherwise benefit small entities, while remaining consistent with our statutory responsibilities in this proceeding.

68. *The Omnibus Appropriations Act for FY 2003,* Public Law 108–7, requires the Commission to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress, pursuant to Section 9(a) of the Communications Act, as amended, has required the Commission to collect for Fiscal Year (FY) 2003.[210] As noted, we have previously sought comment on the proposed methodology for implementing these statutory requirements and any other potential impact of these proposals on small entities.

69. With the use of actual cost accounting data for computation of regulatory fees, we found that some fees which were very small in previous years would have increased dramatically and would have a disproportionate impact on smaller entities. The methodology we are adopting in this *Report and Order* minimizes this impact by limiting the amount of increase and shifting costs to other services which, for the most part, are larger entities.

70. Several categories of licensees and regulatees are exempt from payment of regulatory fees. *See, e.g.*, footnote 204, *supra.*

Report to Small Business Administration: The Commission will send a copy of this *Report and Order,* including a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration. The Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

Report to Congress: The Commission will send a copy of this Final Regulatory Flexibility Analysis, along with this *Report and Order,* in a report to Congress pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

ATTACHMENT B.—SOURCES OF PAYMENT UNIT ESTIMATES FOR FY 2003

[In order to calculate individual service fees for FY 2003, we adjusted FY 2002 payment units for each service to more accurately reflect expected FY 2003 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections when available. We tried to obtain verification for these estimates from multiple sources and, in all cases; we compared FY 2003 estimates with actual FY 2002 payment units to ensure that our revised estimates were reasonable. Where appropriate, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated exactly. These include an unknown number of waivers and/or exemptions that may occur in FY 2003 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical or other reasons. Therefore, when we note, for example, that our estimated FY 2003 payment units are based on FY 2002 actual payment units, it does not necessarily mean that our FY 2003 projection is *exactly* the same number as FY 2002. It means that we have either rounded the FY 2003 number or adjusted it slightly to account for these variables.]

Fee category	Sources of payment unit estimates
Land Mobile (All), Microwave, 218–219 MHz, Marine (Ship & Coast), Aviation (Aircraft & Ground), GMRS, Amateur Vanity Call Signs, Domestic Public Fixed.	Based on Wireless Telecommunications Bureau (WTB) projections of new applications and renewals taking into consideration existing Commission licensee data bases. Aviation (Aircraft) and Marine (Ship) estimates have been adjusted to take into consideration the licensing of portions of these services on a voluntary basis.
CMRS Mobile Services	Based on Wireless Telecommunications Bureau estimates.
CMRS Messaging Services	Based on Wireless Telecommunications Bureau estimates.
AM/FM Radio Stations	Based on estimates from Media Services Bureau estimates and actual FY 2002 payment units.
UHF/VHF Television Stations	Based on Media Services Bureau estimates and actual FY 2002 payment units.
AM/FM/TV Construction Permits	Based on Media Services Bureau estimates and actual FY 2002 payment units.
LPTV, Translators and Boosters	Based on actual FY 2002 payment units.
Auxiliaries	Based on FY 2002 payment units.
MDS/LMDS/MMDS	Based on Wireless Telecommunications Bureau estimates.
Cable Antenna Relay Service (CARS)	Based on Media Services Bureau (previously Cable Services Bureau) estimates.
Cable Television System Subscribers	Based on Media Services Bureau (previously Cable Services Bureau), industry estimates of subscribership, and FY 2002 payment units.
Interstate Telecommunication Service Providers	Based on actual FY 2002 interstate revenues reported on Telecommunications Reporting Worksheet, adjusted for FY 2003 revenue growth/decline for industry as estimated by the Wireline Competition Bureau.
Earth Stations	Based on actual FY 2002 payment estimates.
Space Stations (GSOs & NGSOs)	Based on International Bureau licensee data base estimates.
International Bearer Circuits	Based on International Bureau estimates.
International HF Broadcast Stations, International Public Fixed Radio Service.	Based on International Bureau estimates.

[210] 47 U.S.C. 159(a).

ATTACHMENT C.—CALCULATION OF FY 2003 REVENUE REQUIREMENTS AND PRO-RATA FEES

Fee category	FY 2003 Payment units	Years	FY 2002 revenue estimate	Pro-rated FY 2003 revenue requirement**	Computed new FY 2003 regulatory fee	Rounded new FY 2003 regulatory fee	Expected FY 2003 revenue
PLMRS (Exclusive Use)	3,300	10	204,239	251,148	8	10	330,000
PLMRS (Shared use)	53,300	10	2,166,927	2,664,616	5	5	2,665,000
Microwave	6,100	10	1,145,732	1,408,877	23	25	1,525,000
218–219 MHz (Formerly IVDS)	5	10	1,245	1,531	31	30	1,500
Marine (Ship)	4,400	10	518,070	637,058	14	15	660,000
GMRS	10,600	5	79,205	97,396	2	5	265,000
Aviation (Aircraft)	3,100	10	134,499	165,390	5	5	155,000
Marine (Coast)	1,000	10	89,666	110,260	11	10	100,000
Aviation (Ground)	1,700	5	99,629	122,511	14	15	127,500
Amateur Vanity Call Signs	9,800	10	130,016	159,877	1.63	1.63	159,740
AM Class A	78	1	159,008	195,528	2,507	2,500	195,000
AM Class B	2,168	1	1,957,308	2,406,853	1,110	1,100	2,384,800
AM Class C	1,004	1	675,633	830,809	827	825	828,300
AM Class D	2,021	1	2,214,699	2,723,360	1,348	1,350	2,728,350
FM Classes A, B1 & C3	3,168	1	4,531,717	5,572,539	1,759	1,750	5,544,000
FM Classes B, C, C0, C1 & C2	3,022	1	5,595,554	6,880,713	2,277	2,275	6,875,050
AM Construction Permits	48	1	17,694	21,758	453	455	21,840
FM Construction Permits	202	1	301,875	371,209	1,838	1,850	373,700
Satellite TV	126	1	102,658	126,235	1,002	1,000	126,000
Satellite TV Construction Permit	5	1	2,092	2,573	515	515	2,575
VHF Markets 1–10	44	1	2,062,516	2,536,224	57,641	57,650	2,536,600
VHF Markets 11–25	60	1	2,108,844	2,593,192	43,220	43,225	2,593,500
VHF Markets 26–50	73	1	1,788,836	2,199,687	30,133	30,125	2,199,125
VHF Markets 51–100	117	1	1,720,690	2,115,889	18,085	18,075	2,114,775
VHF Remaining Markets	209	1	755,062	928,481	4,442	4,450	930,050
VHF Construction Permits	16	1	60,275	74,119	4,632	4,625	74,000
UHF Markets 1–10	96	1	1,236,992	1,521,098	15,845	15,850	1,521,600
UHF Markets 11–25	96	1	1,005,653	1,236,627	12,882	12,875	1,236,000
UHF Markets 26–50	129	1	848,240	1,043,059	8,086	8,075	1,041,675
UHF Markets 51–100	181	1	733,517	901,988	4,983	4,975	900,475
UHF Remaining Markets	190	1	220,628	271,301	1,428	1,425	270,750
UHF Construction Permits	45	1	304,192	374,057	8,312	8,300	373,500
Auxiliaries	25,000	1	239,109	294,027	12	10	250,000
International HF Broadcast	5	1	2,959	3,639	728	730	3,650
LPTV/Translators/Boosters	2,993	1	892,674	1,097,699	367	365	1,092,445
CARS	1,450	1	103,614	127,412	88	90	130,500
Cable Systems	67,500,000	1	36,405,378	44,766,781	0.66	0.66	44,550,000
Interstate Telecommunication Service Providers	63,000,000,000	1	101,693,547	125,050,006	0.001985	0.00199	125,370,000
CMRS Mobile Services (Cellular/Public Mobile)	141,800,000	1	29,841,965	37,393,826	0.26	0.26	36,868,000
CMRS Messaging Services	19,700,000	1	1,769,590	1,662,680	0.08	0.08	1,576,000
MDS/MMDS	3,611	1	775,848	954,041	264	265	956,915
LMDS	975	1	209,481	257,594	264	265	258,375
International Bearer Circuits	2,600,000	1	5,638,992	6,934,127	2.67	2.67	6,942,000
International Public Fixed	1	1	1,395	1,715	1,715	1,725	1,725
Earth Stations	3,149	1	540,207	664,280	211	210	661,290
Space Stations (Geostationary)	75	1	7,052,426	8,672,192	115,629	115,625	8,671,875
Space Stations (Non-geostationary	7	1	616,902	758,589	108,370	108,375	758,625
Total Estimated Revenue to be Collected			218,757,000	269,184,570			268,951,805
Total Revenue Requirement				269,000,000			269,000,000
Difference				184,570			(48,195)

** 1.2297 factor applied based on the amount Congress designated for recovery through regulatory fees (Public Law 108–7 and 47 U.S.C. 159(a)(2)).

ATTACHMENT D.—FY 2003 SCHEDULE OF REGULATORY FEES

Fee category	Annual regulatory fee (U.S. $'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	10

ATTACHMENT D.—FY 2003 SCHEDULE OF REGULATORY FEES—Continued

Fee category	Annual regulatory fee (U.S. $'s)
Microwave (per license) (47 CFR part 101)	25
218–219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	30
Marine (Ship) (per station) (47 CFR part 80)	15
Marine (Coast) (per license) (47 CFR part 80)	10
General Mobile Radio Service (per license) (47 CFR part 95)	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	5
PLMRS (Shared Use) (per license) (47 CFR part 90)	5
Aviation (Aircraft) (per station) (47 CFR part 87)	5
Aviation (Ground) (per license) (47 CFR part 87)	15
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.63
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.26
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08
Multipoint Distribution Services (MMDS/MDS) (per call sign) (47 CFR part 21)	265
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	265
AM Radio Construction Permits	455
FM Radio Construction Permits	1,850
TV (47 CFR part 73) VHF Commercial:	
Markets 1–10	57,650
Markets 11–25	43,225
Markets 26–50	30,125
Markets 51–100	18,075
Remaining Markets	4,450
Construction Permits	4,625
TV (47 CFR part 73) UHF Commercial:	
Markets 1–10	15,850
Markets 11–25	12,875
Markets 26–50	8,075
Markets 51–100	4,975
Remaining Markets	1,425
Construction Permits	8,300
Satellite Television Stations (All Markets)	1,000
Construction Permits—Satellite Television Stations	515
Low Power TV, TV/FM Translators & Boosters (47 CFR part 74)	365
Broadcast Auxiliary (47 CFR part 74)	10
CARS (47 CFR part 78)	90
Cable Television Systems (per subscriber) (47 CFR part 76)	.66
Interstate Telecommunication Service Providers (per revenue dollar)	.00199
Earth Stations (47 CFR part 25)	210
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes Direct Broadcast Satellite Service (per operational station) (47 CFR part 100)	115,625
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	108,375
International Bearer Circuits (per active 64KB circuit)	2.67
International Public Fixed (per call sign) (47 CFR part 23)	1,725
International (HF) Broadcast (47 CFR part 73)	730

FY 2003 RADIO STATION REGULATORY FEES

Population served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C0, C1 & C2
<=25,000	600	450	325	400	475	625
25,001—75,000	1,200	900	475	600	950	1,100
75,001—150,000	1,800	1,125	650	1,000	1,300	2,025
150,001—500,000	2,700	1,925	975	1,200	2,025	2,650
500,001—1,200,000	3,900	2,925	1,625	2,000	3,200	3,900
1,200,001—3,000,000	6,000	4,500	2,450	3,200	5,225	6,250
>3,000,000	7,200	5,400	3,100	4,000	6,650	8,125

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

AM Stations

Specific information on each day tower, including field ratio, phasing, spacing and orientation was retrieved, as well as the theoretical pattern RMS figure (mV/m @ 1 km) for the antenna system. The standard, or modified standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in section 73.150 and 73.152 of the Commission's rules.[211] Radiation values were calculated for each of 72 radials around the transmitter site (every 5 degrees of azimuth). Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure M3. Using the calculated horizontal

[211] 47 CFR 73.150 and 73.152.

radiation values, and the retrieved soil conductivity data, the distance to the city grade (5 mV/m) contour was predicted for each of the 72 radials. The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

FM Stations

The maximum of the horizontal and vertical HAAT (m) and ERP (kW) was used. Where the antenna HAMSL was available, it was used in lieu of the overall HAAT figure to calculate specific HAAT figures for each of 72 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the propagation curves specified in section 73.313 of the Commission's rules to predict the distance to the city grade (70 dBuV/m or 3.17 mV/m) contour for each of the 72 radials.[212] The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

Attachment F

Parties Filing Comments on the Notice of Proposed Rulemaking

Amateur Radio Vanity Call Signs

Charles P. Adkins
Daniel J. Berry
Robert Bingham
James Bridge
Tad Burik
Marc Colton
Kenneth Cooperstein
James Cour
Ralph D'Andrea
William J. Edwards
Paul M. Farrar
Dean K. Gibson
Chuck Gysi
Kevin Hemsley
Ralph Howes, Jr.
Steven Karty
Allan Kruger
Victor M. Magana
Doran S. Platt, III
Thomas Powell
Dennis G. Sarver
James B. Stafford
Jon Tandy
Frank A. Todd, IV
Jay Urish
Ira A. Wilner

American Mobile Telecommunications Association, Inc. (''AMTA'')
Arch Wireless; Allied National Paging Association; American Association of Paging Carriers; Metrocall Holdings, Inc.; and WebLink Wireless I, L.P. (''Joint Commenters'')
Bennet & Bennet, PLLC on Behalf of its LMDS Clients (''Bennet & Bennet'')
Blooston, Mordkofsky, Dickens, Duffy & Prendergast (''BMDDP'')
Helen Graham
Industrial Telecommunications Association, Inc. (''ITA'')
Sky Television (''WSKY-TV'')
Verizon, Inc. (''Verizon'')

Parties Filing Reply Comments

Blooston, Mordkofsky, Dickens, Duffy & Prendergast (''BMDDP'')
Kenneth J. Brown
Martin Group on Behalf of its LMDS Clients

Parties Filing a Notice of Oral Ex Parte Presentation

Arch Wireless, Inc.
Weblink Wireless I, L.P.
Metrocall Holdings, Inc.
American Association of Paging Carriers Filed by Wilkinson, Barker, Knauer, LLP

Concurring Statement of Commissioner Michael Copps

Re: Assessment and Collection of Regulatory Fees for Fiscal Year 2003

I respectfully concur in today's decision. I am concerned that the Commission still does not address when or how it should adjust the regulatory fees to take into account changes to the cost of regulating various services.

In section 9 of the Communications Act, Congress directed the Commission to assess and collect regulatory fees. Congress further provided that the Commission shall develop accounting systems that allow it to modify the fee schedule to ensure that the fees are reasonably related to the benefits provided to the payor by the Commission's activities.

This year, as in past years, the Commission merely relies on across-the-board proportionate increases from the previous year's schedule of fees. I am encouraged that the Commission intends to address certain problems with this methodology by committing to initiate a proceeding to consider the fee structure governing LMDS and other wireless services. I urge the Commission to undertake a more comprehensive review of its methodology to ensure that we comply fully with the requirements of section 9.

Concurring Statement of Commissioner Jonathan Adelstein

Re: Assessment and Collection of Regulatory Fees for Fiscal Year 2003; MD Docket No. 03–83

I can only concur with the Commission's decision to collect regulatory fees for fiscal year 2003 because I disagree with the methodology used to determine the actual fees assessed in this item.

Section 9 of the Communications Act requires the Commission to assess and collect regulatory fees to recover the costs of regulatory activities performed by the Commission. It further requires that assessed fees be derived by determining the full-time equivalent number of employees (FTEs) performing these regulatory activities. Finally, while the Commission is able to make permitted amendments to the original Schedule of Regulatory Fees, Section 9(i) requires the Commission to do so based on an accounting system necessary to make the adjustments, which are authorized by subsection 9(b)(3).

I am concerned that the Commission's approach to regulatory fees does not truly recover the costs for regulatory activities on a service by service basis. We essentially rely on repeated proportionate increases of the preceding year's schedule, adjusted to reflect increases or decreases in payment units. While the statute does specifically contemplate a proportionate increase, subsection 9(b)(1)(3) also requires the Commission to amend the Schedule of Regulatory Fees if it determines that the schedule requires amendment to comply with the requirement to assess fees by determining the FTEs performing these regulatory activities.

While I understand the Commission has been considering a new cost-based accounting system for some time, it is unclear if that system will enable us to better comply with Section 9 of the Act. It is my hope that a new cost-based accounting system would more readily react to changes that have increased or decreased our regulatory activities on a service by service basis so that the appropriate costs are passed along to the proper services from year to year. I strongly encourage the Commission to take such steps over the upcoming year.

Commercial Mobile Radio Service (CMRS) Messaging. I am pleased that through the policy of permitted amendments we have made the decision to not increase the regulatory fee for the CMRS messaging industry. However, I disagree with the specific rationale for reducing the fee. I believe that the fee should have been maintained or reduced based on the level of regulatory activities expended by Commission FTEs not on the economic status of the industry, as this item does.

Indeed, many of our regulatees have suffered through difficult financial circumstances through the last several years. While the CMRS messaging industry may have suffered disproportionately, I would have preferred that we first assess the level of regulatory activity associated with the industry before making any adjustment based on an ostensible public interest determination. A cost-based accounting system may have permitted us to lower the CMRS messaging regulatory fee without even addressing the financial health of the messaging industry. Similarly, in the future, such a system may eliminate the disparities that result from automatic increases for all services based on a previous year's regulatory fee schedule, which we properly corrected here.

Classification of Local Multipoint Distribution Service (LMDS). Finally, I want to highlight my significant concern with that portion of the item in which the Commission concludes that LMDS warrants a separate fee category from microwave and assesses LMDS licensees a fee of $265 per license. As previously stated, I believe that in assessing regulatory fees, we should first look at the number of FTEs performing the regulatory activities associated with that service, which was not done here.

[212] 47 CFR 73.313.

While I agree it is appropriate to separate the LMDS service from the Multipoint Distribution Service (MDS) regulatory fee category, I am unable to agree with the conclusion that the LMDS service requires different regulatory activities than those associated with other Part 101 Fixed Microwave Services. Indeed, two other services that share very similar service characteristics with LMDS—24 GHz and 39 GHz—are also regulated under Part 101 and subject to the microwave regulatory fees.

Unfortunately, I am forced to concur to this portion because I understand that a decision to change the regulatory fee for LMDS at this time would make it impossible to both collect regulatory fees this fiscal year and provide Congress with 90 days notice of the amendment, as required by the Act. This item, however, does announce our plan to initiate a rulemaking that will closely look at the regulatory fees assessed against the microwave services including LMDS. I support this effort and strongly encourage the Commission to use this rulemaking as the foundation for a more comprehensive review of the methodology for assessing regulatory fees as outlined above.

Rule Changes

■ Part 1 of Title 47 of the Code of Federal Regulations is amended to read as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303, 309.

■ 2. Section 1.1117 is amended by adding paragraph (f) to read as follows:

§ 1.1117 Petitions and applications for review.

* * * * *

(f) Petitions for waiver of a fee based on financial hardship will be subject to the provisions of paragraph 1.1166(e).

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

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

Exclusive use services (per license)	Fee amount [1]	Address
1. Land Mobile (Above 470 MHz and 220 MHz Local, Base Station & SMRS) (47 CFR, Part 90)		
(a) New, Renew/Mod (FCC 601 & 159)	$10.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	$10.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
(c) Renewal Only (FCC 601 & 159)	$10.00	FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	$10.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
220 MHz Nationwide		
(a) New, Renew/Mod (FCC 601 & 159)	$5.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	$5.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
(c) Renewal Only (FCC 601 & 159)	$5.00	FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	$5.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
2. Microwave (47 CFR Pt. 101) (Private):		
(a) New, Renew/Mod (FCC 601 & 159)	$25.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	$25.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
(c) Renewal Only (FCC 601 & 159)	$25.00	FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	$25.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
3. 218–219 MHz Service:		
(a) New, Renew/Mod (FCC 601 & 159)	$30.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	$30.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
(c) Renewal Only (FCC 601 & 159)	$30.00	FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	$30.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
4. Shared Use Services:		
Land Mobile (Frequencies Below 470 MHz—except 220 MHz)		
(a) New, Renew/Mod (FCC 601 & 159)	$5.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	$5.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
(c) Renewal Only (FCC 601 & 159)	$5.00	FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	$5.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
General Mobile Radio Service		
(a) New, Renew/Mod (FCC 605 & 159)	$5.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 605 & 159)	$5.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
(c) Renewal Only (FCC 605 & 159)	$5.00	FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245.
(d) Renewal Only (Electronic Filing) (FCC 605 & 159)	$5.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
Rural Radio (Part 22)		
(a) New, Additional Facility, Major Renew/Mod (Electronic Filing) (FCC 601 & 159).	$5.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
(b) Renewal, Minor Renew/Mod (Electronic Filing) (FCC 601 & 159)	$5.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
Marine Coast		
(a) New Renewal/Mod (FCC 601 & 159)	$10.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) Renewal Only (FCC 601 & 159)	$10.00	FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245.
(c) Renewal Only (Electronic Filing) (FCC 601 & 159)	$10.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.

Exclusive use services (per license)	Fee amount [1]	Address
Aviation Ground		
(a) New, Renewal/Mod (FCC 601 & 159)	$15.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) Renewal Only (FCC 601 & 159)	$15.00	FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245.
(c) Renewal Only (Electronic Filing) (FCC 601 & 159)	$15.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
Marine Ship		
(a) New, Renewal/Mod (FCC 605 & 159)	$15.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) New, Renewal/Mod (Electronic Filing) (FCC 605 & 159)	$15.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
(c) Renewal Only (FCC 605 & 159)	$15.00	FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245.
(d) Renewal Only (Electronic Filing) (FCC 605 & 159)	$15.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
Aviation Aircraft		
(a) New, Renew/Mod (FCC 605 & 159)	$5.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 605 & 159)	$5.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
(c) Renewal Only (FCC 605 & 159)	$5.00	FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245.
(d) Renewal Only (Electronic Filing) (FCC 605 & 159)	$5.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
5. Amateur Vanity Call Signs:		
(a) Initial or Renew (FCC 605 & 159)	$1.63	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) Initial or Renew (Electronic Filing) (FCC 605 & 159)	$1.63	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
6. CMRS Mobile Services (per unit) (FCC 159)	[2] $.26	FCC, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
7. CMRS Messaging Services (per unit) (FCC 159)	[3] $.08	FCC, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
8. Multipoint Distribution (Includes MMDS and MDS)	$265	FCC, Multipoint, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
9. Local Multipoint Distribution Service	$265	FCC, Multipoint, P.O. Box 358835, Pittsburgh, PA, 15251–5835.

[1] Note that ''small fees'' are collected in advance for the entire license term. The annual fee amount shown in this table (categories 1 through 5) must be multiplied by the 5- or 10-year license term, as appropriate, to arrive at the total amount of regulatory fees owed. Application fees may also apply as detailed in § 1.1102 of this chapter.
[2] These are standard fees that are to be paid in accordance with section 1.1157(b).
[3] These are standard fees that are to be paid in accordance with section 1.1157(b).

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

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

Radio [AM and FM] (47 CFR, part 73)

	Fee amount	Address
1. AM Class A:		
<=25,000 population	$600	FCC, Radio, P.O. Box 358835, Pittsburgh, PA 15251–5835.
25,001–75,000 population	1,200	
75,001–150,000 population	1,800	
150,001–500,000 population	2,700	
500,001–1,200,000 population	3,900	
1,200,001–3,000,000 population	6,000	
>3,000,000 population	7,200	
2. AM Class B:		
<=25,000 population	450	
25,001–75,000 population	900	
75,001–150,000 population	1,125	
150,001–500,000 population	1,925	
500,001–1,200,000 population	2,925	
1,200,001–3,000,000 population	4,500	
>3,000,000 population	5,400	
3. AM Class C:		
<=25,000 population	325	
25,001–75,000 population	475	
75,001–150,000 population	650	
150,001–500,000 population	975	
500,001–1,200,000 population	1,625	
1,200,001–3,000,000 population	2,450	
>3,000,000 population	3,100	
4. AM Class D:		
<=25,000 population	400	
25,001–75,000 population	600	
75,001–150,000 population	1,000	
150,001–500,000 population	1,200	

Radio [AM and FM] (47 CFR, part 73)		
	Fee amount	Address
500,001–1,200,000 population	2,000	
1,200,001–3,000,000 population	3,200	
>3,000,000 population	4,000	
5. AM Construction Permit	455	
6. FM Classes A, B1 and C3:		
<=25,000 population	475	
25,001–75,000 population	950	
75,001–150,000 population	1,300	
150,001–500,000 population	2,025	
500,001–1,200,000 population	3,200	
1,200,001–3,000,000 population	5,225	
>3,000,000 population	6,650	
7. FM Classes B, C, C0, C1 and C2:		
<=25,000 population	625	
25,001–75,000 population	1,100	
75,001–150,000 population	2,025	
150,001–500,000 population	2,650	
500,001–1,200,000 population	3,900	
1,200,001–3,000,000 population	6,250	
>3,000,000 population	8,125	
8. FM Construction Permits	1,850	
TV (47 CFR, Part 73) VHF Commercial		
1. Markets 1 thru 10	57,650	FCC, TV Branch, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
2. Markets 11 thru 25	43,225	
3. Markets 26 thru 50	30,125	
4. Markets 51 thru 100	18,075	
5. Remaining Markets	4,450	
6. Construction Permits	4,625	
UHF Commercial		
1. Markets 1 thru 10	15,850	FCC, UHF Commercial, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
2. Markets 11 thru 25	12,875	
3. Markets 26 thru 50	8,075	
4. Markets 51 thru 100	4,975	
5. Remaining Markets	1,425	
6. Construction Permits	8,300	
Satellite UHF/VHF Commercial		
1. All Markets	1,000	FCC Satellite TV, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
2. Construction Permits	515	
Low Power TV, TV/FM Translator, & TV/FM Booster (47 CFR Part 74)	365	FCC, Low Power, P.O. Box 358835, Pittsburgh, PA 15251–5835.
Broadcast Auxiliary	10	FCC, Auxiliary, P.O. Box 358835, Pittsburgh, PA 15251–5835.

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

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

	Fee amount	Address
Radio facilities		
1. Microwave (Domestic Public Fixed) (Electronic Filing) (FCC Form 601 & 159).	$25.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
Carriers		
1. Interstate Telephone Service Providers (per interstate and international end-user revenues) (see FCC Form 499–A).	.00199	FCC, Carriers, P.O. Box 358835, Pittsburgh, PA 15251–5835.

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

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

	Fee amount	Address
1. Cable Television Relay Service	$90	FCC, Cable, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. Cable TV System (per subscriber)	.66	FCC, P.O. Box 358835, Pittsburgh, PA 15251–5835.

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

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

	Fee amount	Address
Radio Facilities		
1. International (HF) Broadcast	$730	FCC, International, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. International Public Fixed	1,725	FCC, International, P.O. Box 358835, Pittsburgh, PA 15251–5835.
Space Stations (Geostationary Orbit)	115,625	FCC, Space Stations, P.O. Box 358835, Pittsburgh, PA 15251–5835.
Space Stations (Non-Geostationary Orbit)	108,375	FCC, Space Stations, P.O. Box 358835, Pittsburgh, PA 15251–5835.
Earth Stations		
Transmit/Receive & Transmit Only (per authorization or registeration)	210	FCC, Earth Station, P.O. Box 358835, Pittsburgh, PA 15251–5835.
Carriers		
International Bearer Circuits (per active 64KB circuit or equivalent)	2.67	FCC, International, P.O. Box 358835, Pittsburgh, PA 15251–5835.

■ 8. Section 1.1166 is amended by adding paragraph (e) to read as follows:

§ 1.1166 Waivers, reductions and deferrals of regulatory fees.

* * * * *

(e) Petitions for waiver of a fee based on financial hardship, including bankruptcy, will not be granted, even if otherwise consistent with Commission policy, to the extent that the total regulatory and application fees for which waiver is sought exceeds $500,000 in any fiscal year, including regulatory fees due in any fiscal year, but paid prior to the due date. In computing this amount, the amounts owed by an entity and its subsidiaries and other affiliated entities will be aggregated. In cases where the claim of financial hardship is not based on bankruptcy, waiver, partial waiver, or deferral of fees above the $500,000 cap may be considered on a case-by-case basis.

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