

contract, grant under a contract, memorandum of understanding or other funding or employment instrument or contract prior to the end of its term and recovery of appropriated funds expended prior to termination. I further certify that the sub-recipient will submit all certifications to the recipient entity through which it received Department funds.

(e) *Exceptions.* Provided that such individuals or organizations are not recipients or sub-recipients of Department funds through another instrument, program, or mechanism, other than those set forth in paragraphs (e)(1) through (3) of this section, the following individuals or organizations shall not be required to comply with the written certification requirement set forth in this section:

(1) A physician, as defined in 42 U.S.C. 1395(r), physician office, or other health care practitioner participating in Part B of the Medicare program;

(2) A physician, as defined in 42 U.S.C. 1395(r), physician office, or other health care practitioner which participates in Part B of the Medicare program, when such individuals or organizations are sub-recipients of Department funds through a Medicare Advantage plan; or

(3) A sub-recipient of Department funds through a State Medicaid program.

Dated: August 20, 2008.

Michael O. Leavitt,
Secretary.

[FR Doc. E8-19744 Filed 8-21-08; 2:00 pm]
BILLING CODE 4150-28-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 08-65; FCC 08-182]

Assessment and Collection of Regulatory Fees for Fiscal Year 2008

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, we seek comment on changes to the regulatory fee schedule and methodology.

DATES: Comments are due September 25, 2008, and reply comments are due October 27, 2008.

ADDRESSES: You may submit comments, identified by MD Docket No. 08-65, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Federal Communications Commission's Web Site:* <http://www.fcc.gov/cgb/ecfs>.

Follow the instructions for submitting comments.

- *E-mail:* ecfs@fcc.gov. Include MD Docket No. 08-65 in the subject line of the message.

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

- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: FCC504@fcc.gov or phone: (202) 418-0530 or TTY (202) 418-0432.

FOR FURTHER INFORMATION CONTACT:

CORES Helpdesk at (877) 480-3201, option 4 or ARINQUIRIES@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking, MD Docket No. 08-65, FCC 08-182 adopted on August 1, 2008 and released on August 8, 2008. The full text of this document is available is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554. The full text may also be downloaded at <http://www.fcc.gov>.

Pursuant to sections 1.1206(b), 1.1202 and 1.1203 of the Commission's rules, CFR 1.1206(b), 1.1202, 1.1203, this is as a "permit-but-disclose" proceeding. *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required.¹ Additional rules pertaining to oral and written presentations are set forth in section 1.1206(b).

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before the dates

indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System ("ECFS"), (2) the Federal Government's eRulemaking Portal, or (3) procedures for filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998), 13 FCC Rcd 11322 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the Web site for submitting comments. For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

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

¹ See 47 CFR 1.1206(b)(2).

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

- People with Disabilities:* To request information in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call

the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

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I. Further Notice of Proposed Rulemaking

A. Background

1. Each year Congress requires the Commission to collect regulatory fees "to recover the costs of * * * enforcement activities, policy and rulemaking activities, user information services, and international activities."² The Act states that fees are to "be derived by determining the full-time equivalent number of employees performing" these activities "adjusted to take into account factors that are reasonably related to the benefits provided to the payer of the fee by the Commission's activities * * *."³ Regulatory fees recover direct costs, such as salary and expenses; indirect costs, such as overhead functions; and support costs, such as rent, utilities, or

equipment.⁴ Congress sets the amount the Commission collects each year in the annual appropriations law.⁵

2. Section 9 requires the Commission to make certain changes to the regulatory fee schedule "if the Commission determines that the schedule requires amendment to comply with the requirements" of section 9(b)(1)(A), cited above. The Commission must add, delete, or reclassify services in the fee schedule to reflect additions, deletions, or changes in the nature of its services "as a consequence of Commission rulemaking proceedings or changes in law." These

"permitted amendments" require Congressional notification⁶ and resulting changes in fees are not subject to judicial review.⁷ Neither of these provisions requires amendment of the fee schedule to mirror all changes in regulatory costs.⁸

3. To calculate regulatory fees, the Commission allocates the total collection target, as mandated by Congress each year, to each regulatory fee category. Each regulatee within a fee category must pay its proportionate share based on some objective measure, e.g., revenues or subscribers. The first step, allocating fees to fee categories, is based on the Commission's 1994 calculation of full time employees ("FTEs") devoted to each regulatory fee category. We recognize that the communications industry has changed

⁴ See *Assessment and Collection of Regulatory Fees for Fiscal Year 1997*, MD Docket No. 96-186, Report and Order, 12 FCC Rcd 17161, 17170-71, para. 23 (1997) ("FY 1997 Report and Order"). Regulatory fees also recover costs attributable to regulatees that Congress has exempted from the fees as well as costs attributable to licensees granted fee waivers. *FY 1997 Report and Order*, 12 FCC Rcd at 17170, para. 22.

⁵ See, e.g., *Consolidated Appropriations Act, 2008*, Public Law 110-161.

⁶ 47 U.S.C. 159(b)(4)(B).

⁷ 47 U.S.C. 159(b)(3).

⁸ *FY 2004 Report and Order*, 19 FCC Rcd at 11666, para. 9.

² 47 U.S.C. 159(a).

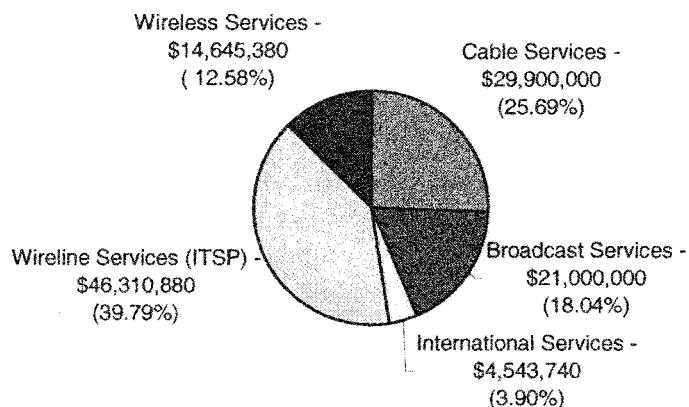
³ 47 U.S.C. 159(b)(1)(A).

considerably since we adopted our regulatory fee schedule in 1994.⁹ Services such as wireless, broadband, and voice over Internet protocol

(“VoIP”) have exploded in growth in recent years. The Commission itself has reorganized several times since 1994 to reflect industry changes.

4. As the following charts show, regulatory fee burdens have shifted significantly since 1995:

FY 1995 Regulatory Fees to be Collected

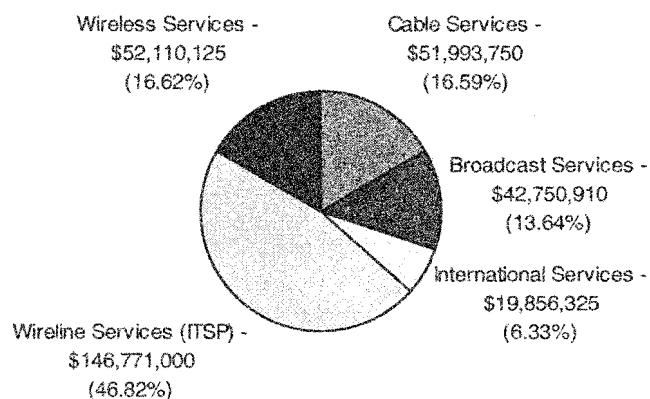


Source: *Assessment and Collection of Regulatory Fees for Fiscal Year 1995*,

Report and Order, 60 FR 34004, June 29, 1995. (FY 2005 was the first year in

which payment units were included in the Report and Order.)

FY 2008 Regulatory Fees to be Collected



Source: Percentages and dollar amounts based on preliminary calculations while drafting the *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Report and Order and Further Notice of Proposed Rulemaking.

5. Historically, and in this year’s proceeding, parties have challenged the Commission’s regulatory fees for certain categories of services by claiming that

the fees are not appropriately based on the Commission’s regulatory costs.¹⁰ Regulatory fees cannot, however, be precisely calibrated, on a service-by-service basis, to the actual costs of the Commission’s regulatory activities for that service.¹¹ The initial Schedule of Regulatory Fees that Congress enacted in section 9(g) reflects this approach. Two specific examples are satellite

regulatory fees and radio and television regulatory fees.¹² Congress required that satellite fees be based on the number of satellites the regulatee has in operation; however, the number of satellites may or may not relate to the actual costs in terms of FTEs of regulating that particular entity.¹³ Similarly, radio and television fees are based on the size of the markets served, which also may

⁹ See *Implementation of Section 9 of the Communications Act*, Report and Order, 9 FCC Rcd 5333 (1994).

¹⁰ See, e.g., *Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, MD Docket

No. 04-146, Report and Order, 19 FCC Rcd 11662, 11665-67, para. 5-11 (2004) (“FY 2004 Report and Order”).

¹¹ See, e.g., *FY 1997 Report and Order*, 12 FCC Rcd at 17171-72, para. 27.

¹² FY 2004 Report and Order, 19 FCC Rcd at 11666, para. 8.

¹³ Id.

have no relationship to the Commission's costs.¹⁴

6. Notwithstanding that regulatory fees cannot be precisely calibrated to our actual costs of our regulatory activities, there may be several areas in which we can revise and improve our regulatory fee process to better reflect the industry today. Industry, regulatory, and Commission organizational changes may mean that the FTE estimates the Commission has used since 1994 to allocate fees to industry segments require updating. In addition, certain services may be excluded from the regulatory fee process because those services were not offered when the fee schedule was adopted and other services may be paying a disproportionate share of regulatory fees because in the past those services had a larger share of the communications market. We adopt this FNPRM to explore more equitable and reasonable approaches to assessing regulatory fees.

B. Discussion

7. The regulatory fees assessed each year are to recover a fixed amount set by Congress. Thus, increasing the regulatory fee for one category will reduce the fee for the remaining categories and vice versa. We seek comment on ways to improve our regulatory fee process regarding any and all categories of service. In light of the industry changes since 1994, how can we better determine the regulatory fees for services in a way that is aligned with the Commission's regulatory activities? We seek comment on whether we should continue to collect our regulatory fees based on the allocations noted above for FY 2008, or if we should revert to a percentage allocation closer to our FY 1995 regulatory fee allocation, or if we should adopt a different allocation based on the communications marketplace that exists today. We also seek comment on possible methodologies for recalculating the regulatory fee allocation.

8. Commenters should discuss the fee categories that bear a too heavy regulatory fee burden. For example, some services, such as paging and PLMRS, have declining subscriber bases. Conversely, we seek comment on whether there are categories that should pay higher regulatory fees. In addition, are there categories that should be added, deleted, or reclassified? Would such changes result in a system that is more (or less) equitable and reasonable?

9. We also seek comment on whether we should review the entire regulatory fee process, apart from the annual

regulatory fee orders, on a periodic basis. Should the Commission undertake a comprehensive analysis of its resource allocations as it did in 1994? Should the Commission allocate regulatory fees to each category based on the proportionate use of full time equivalent ("FTE") within the Commission? We seek comment on whether we should examine FTE allocation by industry segment or some other basis, such as strategic goal.¹⁵

10. Currently, the Commission uses different bases to allocate regulatory fees to entities in different regulatory fee categories. For example, fees for wireless companies are based on subscribers and wireline companies are based on revenues. Should the Commission move to harmonize these bases? Would it be more equitable to allocate fees on a single basis across all regulatory fee categories? Commenters should address the incentives or disincentives of using a particular basis for allocation. For example, do wireless companies have less incentive to sign up subscribers because each new subscriber will increase their regulatory fees?

11. As we discuss below, there are various services or entities that may not be paying their share of regulatory fees. Including more services would lessen the regulatory fee burden on the remaining regulated. We seek comment on whether, and if so how, to include additional services. Increasing compliance with our rules also would lessen the regulatory fee burden on the remaining regulated. We seek comment on ways to improve compliance with our rules. In addition, we seek comment on whether we should adopt additional oversight measures, such as an audit regime to ascertain that payments are in accordance with our rules.

12. We seek comment on whether we should modify our administration of regulatory fees, such as our collection processes, as well as the forms that we use for regulatory fee payors. We seek comment on whether we should modify our Form 159. Should we use a different procedure for billing and prebilling? Should our regulatory fee procedures be combined with other filing and reporting requirements? We seek comment on whether we should adopt additional performance metrics or measurements pertaining to regulatory fees. Commenters should discuss whether we should adopt additional performance measurements and publish

this information regarding, for example, timeliness of payment. We also seek comment on whether there are certain categories of licensees who should qualify for reduced regulatory fees or be exempt entirely.

13. We also invite comment on several specific regulatory fee issues discussed below.

1. Interstate Telecommunications Service Providers ("ITSPs")

14. ITSPs generally identify themselves as interexchange carriers, incumbent local exchange carriers, toll resellers, or some other provider of interexchange service on the FCC Form 499-A. The FCC Form 499-A is filed each year on April 1 with the interstate revenues from the previous year; the ITSP regulatory fee is based on billed interstate and international end-user revenues.¹⁶

15. In FY 1995, the ITSP fee rate amounted to a fee factor of .00088 per revenue dollar, representing approximately 40 percent of the revenues to be collected in FY 1995.¹⁷ Carriers were required in FY 1995 to multiply their adjusted gross revenues (gross revenue reduced by the total amount of payments to underlying common carriers for telecommunications facilities or services) by 0.00088 to determine the appropriate regulatory fee. In the Commission's FY 1997 regulatory fee proceeding, the Commission calculated that regulation of ITSPs¹⁸ accounted for approximately 36 percent of all Commission costs.¹⁹ Since FY 1995, the ITSP fee factor rate has increased from .00088 per revenue dollar to .00266 in FY 2007.²⁰

16. ITTA, an association of mid-size local exchange carriers, filed comments to the *FY 2008 NPRM*, contending that from 1999 to 2008 the Commission's overall budget has increased by 81 percent yet the percentage of ITSP revenues used to support Commission activities has nearly tripled.²¹ ITTA contends that regulatory fees for

¹⁶ This is explained in our fact sheet, available at <http://www.fcc.gov/fees/regfees.html>.

¹⁷ See *Assessment and Collection of Regulatory Fees for Fiscal Year 1995*, Report and Order, 60 FR 34004 at 34025 (Table 4) (June 29, 1995) ("1995") ("FY 1995 Report and Order").

¹⁸ ITSPs generally identify themselves as interexchange carriers, incumbent local exchange carriers, toll resellers, or some other provider of interexchange service on the FCC Form 499-A which is filed each year on April 1 with the interstate revenues from the previous year; the ITSP regulatory fee is based on billed interstate and international end-user revenues.

¹⁹ See *FY 1997 Report and Order*, 12 FCC Rcd at 17176, para. 39.

²⁰ *Id.*, 12 FCC Rcd at 17246.

²¹ ITTA Reply Comments at 1-2.

¹⁴ *Id.*

¹⁵ See *Federal Communications Commission Fiscal Year 2007 Performance and Accountability Report* at 31-90 (<http://www.fcc.gov/Reports/ar2007.pdf>).

wireless carriers have decreased and the disparity in regulatory fee treatment between wireline and wireless services continues to widen.²² ITTA recommends that the Commission extend the process by which it added interconnected Voice over Internet Protocol (“VoIP”) providers to the ITSP category and also include wireless providers in the ITSP category.²³ We seek comment on this recommendation.

17. Relative to other services that pay regulatory fees, we recognize that the ITSP market has changed since the Commission calculated the cost of ITSP regulation in FY 1997. We agree that it is appropriate to review our methodology for assessing regulatory fees on ITSPs. We seek comment on whether ITSPs current share of regulatory fees, which has not been revised significantly since 1997, is appropriate. Commenters should discuss the ITSP market and how it has changed since 1997 relative to the other services that pay regulatory fees such as wireless and broadcast services.

Commenters suggesting a change in the proportionate share for ITSPs should propose a methodology. For example, would it be more appropriate to return to the original Schedule of Regulatory Fees and assess fees per 1,000 access lines? We note that we have experienced significant success and accuracy with a number-based approach for CMRS. Would number of access lines be most appropriate?

2. International and Interstate Toll Services

18. International and interstate toll calls can originate from either a wireless or a landline telephone; if such calls are made from a wireless telephone they are considered wireless revenue and not interstate or international revenue for regulatory fee purposes. Commercial mobile radio services (“CMRS”) regulatory fees are determined on a per unit basis rather than on a revenue basis. For FY 1995, the CMRS regulatory fee was \$0.15 per unit; for FY 2007, the CMRS regulatory fee was \$0.18 per unit. Thus, international and interstate toll calls made on a wireless telephone, even if billed separately to the customer as international or interstate toll calls, are not paid on a revenue basis for CMRS regulatory fee purposes, but on a subscriber basis. Whereas, international and interstate toll calls made on a landline telephone are considered international and interstate revenue for ITSP regulatory fee purposes. We seek

comment on whether this disparity is equitable.

19. Specifically, we seek comment on whether we should include interstate and international toll calls made from wireless handsets as international and interstate revenue for regulatory fee purposes. Commenters should also discuss whether, for example, a wireless international call to Canada or Mexico, even though the call would be carried for the most part on the wireline network, should be considered wireless revenue and feeable for CMRS regulatory fee purposes. To the extent that wireless carriers bill their customers a separate charge for the international call (apart from minutes), should this be considered a call subject to regulatory fees regardless of whether the call originated from a landline or a wireless handset? Commenters should discuss why including (or excluding) revenues from interstate and international calls is reasonable. Commenters should also address the effect on CMRS and ITSP regulatory fees if wireless revenues from interstate and international toll calls become subject to regulatory fees. We seek comment on this proposal.

3. Regulatory Fee Obligations for Digital Broadcasters

20. After February 17, 2009, full-power television broadcast stations must transmit only in digital signals and may no longer transmit analog signals.²⁴ Digital television (“DTV”) licensees are subject to section 8 application fees but our current schedule of regulatory fees does not include a specific service category for digital broadcasters.²⁵ Licensees in the broadcast industry pay regulatory fees based on their analog facilities. For licensees that broadcast in both the analog and digital formats, the only regulatory fee obligation at present is for their analog facility. A licensee that has fully transitioned to digital broadcasting and has surrendered its analog spectrum currently has no regulatory fee obligation.

21. In our *FY 2005 Report and Order* we stated that we had sought comment on whether to establish a regulatory fee category for digital broadcasters but received no comments on the issue and therefore we did not establish regulatory fee obligations for digital broadcasters.²⁶ At that time we recognized the

Commission’s initiatives to transition analog broadcasters to digital spectrum and that we should address these issues from a regulatory fee perspective. We seek comment on whether we should now establish a specific regulatory fee service category for digital broadcasters.

22. Our rules do not state that regulatory fees are required for analog licenses only,²⁷ but we have consistently assessed regulatory fees on analog licenses only.²⁸ We seek comment on whether we should clarify that regulatory fees are required for analog and digital broadcasters, based on their markets. We seek comment on whether a rule change is necessary under these circumstances. We do not intend to assess regulatory fees for both digital and analog licenses from a licensee in the process of transitioning from analog to digital. Our goal is to efficiently and seamlessly account for the collection of fee revenue from digital broadcasters without harming early transitioners to digital spectrum or late transitioners from analog spectrum. We seek comment on ways to achieve this goal.

4. Per-Subscriber Fees for Video Services in Addition to Cable Television Operators

23. We seek comment on whether service providers other than cable operators, such as incumbent local exchange carriers (ILEC) providing video service, should also pay regulatory fees on a per-subscriber basis or otherwise.²⁹ For example, should ILECs as well as cable providers pay a per-subscriber regulatory fee because ILECs are providing a service similar to cable service? Presently, ILECs that provide video service are not subject to regulatory fees for their video service, unless they are classified as a cable provider. We seek comment on this proposal.

a. Internet Protocol TV (“IPTV”)

24. From the customer’s perspective, there is likely not much difference between IPTV and other video services, such as cable service. The IPTV service could be offered to the customer bundled with the customer’s Internet

FCC Rcd 12259, 12266–67, para. 23 (2005) (“*FY 2005 Report and Order*”).

²⁷ 47 CFR 1.1153, “Schedule of annual regulatory fees and filing locations for mass media services” provides the fee amounts due for television stations based on the market where the station is broadcast.

²⁸ The table in section 1.1153 of our rules does, however, refer to “UHF” and “VHF”.

²⁹ See “FCC Adopts 13th Annual Report to Congress on Video Competition and Notice of Inquiry for the 14th Annual Report,” MB Docket No. 07–269, Press Release, Nov. 27, 2007.

²² ITTA Reply Comments at 2.

²³ ITTA Reply Comments at 4–5.

²⁴ 47 U.S.C. 309(j)(14) and 337(e).

²⁵ *Assessment and Collection of Regulatory Fees for Fiscal Year 2003*, MD Docket No. 03–83, Report and Order, 18 FCC Rcd 15985, 15993, para. 25 (2003) (“*FY 2003 Report and Order*”).

²⁶ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2005*, MD Docket No. 05–59, Report and Order and Order on Reconsideration, 20

and landline telephone service.³⁰ We seek comment on whether this video service should be subject to regulatory fees, and if so, should the IPTV provider count this service for regulatory fee purposes in the same manner as cable services, which is on a subscriber basis? Also, we seek comment on the likely outcome of taking no regulatory fee action for IPTV. Commenters should discuss the impact on cable services and the equities of treating similar services differently for regulatory fee purposes if no regulatory fees are imposed.

25. We also note that any carrier offering this service would pay regulatory fees for the interstate telecommunications service that may be offered together with the IPTV service. We tentatively conclude that in such a situation, the carrier should pay regulatory fees for the ITSP service exclusive of the IPTV service, *i.e.*, the IPTV revenues should not be combined into the ITSP revenue-based regulatory fee. We seek comment on this tentative conclusion. Commenters should discuss the ease or difficulty of separating the ITSP revenues from the IPTV revenues.

b. Direct Broadcast Service (“DBS”) Providers

26. Currently cable service providers pay approximately \$0.75 per subscriber in regulatory fees; DBS providers do not pay a per-subscriber fee. Previously, the Commission declined to adopt the same per-subscriber fee for DBS.³¹ We seek comment on whether we should impose the same per subscriber fee on DBS that cable providers pay, or continue to assess a space station regulatory fee for the DBS industry and a subscriber-based regulatory fee structure for the cable industry.

5. Cable Television Services—Calculation of Subscriber Numbers

27. In FY 1995, when the Commission assessed payments of \$0.49 per cable television subscriber, the Commission explained how cable service providers should calculate their number of subscribers:³²

Cable Systems should determine their subscriber numbers by calculating the number of single family dwellings, the number of individual households in multiple dwelling units, *e.g.*, apartments,

³⁰ According to AT&T, “[t]he AT&T U-verse portfolio of IP-based services integrates digital video, AT&T Yahoo! High Speed Internet U-verse Enabled, and in the future, voice over IP services.” See <http://www.att.com/gen/press-room?pid=5838>.

³¹ FY 2005 Report and Order, 20 FCC Rcd at 12264, para. 10-11.

³² See *Assessment and Collection of Regulatory Fees for Fiscal Year 1995*, MD Docket No. 95-3, Report and Order, 10 FCC Rcd 13512, 13579, Appendix H, para. 28 (1995).

condominiums, mobile home parks, etc., paying at the basic subscriber rate, the number of bulk rate customers and the number of courtesy or fee customers. In order to determine the number of bulk rate subscribers, a system should divide its bulk rate charge by the annual subscription rate for individual households.³³

28. Cable service providers are still required to pay regulatory fees on a per subscriber basis.³⁴ We recognize that it may be difficult to identify the number of subscribers that reside in multiple dwelling units (“MDUs”) (*e.g.*, condominiums, apartment buildings, university dormitories) when residents do not contract directly with a cable service provider. We seek comment on whether the “bulk rate” calculation described above should be modified to more accurately reflect the number of subscribers in the MDU. If the “bulk rate” calculation does need to be revised, commenters should recommend a more accurate way to calculate the number of subscribers in a MDU. We note that if some cable operators are undercounting their subscribers, the remaining cable operators are paying more. Commenters should discuss whether the “bulk rate” charge is consistent with the requirement that cable service providers pay regulatory fees on the number of subscribers,³⁵ and if not, commenters should discuss why it is important for “bulk rate” counts to remain separate from subscriber counts. We seek comment on this proposal.

6. Private Land Mobile Radio Services (“PLMRS”)

29. PLMRS, which includes both Exclusive and Shared Services, is contending with a declining unit base and an ever increasing regulatory fee obligation. In its FY 2003 Report and Order, the Commission decided to freeze the Commercial Mobile Radio Service (CMRS) Messaging fee rate at the FY 2002 level.¹ The Commission argued in FY 2003 that because the decline in the CMRS Messaging industry was a unique circumstance, and it was not a temporary phenomenon, it was appropriate to provide such relief. However, the PLMRS industry may not be the only industry that is facing a permanent declining unit base. As a result, it may be necessary for the Commission to consider guidelines for assessing regulatory fees on such industries. For

³³ *Id.*

³⁴ 47 CFR 1.1155.

³⁵ We recognize that there may be other methods to determine the number of subscribers in an MDU, such as counting the number of set top boxes or the premium channels ordered, that may be more accurate than the “bulk rate” calculation.

example, what would constitute a declining industry, and under what basis should the Commission provide regulatory fee relief? Should the Commission propose to provide regulatory fee relief in any and all circumstances in which an industry is in decline? We seek comment on this proposal.

7. Other Telecommunications Services

30. We seek comment on whether to add, delete, or reclassify services. We seek comment on adding other services that were not included in our regulatory fee schedule initially that should be included now. For example, should we assess regulatory fees on Wi-Fi service providers? Are there other services available today that should share the regulatory fee burden and thus lessen the burden on the more established services? If so, how should we assess the regulatory fees on these services? We also seek comment on whether there are fee categories that should be eliminated.

31. *International Fixed Public Radio.*³⁶ There is only one licensee in this category and we do not expect any additional licensees or applications. We propose to eliminate this category from our schedule of regulatory fees in order to reduce the administrative burden on the Commission in assessing this fee category. We seek comment on this proposal.

32. *International High Frequency Broadcast Stations.*³⁷ There are only 25 licensed stations in this category. Most of these licensees are tax-exempt organizations that are exempt from payment of regulatory fees. We propose to eliminate this category from our schedule of regulatory fees in order to reduce the administrative burden on the Commission in assessing this fee category. We seek comment on this proposal.

33. *General Mobile Radio Service (“GMRS”).* GMRS is a two-way radio service licensed to individuals.³⁸ Prospective licensees pay a \$50 license application fee for a five-year license term as well as a \$25 regulatory fee. Such costs may be larger than the price of the GMRS device. In addition, other individual radio devices, such as the Family Radio Service,³⁹ do not pay such

³⁶ See 47 CFR Part 23.

³⁷ See 47 CFR Part 73, Subpart F.

³⁸ In 1988, the Commission amended the GMRS rules to provide flexibility to the individual user and limit eligibility for new GMRS licenses to individuals. See *Amendment of Subparts A and E of Part 95 to Improve the General Mobile Radio Service (“GMRS”)*, Report and Order, PR Docket No. 87-265, 3 FCC Rcd 6554, 6554, para. 3 (1988).

³⁹ In 1996, the Commission established the Family Radio Service (“FRS”) as a very short range,

fees. These issues may contribute to the low rate of compliance with our licensing requirements for GMRS. We therefore propose to eliminate the regulatory fees for GMRS devices. The application fee would continue to apply for this service. We seek comment on this proposal.

34. The above three services are perhaps more well known to the Commission, but it is possible that there may be additional services that should be consolidated or eliminated because they are based on outmoded technology. We seek comment on this issue.

C. Ex Parte Rules

35. *Permit-But-Disclose.* This is as a "permit-but-disclose" proceeding subject to the requirements under section 1.1206(b) of the Commission's rules.⁴⁰ *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required.⁴¹ Additional rules pertaining to oral and written presentations are set forth in section 1.1206(b).

D. Filing Requirements

36. *Comments and Replies.* Pursuant to sections 1.415 and 1.419 of the Commission's rules,⁴² interested parties may file comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System ("ECFS"), (2) the Federal Government's eRulemaking Portal, or (3) procedures for filing paper copies.⁴³

two-way voice personal radio service that provides an affordable and convenient means of communications among small groups of persons, including families, with minimal regulation. *See Amendment of Part 95 of the Commission's Rules to Establish a Very Short Distance Two-way Voice Radio Service*, Report and Order, WT Docket No. 95-102, 11 FCC Rcd 12977, 12977, para. 2, 12983, para. 17, 12984, para. 19 (1996). The FRS shares seven frequencies in the 462 MHz band with the GMRS and has seven channels that are offset from GMRS channels in the 467 MHz band. Specifically, FRS channels 1-7 are also GMRS frequencies and FRS channels 8-14 are offset from GMRS frequencies.

⁴⁰ See 47 CFR 1.1206(b); *see also* 47 CFR 1.1202, 1.1203.

⁴¹ See 47 CFR 1.1206(b)(2).

⁴² See *id.* section 1.415, 1.419.

⁴³ See *Electronic Filing of Documents in Rulemaking Proceedings*, 13 FCC Rcd 11322 (1998).

37. *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments. For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

38. *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

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

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

39. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference

Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC 20554. These documents will also be available free online, via ECFS. Documents will be available electronically in ASCII, Word, and/or Adobe Acrobat.

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

Federal Communications Commission.
Marlene Dortch,
Secretary.

Appendix

Initial Regulatory Flexibility Analysis

41. As required by the Regulatory Flexibility Act ("RFA"),⁴⁴ the Commission has prepared this Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities by the policies and rules in the Further Notice of Proposed Rulemaking ("NPRM"). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed on or before the dates indicated on the first page of this NPRM. The Commission will send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.⁴⁵ In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.⁴⁶

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

42. This NPRM seeks comment on ways the Commission can revise the regulatory fee schedule for various categories of services. The Commission would like to accomplish this in an efficient manner and without undue public burden.

II. Legal Basis

43. This action, including publication of proposed rules, is authorized under sections (4)(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended.⁴⁷

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

44. The RFA directs agencies to provide a description of, and where feasible, an

⁴⁴ 5 U.S.C. 603. The RFA, 5 U.S.C. 601-612 has been amended by the Contract With America Advancement Act of 1996, Public Law 104-121, 110 Stat. 847 (1996) ("CWAAA"). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").

⁴⁵ 5 U.S.C. 603(a).

⁴⁶ *Id.*

⁴⁷ 47 U.S.C. 154(i) and (j), 159, and 303(r).

estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.⁴⁸ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁴⁹ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁵⁰ A “small business concern” is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁵¹

45. Nationwide, there are a total of 22.4 million small businesses, according to SBA data.⁵² A “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”⁵³ Nationwide, as of 2002, there were approximately 1.6 million small organizations.⁵⁴ The term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”⁵⁵ Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.⁵⁶ We estimate that, of this total, 84,377 entities were “small governmental jurisdictions.”⁵⁷ Thus, we estimate that most governmental jurisdictions are small. Below, we further describe and estimate the number of small entities, applicants and licensees, that may be affected by our action.

46. Incumbent Local Exchange Carriers (“ILECs”). Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁵⁸

⁴⁸ 5 U.S.C. 603(b)(3).

⁴⁹ 5 U.S.C. 601(6).

⁵⁰ 5 U.S.C. 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.”

⁵¹ 15 U.S.C. 632.

⁵² See SBA, Programs and Services, SBA Pamphlet No. CO-0028, at p. 40 (July 2002).

⁵³ 5 U.S.C. 601(4).

⁵⁴ Independent Sector, The New Nonprofit Almanac & Desk Reference (2002).

⁵⁵ 5 U.S.C. 601(5).

⁵⁶ U.S. Census Bureau, Statistical Abstract of the United States: 2006, Section 8, page 272, Table 415.

⁵⁷ We assume that the villages, school districts, and special districts are small and total 48,558. See U.S. Census Bureau, Statistical Abstract of the United States: 2006, section 8, p. 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

⁵⁸ 13 CFR 121.201, North American Industry Classification System (NAICS) code 517110.

According to Commission data,⁵⁹ 1,303 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,303 carriers, an estimated 1,020 have 1,500 or fewer employees and 283 have more than 1,500 employees.

Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by these rules.

47. Competitive Local Exchange Carriers (“CLECs”), Competitive Access Providers (“CAPs”), “Shared-Tenant Service Providers,” and “Other Local Service Providers.” Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁶⁰ According to Commission data,⁶¹ 769 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 769 carriers, an estimated 676 have 1,500 or fewer employees and 94 have more than 1,500 employees. In addition, 12 carriers have reported that they are “Shared-Tenant Service Providers,” and all 12 are estimated to have 1,500 or fewer employees. In addition, 39 carriers have reported that they are “Other Local Service Providers.” Of the 39, an estimated 38 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, “Shared-Tenant Service Providers,” and “Other Local Service Providers” are small entities that may be affected by these rules.

48. Local Resellers. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁶² According to Commission data,⁶³ 143 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 141 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by these rules.

1. Toll Resellers. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁶⁴ According to Commission data,⁶⁵ 770 carriers have reported that they are engaged in the

⁵⁹ FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, “*Trends in Telephone Service*” at Table 5.3, Page 5–5 (June 2005) (hereinafter “*Trends in Telephone Service*”).

⁶⁰ 13 CFR 121.201, NAICS code 517110.

⁶¹ “*Trends in Telephone Service*” at Table 5.3.

⁶² 13 CFR 121.201, NAICS code 517310.

⁶³ “*Trends in Telephone Service*” at Table 5.3.

⁶⁴ 13 CFR 121.201, NAICS code 517310.

⁶⁵ “*Trends in Telephone Service*” at Table 5.3.

provision of toll resale services. Of these, an estimated 747 have 1,500 or fewer employees and 23 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by these rules.

2. Payphone Service Providers (“PSPs”). Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁶⁶ According to Commission data,⁶⁷ 654 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 652 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by these rules.

3. Interexchange Carriers (“IXCs”). Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁶⁸ According to Commission data,⁶⁹ 316 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 292 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by these rules.

4. Operator Service Providers (“OSPs”). Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁷⁰ According to Commission data,⁷¹ 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 20 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by these rules.

5. Prepaid Calling Card Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁷² According to Commission data,⁷³ 89 carriers have reported that they are

⁶⁶ 3 CFR 121.201, NAICS code 517110.

⁶⁷ “*Trends in Telephone Service*” at Table 5.3.

⁶⁸ 13 CFR 121.201, NAICS code 517110.

⁶⁹ “*Trends in Telephone Service*” at Table 5.3.

⁷⁰ 13 CFR 121.201, NAICS code 517110.

⁷¹ “*Trends in Telephone Service*” at Table 5.3.

⁷² 13 CFR 121.201, NAICS code 517310.

⁷³ “*Trends in Telephone Service*” at Table 5.3.

engaged in the provision of prepaid calling cards. Of these, an estimated 88 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by these rules.

6. 800 and 800-Like Service Subscribers.⁷⁴ Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service ("toll free") subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁷⁵ The most reliable source of information regarding the number of these service subscribers appears to be data the Commission receives from Database Service Management on the 800, 866, 877, and 888 numbers in use.⁷⁶ According to our data, at the end of December 2004, the number of 800 numbers assigned was 7,540,453; the number of 888 numbers assigned was 5,947,789; the number of 877 numbers assigned was 4,805,568; and the number of 866 numbers assigned was 5,011,291. We do not have data specifying the number of these subscribers that are independently owned and operated or have 1,500 or fewer employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,540,453 or fewer small entity 800 subscribers; 5,947,789 or fewer small entity 888 subscribers; 4,805,568 or fewer small entity 877 subscribers, and 5,011,291 or fewer entity 866 subscribers.

7. International Service Providers. There is no small business size standard developed specifically for providers of international service. The appropriate size standards under SBA rules are for the two broad census categories of "Satellite Telecommunications" and "Other Telecommunications." Under both categories, such a business is small if it has \$13.5 million or less in average annual receipts.⁷⁷

8. The first category of Satellite Telecommunications "comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications."⁷⁸ For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year.⁷⁹ Of this total, 307 firms had

⁷⁴ We include all toll-free number subscribers in this category, including those for 888 numbers.

⁷⁵ 13 CFR 121.201, NAICS code 517310.

⁷⁶ "Trends in Telephone Service" at Tables 18.4, 18.5, 18.6, and 18.7.

⁷⁷ 13 CFR 121.201, NAICS codes 517410 and 517910.

⁷⁸ U.S. Census Bureau, 2002 NAICS Definitions, "517410 Satellite Telecommunications;" <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

⁷⁹ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 517410.

annual receipts of under \$10 million, and 26 firms had receipts of \$10 million to \$24,999,999.⁸⁰ Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

9. The second category of Other Telecommunications "comprises establishments primarily engaged in (1) providing specialized telecommunications applications, such as satellite tracking, communications telemetry, and radar station operations; or (2) providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems."⁸¹ For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year.⁸² Of this total, 259 firms had annual receipts of under \$10 million and 15 firms had annual receipts of \$10 million to \$24,999,999.⁸³ Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

10. Wireless Telecommunications Carriers (except Satellite). Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.⁸⁴ Prior to that time, such firms were within the now-superseded categories of "Paging" and "Cellular and Other Wireless Telecommunications."⁸⁵ Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.⁸⁶ Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year.⁸⁷ Of this total, 804 firms had employment of 999 or fewer employees, and three firms had

⁸⁰ *Id.* An additional 38 firms had annual receipts of \$25 million or more.

⁸¹ U.S. Census Bureau, 2002 NAICS Definitions, "517910 Other Telecommunications;" <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

⁸² U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 517910.

⁸³ *Id.* An additional 14 firms had annual receipts of \$25 million or more.

⁸⁴ U.S. Census Bureau, 2007 NAICS Definitions, "517210 Wireless Telecommunications Categories (Except Satellite);"<http://www.census.gov/naics/2007/def/ND517210.HTM#N517210>.

⁸⁵ U.S. Census Bureau, 2002 NAICS Definitions, "517211 Paging"; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>; U.S. Census Bureau, 2002 NAICS Definitions, "517212 Cellular and Other Wireless Telecommunications"; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

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

⁸⁷ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 517211 (issued Nov. 2005).

employment of 1,000 employees or more.⁸⁸ For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year.⁸⁹ Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.⁹⁰ Thus, we estimate that the majority of wireless firms are small.

11. Internet Service Providers. The SBA has developed a small business size standard for Internet Service Providers. This category comprises establishments "primarily engaged in providing direct access through telecommunications networks to computer-held information compiled or published by others."⁹¹ Under the SBA size standard, such a business is small if it has average annual receipts of \$21 million or less.⁹² According to Census Bureau data for 1997, there were 2,751 firms in this category that operated for the entire year.⁹³ Of these, 2,659 firms had annual receipts of under \$10 million, and an additional 67 firms had receipts of between \$10 million and \$24,999,999.⁹⁴ Thus, under this size standard, the great majority of firms can be considered small entities.

12. Television Broadcasting. The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public."⁹⁵ The SBA has created a small business size standard for Television Broadcasting entities, which is: Such firms having \$13 million or less in annual receipts.⁹⁶ According to Commission staff review of the BIA Publications, Inc., Media Access Pro Television Database as of December 7, 2000, about 825 (66 percent) of the 1,250 commercial television stations in the United States had revenues of \$13 million or less. We note, however, that in assessing whether a business entity qualifies as small under the

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 for firms with "1,000 employees or more."

⁸⁹ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 517212 (issued Nov. 2005).

⁹⁰ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

⁹¹ Office of Management and Budget, North American Industry Classification System, page 515 (1997). NAICS code 518111, "On-Line Information Services."

⁹² 13 CFR 121.201, NAICS code 518111.

⁹³ U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 4, Receipts Size of Firms Subject to Federal Income Tax: 1997, NAICS code 514191.

⁹⁴ *Id.*

⁹⁵ U.S. Census Bureau, 2002 NAICS Definitions, "515120 Television Broadcasting" (partial definition); <http://www.census.gov/epcd/naics02/def/NDEF515.HTM>.

⁹⁶ 13 CFR 121.201, NAICS code 515120.

above definition, business (control) affiliations⁹⁷ 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.

13. 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.

14. There are also 2,117 low power television stations ("LPTV").⁹⁸ Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

15. Radio Broadcasting. The SBA defines a radio broadcast entity that has \$6 million or less in annual receipts as a small business.⁹⁹ Business concerns included in this industry are those "primarily engaged in broadcasting aural programs by radio to the public."¹⁰⁰ 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) affiliations¹⁰¹ are included.¹⁰² Our estimate, therefore likely overstates the number of small businesses that might be affected by the rules adopted herein.

16. Auxiliary, Special Broadcast and Other Program Distribution Services. This service involves a variety of transmitters, generally used to relay broadcast programming to the

⁹⁷ "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 to power to control both." 13 CFR 21.103(a)(1).

⁹⁸ FCC News Release, "Broadcast Station Totals as of September 30, 2007."

⁹⁹ See OMB, North American Industry Classification System: United States, 1997, at 509 (1997) (Radio Stations) (NAICS code 515112).

¹⁰⁰ *Id.*

¹⁰¹ "Concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both." 13 CFR 21.103(a)(1).

¹⁰² "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).

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.¹⁰³

17. The Commission estimates that there are approximately 5,618 FM translators and boosters.¹⁰⁴ 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 (\$6.5 million for a radio station or \$13.0 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a "small business concern" because they are not independently owned and operated.¹⁰⁵

18. Cable and Other Program Distribution. The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged as third-party distribution systems for broadcast programming. The establishments of this industry deliver visual, aural, or textual programming received from cable networks, local television stations, or radio networks to consumers via cable or direct-to-home satellite systems on a subscription or fee basis. These establishments do not generally originate programming material."¹⁰⁶ The SBA has developed a small business size standard for Cable and Other Program Distribution, which is: All such firms having \$13.5 million or less in annual receipts.¹⁰⁷ According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.¹⁰⁸ Of this total, 1,087 firms had annual receipts of under \$10 million, and 43 firms had receipts of \$10 million or more but less than \$25 million.¹⁰⁹ Thus, under this size

¹⁰³ 13 CFR 121.201, NAICS codes 513111 and 513112.

¹⁰⁴ FCC News Release, "Broadcast Station Totals as of September 30, 2007."

¹⁰⁵ 15 U.S.C. 632.

¹⁰⁶ U.S. Census Bureau, 2002 NAICS Definitions, "517510 Cable and Other Program Distribution;" <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

¹⁰⁷ 13 CFR 121.201, NAICS code 517510.

¹⁰⁸ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510.

¹⁰⁹ *Id.* An additional 61 firms had annual receipts of \$25 million or more.

standard, the majority of firms can be considered small.

19. Cable Companies and Systems. The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide.¹¹⁰ Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.¹¹¹ In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.¹¹² Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have less than 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers.¹¹³ Thus, under this second size standard, most cable systems are small.

20. Cable System Operators. The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."¹¹⁴ The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.¹¹⁵ Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.¹¹⁶ We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million,¹¹⁷ and therefore we are unable to

¹¹⁰ 47 CFR 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

¹¹¹ These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, "Top 25 Cable/Satellite Operators," pages A-8 & C-2; Warren Communications News, *Television & Cable Factbook 2006*, "Ownership of Cable Systems in the United States," pages D-1805 to D-1857.

¹¹² 47 CFR 76.901(c).

¹¹³ Warren Communications News, *Television & Cable Factbook 2006*, "U.S. Cable Systems by Subscriber Size," page F-2 (data current as of Oct. 2005). The data do not include 718 systems for which classifying data were not available.

¹¹⁴ 47 U.S.C. 543(m)(2); see 47 CFR 76.901(f) & nn. 1–3.

¹¹⁵ 47 CFR 76.901(f); see Public Notice, "FCC Announces New Subscriber Count for the Definition of Small Cable Operator," 16 FCC Rcd 2225 (Cable Services Bureau, 2001).

¹¹⁶ These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, "Top 25 Cable/Satellite Operators," pages A-8 & C-2; Warren Communications News, *Television & Cable Factbook 2006*, "Ownership of Cable Systems in the United States," pages D-1805 to D-1857.

¹¹⁷ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's

estimate more accurately the number of cable system operators that would qualify as small under this size standard.

21. Open Video Services. Open Video Service ("OVS") systems provide subscription services.¹¹⁸ The SBA has created a small business size standard for Cable and Other Program Distribution.¹¹⁹ This standard provides that a small entity is one with \$13.5 million or less in annual receipts. The Commission has certified approximately 25 OVS operators to serve 75 areas, and some of these are currently providing service.¹²⁰ Affiliates of Residential Communications Network, Inc. ("RCN"), received approval to operate OVS systems in New York City, Boston, Washington, DC, and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 24 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies adopted herein.

22. Cable Television Relay Service. This service includes transmitters generally used to relay cable programming within cable television system distribution systems. The SBA has developed a small business size standard for Cable and Other Program Distribution, which is: All such firms having \$13.5 million or less in annual receipts.¹²¹ According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.¹²² Of this total, 1,087 firms had annual receipts of under \$10 million, and 43 firms had receipts of \$10 million or more but less than \$25 million.¹²³ Thus, under this size standard, the majority of firms can be considered small.

23. Multichannel Video Distribution and Data Service ("MVDDS"). MVDDS is a terrestrial fixed microwave service operating in the 12.2–12.7 GHz band. The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. It defined a very small business as an entity with average annual gross revenues not exceeding \$3 million for the preceding three years; a small business as an entity with average annual gross revenues not exceeding \$15 million for the preceding three years; and an entrepreneur as an entity with average annual gross revenues not exceeding \$40 million for the preceding three

finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission's rules. See 47 CFR 76.909(b).

¹¹⁸ See 47 U.S.C. 573.

¹¹⁹ 13 CFR 121.201, NAICS code 517510.

¹²⁰ See <http://www.fcc.gov/csb/ovs/csovscr.html>.

¹²¹ 13 CFR 121.201, NAICS code 517510.

¹²² U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510.

¹²³ *Id.* An additional 61 firms had annual receipts of \$25 million or more.

years.¹²⁴ These definitions were approved by the SBA.¹²⁵ On January 27, 2004, the Commission completed an auction of 214 MVDDS licenses (Auction No. 53). In this auction, ten winning bidders won a total of 192 MVDDS licenses.¹²⁶ Eight of the ten winning bidders claimed small business status and won 144 of the licenses. The Commission also held an auction of MVDDS licenses on December 7, 2005 (Auction 63). Of the three winning bidders who won 22 licenses, two winning bidders, winning 21 of the licenses, claimed small business status.¹²⁷

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

25. Aviation and Marine Services. Small businesses in the aviation and marine radio services use a very high frequency ("VHF") marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees.¹²⁸ 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

¹²⁴ Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2–12.7 GHz Band by Direct Broadcast Satellite Licenses and their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd., to Provide a Fixed Service in the 12.2–12.7 GHz Band, ET Docket No. 98–206, Memorandum Opinion and Order and Second Report and Order, 17 FCC Rcd 9614, 9711, para. 252 (2002).

¹²⁵ See Letter from Hector V. Barreto, Administrator, SBA, to Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (Feb. 13, 2002).

¹²⁶ See "Multichannel Video Distribution and Data Service Auction Closes," *Public Notice*, 19 FCC Rcd 1834 (2004).

¹²⁷ See "Auction of Multichannel Video Distribution and Data Service Licenses Closes; Winning Bidders Announced for Auction No. 63," *Public Notice*, 20 FCC Rcd 19807 (2005).

¹²⁸ 13 CFR 121.201, NAICS code 517212.

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.¹²⁹ 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.

26. Personal Radio Services. Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The Personal Radio Services include spectrum licensed under Part 95 of our rules.¹³⁰ These services include Citizen Band Radio Service ("CB"), General Mobile Radio Service ("GMRS"), Radio Control Radio Service ("R/C"), Family Radio Service ("FRS"), Wireless Medical Telemetry Service ("WMTS"), Medical Implant Communications Service ("MICS"), Low Power Radio Service ("LPRS"), and Multi-Use Radio Service ("MURS").¹³¹ There are a variety of methods used to license the spectrum in these rule parts, from licensing by rule, to conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. Under the RFA, the Commission is required to make a determination of which small entities are directly affected by the rules being adopted. Since all such entities are wireless, we apply the definition of cellular and other wireless telecommunications, pursuant to which a small entity is defined as employing 1,500 or fewer persons.¹³² Many of the licensees in these services are individuals, and thus are not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base an estimation of the number of small entities under an SBA definition that might be directly affected by the rules adopted herein.

27. Public Safety Radio Services. Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.¹³³ There are a total of

¹²⁹ Amendment of the Commission's Rules Concerning Maritime Communications, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853 (1998).

¹³⁰ 47 CFR Part 90.

¹³¹ The Citizens Band Radio Service, General Mobile Radio Service, Radio Control Radio Service, Family Radio Service, Wireless Medical Telemetry Service, Medical Implant Communications Service, Low Power Radio Service, and Multi-Use Radio Service are governed by Subpart D, Subpart A, Subpart C, Subpart B, Subpart H, Subpart I, Subpart G, and Subpart J, respectively, of Part 95 of the Commission's rules. See generally 47 CFR Part 95.

¹³² 13 CFR 121.201, NAICS Code 517212.

¹³³ With the exception of the special emergency service, these services are governed by Subpart B of part 90 of the Commission's Rules, 47 CFR 90.15–90.27. The police service includes approximately 27,000 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype

Continued

approximately 127,540 licensees in these services. Governmental entities¹³⁴ as well as private businesses comprise the licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small entity.¹³⁵ The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.¹³⁶ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."¹³⁷ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.¹³⁸ A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹³⁹

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

28. The Commission is concerned that some entities are paying too much and others are not paying enough regulatory fees. In this FNPRM, the Commission seeks comment on ways to modify the regulatory fee rules to

and facsimile (printed material). The fire radio service includes approximately 23,000 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of approximately 41,000 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are approximately 7,000 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The approximately 9,000 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The approximately 1,000 licensees in the Emergency Medical Radio Service ("EMRS") use the 39 channels allocated to this service for emergency medical service communications related to the delivery of emergency medical treatment. 47 CFR 90.15–90.27. The approximately 20,000 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 CFR 90.33–90.55.

¹³⁴ 47 CFR 1.1162.

¹³⁵ 5 U.S.C. 601(5).

¹³⁶ 5 U.S.C. 603(b)(3).

¹³⁷ 5 U.S.C. 601(6).

¹³⁸ 5 U.S.C. 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the *Federal Register*."

¹³⁹ 15 U.S.C. 632.

better reflect the current industry and offered services. In addition, the Commission is concerned with rule non-compliance. The Commission could reduce such noncompliance by various means, including adopting filing requirements for international bearer circuits for non-common carriers. Common carriers already have filing requirements.

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

29. The RFA requires an agency to describe any significant alternatives that it has 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.¹⁴⁰ The Commission is seeking comment on ways to revise the regulatory fees to possibly include more entities and to reduce or increase the fee burden on certain fee categories. The Commission is also seeking comment on reducing international bearer circuit regulatory fee non-compliance and close loopholes in the Commission's rules. It is possible that additional filing requirements for non-common carriers will be considered, with respect to international bearer circuits. These filing requirements already apply to common carriers. There may be other proposals offered by commenters to add or reduce regulatory fees or to reduce non-compliance with our rules. Such proposals may include reporting or recordkeeping requirements. It is important that all entities bear their required share of regulatory fees; otherwise, the companies that comply with the rules must pay for those that refuse to comply.

VI. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

30. None.

[FR Doc. E8-19431 Filed 8-25-08; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08-1722; MB Docket No. 07-296; RM-11412]

Radio Broadcasting Services; French Lick, Indiana; Irvington, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by L. Dean Spencer, requesting the allotment of Channel 261A at Irvington, Kentucky, as the community's first local aural transmission service. Channel 261A can be allotted at Irvington, Kentucky at a site 13.8 kilometers (8.5 miles) northwest of the community at coordinates 37-56-52 NL and 86-24-54 WL.

DATES: Comments must be filed on or before September 22, 2008, and reply comments on or before October 7, 2008.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel as follows: John F. Garziglia, Esq., Womble, Carlyle Sandridge & Rice, PLLC, 1401 Eye Street, NW., Seventh Floor, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Victoria McCauley, Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making and Order to Show Cause, MB Docket No. 07-296, adopted July 30, 2008, and released August 1, 2008. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 Twelfth Street, SW., Washington, DC 20554. This document may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 1-800-378-3160 or <http://www.BCPIWEB.com>.

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments.

¹⁴⁰ 5 U.S.C. 603.