Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	MD Docket No. 07-81
Assessment and Collection of Regulatory Fees for	)	
Fiscal Year 2007	)	

REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: August 2, 2007 **Released: August 6, 2007**

Comment Date: (30 days after date of publication in the Federal Register)
Reply Comment Date: (60 days after date of publication in the Federal Register)

By the Commission: Commissioner Copps approving in part, concurring in part and issuing a statement; Commissioner Adelstein concurring and issuing a statement.

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I. INTRODUCTION

1. In this Report and Order and Further Notice of Proposed Rulemaking, we conclude a proceeding to collect $290,295,160 in regulatory fees for Fiscal Year ("FY") 2007, pursuant to section 9 of the Communications Act of 1934, as amended (the "Act"). Section 9 regulatory 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] The Further Notice of Proposed Rulemaking ("FNPRM") seeks comment on the appropriate fee structure for Broadband Radio Service ("BRS").

2. We retain the established methods, policies, and procedures for collecting section 9 regulatory fees adopted by the Commission in prior years. We have found that the assessment methodology adopted in prior regulatory fee cycles has provided a satisfactory means for collecting the Commission's annual appropriations. In addition to the assessment methodology, we retain and enhance our administrative measures used for notification and assessment of regulatory fees as in previous years, such as generating bills and pre-completed assessment notifications for certain regulatees. Beginning this year, we expand our billing efforts to include licensees of earth stations and cable television relay service ("CARS") stations. We will also apply regulatory fee obligations to interconnected Voice over Internet Protocol ("VoIP") providers. Finally, we wish to take this opportunity to strongly encourage regulatees to electronically file their FY 2007 regulatory fee payments via Fee Filer.

3. The Commission is obligated to collect $290,295,160 in regulatory fees during FY 2007 to fund the Commission's operations. Consistent with our established practice, we intend to collect these regulatory fees during a filing window in September 2007 in order to collect the required amount by the end of our fiscal year.

II. REPORT AND ORDER

A. FY 2007 Regulatory Fee Assessment Methodology

4. On April 18, 2007, we released a Notice of Proposed Rulemaking seeking comment on regulatory fee issues.[2] As noted in the *FY 2007 NPRM*, the section 9 regulatory fee proceeding is an annual rulemaking process intended to ensure the Commission collects the fee amount required by Congress each

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[1] 47 U.S.C. § 159(a).

[2] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2007,* Notice of Proposed Rulemaking, 22 FCC Rcd 7975 (2007) ("*FY 2007 NPRM*").

year. In the *FY 2007 NPRM*, we proposed to largely retain the section 9 regulatory fee methodology used in the prior fiscal year. We received ten comments and six reply comments.[3] We address the issues raised in our *FY 2007 NPRM* below.

1. Development of FY 2007 Regulatory Fees

a. Calculation of Revenue and Fee Requirements

5. In our FY 2007 regulatory fee assessment, we use essentially the same section 9 regulatory fee assessment methodology adopted for FY 2006. Each fiscal year, the Commission proportionally allocates the total amount that must be collected via section 9 regulatory fees. The results of our FY 2007 regulatory fee assessment methodology (including a comparison to the prior year's results) are contained in Attachment C. For FY 2007, we will use the FY 2006 congressionally mandated amount as the basis for calculating the unit fees for each fee category. To collect the $290,295,160 required by law, we adjust the FY 2006 amount downward by approximately 2.84 percent.[4] Consistent with past practice, we then divide the FY 2007 amount by the number of payment units in each fee category to determine the unit fee.[5] As in prior years, for cases involving small fees (*e.g.*, licenses that are renewed over a multiyear term), we divide the resulting unit fee by the term of the license, and then round these unit fees consistent with the requirements of section 9(b)(2).

b. Additional Adjustments to Payment Units

6. In calculating the FY 2007 regulatory fees listed in Attachment D, we further adjusted the FY 2006 list of payment units (Attachment B) based upon licensee databases and industry and trade group projections. Whenever possible, we verified these estimates from multiple sources to ensure the accuracy of these estimates. In some instances, Commission licensee databases were used, while in other instances, actual prior year payment records and/or industry and trade association projections were used in determining the payment unit counts.[6] Where appropriate, we adjusted and rounded our final estimates to take into consideration events that may impact the number of units for which regulatees submit payment, such as

[3] *See* Attachment G for the list of commenters and abbreviated names.

[4] The percentage decrease of approximately 2.84 percent is based on the total amount of regulatory fees that was mandated by Congress to be collected in FY 2006, which included an amount of $288,771,000 in regulatory fees pursuant to section 9 of the Act and an additional $10,000,000 as required by section 3013 of the Deficit Reduction Act (Public Law 109-171). Together, the total amount of regulatory fees mandated by Congress to be collected in FY 2006 was $298,771,000. Also, the decrease in regulatory fee payments of approximately 2.84 percent in FY 2007 is reflected in the revenue that is expected to be collected from each service category. Because this expected revenue is adjusted for each individual service category each year by the number of estimated payment units in a service category, and then adjusted for rounding, the actual fee will likely differ by an amount more or less than 2.84 percent. For example, in industries where the number of payment units is declining, the per-unit regulatory fee amount for FY 2007 may actually be more than the amount for FY 2006.

[5] In many instances, the regulatory fee amount is a flat fee per licensee or regulatee. However, in some instances the fee amount represents a per-unit fee (such as for International Bearer Circuits), a per-unit subscriber fee (such as for Cable, Commercial Mobile Radio Service ("CMRS") Cellular/Mobile and CMRS Messaging), or a fee factor per revenue dollar (Interstate Telecommunications Service Provider fee). The payment unit is the measure upon which the fee is based, such as a licensee, regulatee, subscriber fee, *etc*.

[6] The databases we consulted include, but are not limited to, the Commission's Universal Licensing System (ULS), International Bureau Filing System ("IBFS"), Consolidated Database System ("CDBS") and Cable Operations and Licensing System ("COALS"). We also consulted industry sources including, but not limited to, *Television & Cable Factbook* by Warren Publishing, Inc. and the *Broadcasting and Cable Yearbook* by Reed Elsevier, Inc., as well as reports generated within the Commission such as the Wireline Competition Bureau's *Trends in Telephone Service* and the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast* and *Annual CMRS Competition Report*. For additional information on source material, *see* Attachment B.

waivers and exemptions that may be filed in FY 2007, and fluctuations in the number of licensees or station operators due to economic, technical, or other reasons. Therefore, when we state that our estimated FY 2007 payment units are based on FY 2006 actual payment units, the number may have been rounded or adjusted slightly to account for these variables.

7. We consider additional factors in determining regulatory fees for AM and FM radio stations. These factors are facility attributes and the population served by the radio station. The calculation of the population served is determined by coupling current U.S. Census Bureau data with technical and engineering data, as detailed in Attachment E. Consequently, the population served, as well as the class and type of service (AM or FM), determines the regulatory fee amount to be paid.[7]

2. Commercial Mobile Radio Service Messaging Service

8. In the *FY 2007 NPRM*, we proposed to continue our policy of maintaining the CMRS Messaging Service regulatory fee at the rate that was established in FY 2002 (*i.e.*, $0.08 per subscriber), noting that the subscriber base in this industry has declined 79 percent from 40.8 million to 8.3 million from FY 1997 to FY 2006.[8] The only commenters addressing this issue, AAPC and USA Mobility, state that maintaining the fee amount at $0.08 per subscriber is the minimum action to take and that the Commission should consider reducing the fee amount.[9]

9. We continue to believe that maintaining the CMRS Messaging regulatory fee at the rate established in FY 2002, rather than allowing it to increase, is the appropriate level of relief to be afforded to the messaging industry. We are cognizant of the financial hardship that could be caused by increasing the fee (shrinking profit margins, additional loss of subscribers, reduced revenue, *etc*.) for this service category. Therefore, we adopt our proposal to maintain the CMRS Messaging Service regulatory fee for FY 2007 at $0.08 per subscriber.

3. International Bearer Circuits

10. In our *FY 2006 NPRM*,[10] we noted that VSNL Telecommunications (US) Inc. ("VSNL") had filed a Petition for Rulemaking urging the Commission to revise its regulatory fee methodology for bearer circuits;[11] and that we issued a Public Notice designating the proceeding as RM-11312 and requesting comment on the Petition.[12] We stated in our *FY 2006 Report and Order* that the issues presented in the Petition warrant consideration separately from the Commission's annual regulatory fee proceeding.[13] In our *FY 2007 NPRM*, we received a set of joint comments filed by seven submarine cable

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[7] In addition, beginning in FY 2005, we established a procedure by which we set regulatory fees for AM and FM radio and VHF and UHF television Construction Permits each year at an amount no higher than the lowest regulatory fee in that respective service category. For example, the regulatory fee for a Construction Permit for an AM radio station will never be more than the regulatory fee for an AM Class C radio station serving a population of less than 25,000.

[8] *See FY 2007 NPRM*, 22 FCC Rcd at 7978 , ¶ 7.

[9] AAPC Comments at 1; USA Mobility Comments at 3. No commenters opposed our proposal.

[10] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2006*, MD Docket No. 06-68, Notice of Proposed Rulemaking, 21 FCC Rcd 3708, 3718, n.20 (2006) ("*FY 2006 NPRM*").

[11] *See* Petition for Rulemaking of VSNL Telecommunications (US) Inc., RM-11312 (filed Feb. 6, 2006) ("VSNL Petition").

[12] *See* Consumer and Governmental Affairs Bureau, Reference Information Center, *Public Notice,* Report No. 2759 (rel. Feb. 15, 2006).

[13] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2006*, MD Docket No. 06-68, Report and Order, 21 FCC Rcd 8092, 8098-99, ¶ 18 (2006) ("*FY 2006 Report and Order*").

landing licensees urging the Commission to take similar action.[14] We reiterate that the issues presented in the Petition warrant consideration separately from the Commission's annual regulatory fee proceeding.[15]

4. Interconnected Voice over Internet Protocol Service Providers

11. In the *FY 2007 NPRM*, we observed that providers of interconnected VoIP[16] services are now required to contribute to the Universal Service Fund ("USF")[17] and we tentatively concluded that the interconnected VoIP providers should also pay regulatory fees.[18] Our tentative conclusion was based on the mandate in section 9 of the Act that the Commission "assess and collect regulatory fees to recover the costs" of regulatory activities[19] as well as our analysis in the *2006 Interim Contribution Methodology Order*. In this Report and Order we adopt our tentative conclusion in the *FY 2007 NPRM* and require interconnected VoIP providers to pay FY 2007 regulatory fees based on revenues reported on the FCC Form 499-A at the same rate as interstate telecommunications service providers ("ITSPs").[20]

a. Jurisdiction

12. By way of recent background, in the *2006 Interim Contribution Methodology Order*, the Commission, among other things, established universal service contribution obligations for providers of interconnected VoIP service based on its permissive authority under section 254(d) of the Act and its ancillary jurisdiction under Title I of the Act.[21] The Commission noted that significant growth in the number of VoIP subscribers in recent years is expected to continue.[22] In addition, the Commission observed that the USF revenue base had been diminishing and the contribution factor used to determine contributor payments into the fund has risen considerably as a result.[23] Interconnected VoIP service is increasingly used to replace traditional telephone service and, as the interconnected VoIP service industry continues to grow and to attract customers who previously relied on traditional voice service, it was inappropriate to exclude interconnected VoIP service from universal service contribution requirements.[24] In its *Vonage* decision, the D.C. Circuit upheld the Commission's decision to impose USF fees on

[14] *See* Joint Comments at 1.

[15] We incorporate the instant comments of the seven cable landing licensees into the VSNL Petition proceeding, RM-11312.

[16] *See* 47 C.F.R § 9.3 for the definition of interconnected VoIP service.

[17] *See Universal Service Contribution Methodology*, Report and Order and Notice of Proposed Rulemaking, WC Docket No. 06-122, 21 FCC Rcd 7518, 7536-543, ¶¶ 34-49 (2006) ("*2006 Interim Contribution Methodology Order*") (finding that interconnected VoIP service providers are "providers of interstate telecommunications" under section 254(d) and asserting the Commission's permissive authority to require interconnected VoIP service providers to contribute to the preservation and advancement of universal service), *aff'd in relevant part*, *Vonage Holdings Corp., v. FCC*, No. 06-1276 (D.C. Cir. 2007)("*Vonage*").

[18] *FY 2007 NPRM*, 22 FCC Rcd at 7979, ¶ 10.

[19] 47 U.S.C. § 159(a)(1).

[20] Interconnected VoIP providers will pay FY 2007 regulatory fees during a separate filing window (to be determined later), most likely in 2008. For FY 2008, interconnected VoIP providers will be required to pay regulatory fees in the same filing window as other entities.

[21] *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7538-543, ¶¶ 38-49.

[22] *Id.*, 21 FCC Rcd at 7528-29, ¶ 19.

[23] *Id.*

[24] *Id.*, 21 FCC Rcd at 7541, ¶ 44.

interconnected VoIP providers.[25] Prior to the *2006 Interim Contribution Methodology Order*, the Commission asserted its ancillary jurisdiction under Title I of the Act to require providers of interconnected VoIP services to supply 911 emergency calling capabilities to their customers.[26] More recently, the Commission also extended the section 222 customer proprietary network information ("CPNI") obligations, disability access obligations, and telecommunications relay services ("TRS") requirements to providers of interconnected VoIP services using its Title I authority.[27]

13. Consistent with our previous orders, we conclude that Title I of the Act gives us direct authority to impose regulatory fees on providers of interconnected VoIP services. In particular, we have previously found, based on sections 1 and 2(a) of the Act, coupled with the definitions set forth in section 3(33) ("radio communication") and section 3(52) ("wire communication"), that interconnected VoIP services are covered by the Commission's general jurisdictional grant.[28] Section 1 of the Act states that the Commission is created "[f]or the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges," and that the agency "shall execute and enforce the provisions of th[e] Act."[29] Section 2(a), in turn, confers on the Commission regulatory authority over all interstate communication by wire or radio.[30] As we have previously observed, interconnected VoIP services are covered by the statutory definitions of "wire communication" and/or "radio communication" because they involve "transmission of [voice] by aid of wire, cable, or other like connection . . ." and/or "transmission by radio . . ." of voice.[31] Therefore, these services come within the scope of the Commission's subject matter jurisdiction under section 2(a) of the Act. Accordingly, section 9 of the Act gives the Commission direct authority to impose regulatory fees on interconnected VoIP providers. Specifically, section 9 states that the Commission "shall assess and collect regulatory fees to recover the costs of the following regulatory activities of the Commission: enforcement activities, policy and rulemaking activities, user information

[25] *Vonage* at 15. Because it found that the Commission has authority under section 254(d) of the Act to impose USF contribution obligations on interconnected VoIP providers, the court did not decide whether the Commission also could have imposed this obligation pursuant to its Title I ancillary jurisdiction. *Id.* at 15-16.

[26] *See E911 Requirements for IP-Enabled Service Providers,* First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245 (2005) ("*VoIP 911 Order*")*;* 47 C.F.R. Part 9. The Commission also concluded that providers of interconnected VoIP services are subject to the Communications Assistance for Law Enforcement Act ("CALEA"). *See Communications Assistance for Law Enforcement Act and Broadband Access and Services*, ET Docket No. 04-295, RM-10865, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 14989, 14991-92, ¶ 8 (2002) ("*CALEA First Report and Order*"), *aff'd*, *American Council on Education v. FCC*, 451 F.3d 226 (D.C. Cir. 2006).

[27] *Implementation of the Telecommunications Act of 1996, Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, IP-Enabled Services*, CC Docket No. 96-115, WC Docket No. 04-36, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927 (2007) ("*EPIC CPNI Order*"); *IP-Enabled Services, Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996: Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities*, WC Docket No. 04-36, WT Docket No. 96-198, Report and Order, FCC 07-110 (rel. June 15, 2007) ("*VoIP TRS Order*").

[28] *See, e.g., VoIP 911 Order,* 20 FCC Rcd at 10261-62, ¶ 28.

[29] 47 U.S.C. § 151.

[30] *See* 47 U.S.C. § 152(a) (stating that the provisions of the Act "shall apply to all interstate and foreign communication by wire or radio and all interstate and foreign transmission of energy by radio, which originates and/or is received within the United States, and to all persons engaged within the United States in such communication or such transmission of energy by radio. . .").

[31] *VoIP 911 Order,* 20 FCC Rcd at 10261-62, ¶ 28.

services, and international activities."[32] In light of the many and increasing resources the Commission now dedicates to VoIP, the Commission should recover costs from interconnected VoIP providers.[33]

14. We disagree with the VON Coalition's argument that we do not have jurisdiction to extend regulatory fees to interconnected VoIP providers because regulatory fees can only be assessed on entities subject to licensing or certification requirements.[34] On the contrary, section 9 gives the Commission broad authority to impose regulatory fees. Section 9 does not limit the regulatory fee requirement to licensees. Moreover, the Commission has not, in the annual regulatory fee orders or otherwise, specifically limited the implementation of section 9 to "licensees." To construe section 9 as narrowly as the VON Coalition proposes would prohibit the Commission from recovering costs from providers that impose costs on the Commission, simply because they were not licensees and would unreasonably lighten regulatory costs on certain industry segments at the cost of others.

b. Basis and Rate

15. Having concluded that the Commission has authority to assess regulatory fees on interconnected VoIP providers, we must determine how to assess those fees. Specifically, we must determine whether to base fees on revenues or subscribers, or some other basis, and at what rate. We conclude that interconnected VoIP providers should pay regulatory fees based on their interstate and international revenue at the same rate as ITSPs.

16. In the *FY 2007 NPRM*, we sought comment on whether interconnected VoIP providers should be assessed regulatory fees based on revenues, which would be consistent with the regulatory fee methodology used for interstate telecommunications service providers, or if we should use a numbers-based approach, which would be consistent with the methodology used for CMRS.[35] Most commenters addressing this issue favor a numbers-based or subscriber-based approach, as opposed to a revenue-based approach.[36] We instead adopt a revenue-based approach as adopted in the *2006 Interim Contribution Methodology Order* for USF contributions. The Commission's conclusion that interconnected VoIP service is more closely analogous to wireline toll service than to CMRS guides us here.[37] As a result, we will use revenue as the basis for imposing regulatory fees on interconnected VoIP providers instead of a subscriber-based approach, which is the basis for wireless providers.[38]

17. Commenters contend that broadband providers often offer a bundle of services to consumers and it may be difficult to separate the telecommunications service revenues from the other

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[32] 47 U.S.C. §159(a)(1).

[33] *See, e.g.*, nn.26-27 *supra.* Although we find that section 9 by its terms allows us to impose regulatory fees on providers of interconnected VoIP services, we also find, consistent with our prior orders, that we have ancillary authority under Title I to impose these fees. *See, e.g., VoIP 911 Order,* 20 FCC Rcd at 10261-63, ¶¶ 26-29. Interconnected VoIP providers fall within our Title I jurisdictional grant and the assessment of regulatory fees to fund Commission operations is critical to the effective performance of the Commission's responsibilities.

[34] VON Coalition Comments at 6-7; WCA Comments at 3-5 & Reply Comments at 2-3.

[35] *FY 2007 NPRM*, 22 FCC Rcd at 7979, ¶ 10.

[36] *See, e.g.*, Nuvio Comments at 4; IUB Comments at 2-4; Comcast Comments at 1-2; WCA Comments at 3; NCTA Reply Comments at 2; VON Coalition Reply Comments at 6. Nuvio and VON Coalition suggest that if the Commission adopts a numbers-based assessment, the assessment should be on active numbers and not the inventory of numbers. Nuvio Comments at 4; VON Coalition Reply Comments at n. 16.

[37] The D.C. Circuit rejected Vonage's challenge to that conclusion because Vonage was unable to show why usage patterns for VoIP are more like those for wireless than for wireline toll. *Vonage* at 18.

[38] *See* NTCA Comments at 2.

revenues.[39] Consistent with our decision in the *2006 Interim Contribution Methodology Order*, however, interconnected VoIP providers may avoid separating revenue types by using a safe-harbor level of 64.9 percent interstate or international revenues for purposes of calculating regulatory fee obligations.[40] Interconnected VoIP providers may contribute based on a lesser percentage if they provide supporting traffic studies.[41]

18. We also conclude that interconnected VoIP providers will pay regulatory fees on their interstate and international revenues at the same rate as ITSPs. As we stated in the *2006 Interim Contribution Methodology Order*, interconnected VoIP providers offer a service that is almost indistinguishable, from the consumers' point of view, from the service offered by interstate telecommunications service providers.[42] Further, the explosive growth of the VoIP industry in recent years has resulted in recent Commission actions addressing the service.[43] The growth of the VoIP industry and the extent to which VoIP service is used as a substitute for analog voice service have necessitated a number of Commission rulemaking proceedings pertaining to interconnected VoIP services.

19. We recognize that the costs and benefits associated with our regulation of interconnected VoIP providers are not identical as those associated with regulating interstate telecommunications service and CMRS.[44] For example, at this time interconnected VoIP providers are not subject to the Commission's enforcement authority in most instances and only recently have the Commission's rulemaking activities involved interconnected VoIP providers.[45] The Commission does not maintain a database system pertaining to interconnected VoIP providers similar to the registration and filing systems for CMRS and wireline carriers.[46] In addition, interconnected VoIP providers do not receive certain benefits, such as universal service support payments and interconnection rights, as Title II carriers do.[47] Section 9 is clear, however, that regulatory fee assessments are based on the burden imposed on the Commission, not benefits

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[39] Nuvio Comments at 4; Iowa Utilities Board Comments at 2-4; Comcast Comments at 1-2; WCA Comments at 3; NCTA Reply Comments at 2. Nuvio suggests that if the Commission adopts a numbers-based assessment, the assessment should be on active numbers and not the inventory of numbers. Nuvio Comments at 4.

[40] *See 2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7544-45, ¶ 53; *Vonage,* slip op. at 7, 17-19.

[41] Consistent with the *Vonage* decision, interconnected VoIP providers need not at this time obtain pre-approval of their traffic studies. Rather, they must submit any studies upon which they rely no later than the deadline for submitting the FCC Form 499-Q for the same time period. *Vonage,* slip op. at 19-20; *2006 Interim Contribution Methodology Order,* 21 FCC Rcd at 7535, ¶ 32.

[42] The Commission has determined that interconnected VoIP service is increasingly used to replace analog voice service. *See 2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7542, ¶ 48.

[43] *See, e.g.*, *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7541-43, ¶¶ 46-49; *VoIP 911 Order*, 20 FCC Rcd at 10261-266, ¶¶ 26-35; *EPIC CPNI Order* at ¶ 55.

[44] *See* WCA Comments at 6; VON Coalition Comments at 15-17 & n.42.

[45] VON Coalition Comments at 16.

[46] *Id.*

[47] VON Coalition Comments at 17; WCA Comments at 6. We note that interconnected VoIP service is currently an eligible service for purposes of the schools and libraries program. In addition, the Commission recently clarified that wholesale telecommunications carriers have interconnection rights under sections 251(a) and (b) of the Act, including when providing wholesale services to interconnected VoIP providers. *See Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, WC Docket No. 06-55, Memorandum Opinion and Order, DA 07-709 (WCB rel. Mar. 1, 2007).

realized by regulatees.[48] Interconnected VoIP providers create costs at the Commission by participating in rulemaking proceedings, waiver petitions, and other matters in the wake of our assertion of ancillary jurisdiction under Title I of the Act to require providers of interconnected VoIP services to contribute to the universal service fund, supply 911 emergency calling capabilities to their customers, comply with section 222 CPNI obligations, and comply with our disability access and TRS requirements.[49] The provision of interconnected VoIP service is a growing industry[50] and we can reasonably assume that this regulatory burden on the Commission will continue to increase.[51] Thus, this category of service providers should share in the costs of the Commission's regulatory activities in the same manner as ITSPs. Section 9 does not require the Commission to engage in a company-by-company assessment of relative regulatory costs. In any given year, companies grouped in the ITSP category, or other regulatory fee categories, might be the subject of more regulation than others, *e.g.,* merger proceedings. As a result, our responsibility here is to identify the category of regulatory fee payees with which interconnected VoIP providers most closely relate. On this note, we also observe that interconnected VoIP providers are able to offer their services because they interconnect with the PSTN, and they thereby benefit from our substantial regulation of telecommunications service providers.[52]

20. Because we are adding interconnected VoIP services to our regulatory fee assessments, we conclude that this is a permitted amendment under section 9(b)(3) of the Act. Section 9(b)(4)(B) of the Act in turn requires us to notify Congress 90 days before the change may take effect. We will provide Congress notification upon publication of this order, and will release a public notice once the amendment takes effect, if there is no Congressional objection.

5. Private Land Mobile Radio Service

21. EWA argues that the fee for Private Land Mobile Radio Service ("PLMRS") exclusive use licenses has increased from $5 per year in 2001 to $20 per year in 2006, and for PLMRS shared use licenses, the fee has increased from $5 to $10 during the same time period.[53] EWA further contends that this increase in fee rates is not associated with a corresponding increase in the cost of regulating the PLMRS industry, and as a result, the Commission's FY 2007 proposed Part 90 PLMRS regulatory fee of $35 (PLMRS Exclusive Use) and $15 (PLMRS Shared Use) is unjustified.

22. We disagree. In our *FY 2004 Report and Order*, the Commission stated that regulatory fees need not be precisely calibrated on a service-by-service basis to the actual costs of the Commission's regulatory activities for that service.[54] The Commission stated that, "the initial Schedule of Regulatory Fees that Congress enacted in section 9(g) reflects a 'costs adjusted for benefits' approach permitted under

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[48] Commenters have not attempted to quantify the relative burden imposed on the Commission by interconnected VoIP providers.

[49] *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7541-43, ¶¶ 46-49; *VoIP 911 Order*, 20 FCC Rcd at 10261-266, ¶¶ 26-35; *EPIC CPNI Order* at ¶ 55; *VoIP TRS Order* at ¶ 16.

[50] *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7528-29, ¶ 19.

[51] We recognize that including interconnected VoIP providers in our regulatory fee schedule at this time will have a minimal impact on the fees assessed other carriers, but this may change as the industry grows and their share of regulatory fees increases.

[52] In addition, those companies that currently offer their customers both Title II services and interconnected VoIP services may choose to shift customers from the traditional landline service to the interconnected VoIP service in order to reduce the regulatory fee burden.

[53] EWA Comments at 2-3.

[54] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2004,* MD Docket No. 04-73, Report and Order, 19 FCC Rcd 11662, 11665-67, ¶¶ 6-12 (2004) ("*FY 2004 Report and Order*").

section 9."[55] Procedurally, the Commission calculates regulatory fees by proportionally allocating the total amount that must be collected in section 9 regulatory fees (known as "Expected Revenue"), and dividing this allocated amount by the estimated number of units in its respective fee category. In the case of PLMRS (Shared Use and Exclusive Use), the resulting figure is also divided by 10, the length of the term of a PLMRS license. Because PLMRS licenses have a ten-year term, and regulatory fees are not collected again from these licenses until after 10 years have passed, it is possible that in any given year, there may be fewer units that are either renewing their PLMRS licenses or applying for new ones. For example, between FY 2001 and FY 2006, the unit estimates for PLMRS Exclusive Use decreased from 5,500 units (FY 2001) to 2,200 units (FY 2006), a 60 percent reduction, while PLMRS Shared Use unit estimates decreased from 58,000 units (FY 2001) to 25,000 units (FY 2006), a 57 percent reduction.[56] At the same time that PLMRS (Shared Use and Exclusive Use) unit estimates were decreasing by nearly 60 percent, our congressionally mandated regulatory fees collections amount increased from $200.1 million (FY 2001) to $298.8 million (FY 2006), an increase of 49 percent. The combination of an increasing collections amount mandated by Congress combined with a decrease in the number of units resulted in a higher unit fee between FY 2001 and FY 2006 for PLMRS Shared Use and PLMRS Exclusive Use fee categories.

23. We also note that the unit fee increase has been gradual over time. For example, between FY 2001 and FY 2006, the PLMRS Shared Use unit fee remained steady at $5 per year between FY 2001 and FY 2005, and increased only to $10 per year beginning in FY 2006. During the same time period, the PLMRS Exclusive Use unit fee remained at $5 per year in FY 2001 and FY 2002, increased to the level of $10 per year in FY 2003, FY 2004, and FY 2005, and then increased to $20 per year in FY 2006. Because these fee increases are based primarily on a declining unit base and an increasing congressional mandate to collect more annual regulatory fees, common factors that contribute to unit fee changes each year, we decline to modify or reduce the PLMRS (Shared Use and Exclusive Use) unit fee as EWA suggests.

B. Administrative and Operational Issues

24. In our *FY 2007 NPRM*, we sought comment on the administrative and operational processes used to collect the annual section 9 regulatory fees. Although these issues do not affect the amount of regulatory fees parties are obligated to submit, the administrative and operational issues affect the process of submitting payment.

1. Use of Fee Filer

25. We did not seek specific comment on the use of our online Fee Filer application in the *FY 2007 NPRM*. We take this opportunity, however, to <u>strongly encourage regulatees to electronically file their FY 2007 regulatory fee payments via Fee Filer</u>,[57] rather than submitting payment with a completed hardcopy Form 159, Form 159-B, and/or Form 159-W. The benefits of electronically filing via Fee Filer are expeditious payment submissions that are less expensive (no U.S. postage if paying online) and less prone to error. It also results in improved record keeping and payment reconciliation efforts, and reduces paperwork burdens on payers and Commission staff alike.

26. Traditionally, we have received hardcopy Form 159-Cs (Continuation Sheets) from our regulatees needing to make voluminous payment transactions. Our "voluminous payers" will benefit even more so by using Fee Filer. Having expanded our pre-billing initiatives in FY 2007, some regulatees will receive more than one Form 159-B; and some will be obligated to pay for fees that were pre-billed and other fees that were not pre-billed. Fee Filer relieves regulatees of the need to mail several different pre-bills or to follow different filing instructions for different fees; and enables all fee obligations to be paid

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[55] *See FY 2004 Report and Order*, 19 FCC Rcd at 11666, ¶ 8.

[56] Data derived from regulatory fee Report and Orders for fiscal years 2001-2006.

[57] Fee Filer can be accessed at http://www.fcc.gov/fees/feefiler.html.

simply either online or by following pre-printed instructions on a Fee Filer-produced voucher.

27. We note that Fee Filer accepts electronic credit card transactions of up to $99,999.99 and ACH payment transactions from a bank account of an unlimited dollar amount. Fee Filer also facilitates payment by check or wire transfer by producing a one-page Remittance Voucher Form 159-E which can be mailed to our lockbox bank.

2. Proposals for Notification and Collection of Regulatory Fees

28. In our *FY 2007 NPRM*, we sought comment on the administrative processes that the Commission uses to notify regulatees and collect regulatory fees. We received no comment on these general processes. Each year, we generate public notices and fact sheets that notify regulatees of the fee payment due date and provide additional information regarding regulatory fee payment procedures. Consistent with our established practice, we will provide public notices, fact sheets and all other relevant material on our website at http://www.fcc.gov/fees/regfees.html for the FY 2007 regulatory fee cycle. As a general practice, we will not send regulatory fee material to regulatees via surface mail. However, in the event that regulatees do not have access to the Internet, we will mail public notices and other relevant material upon request. Regulatees and the general public may request such information by contacting the FCC Financial Operations HelpDesk at (877) 480-3201, Option 4.

29. As discussed above, we do not send public notices and fact sheets to regulatees en masse. However, we will continue to send specific regulatory fee pre-bills or assessment notifications via surface mail to the select fee categories discussed below.[58] Pre-bills are hardcopy billing statements that the Commission mails to certain regulatees. In prior years, the Commission only sent pre-bills to ITSPs and satellite space station licensees. The remaining regulatees did not receive pre-bills.

30. In our *FY 2007 NPRM*, we sought comment on expanding our section 9 regulatory fee pre-billing initiatives to include our service categories for earth stations and CARS stations, beginning in FY 2007. We stated that we could accomplish pre-billing for these categories because they are comprised of relatively few payment units (relative to many other categories in our Schedule of Regulatory Fees), and because we maintain licensing databases for both categories.[59] The ACA supports our proposal to pre-bill earth stations and CARS stations, noting that it can promote timely filings and payments, and further reduce administrative burdens and costs for small cable operators.[60] We received no comments regarding our proposal. Effective this fiscal year, we will pre-bill our earth station and CARS station service categories.

a. Interstate Telecommunications Service Providers

31. In FY 2001, we began mailing pre-completed FCC Form 159-W assessments to carriers in an effort to assist them in paying their ITSP regulatory fee. The fee amount on FCC Form 159-W was calculated from the FCC Form 499-A worksheet. Beginning in FY 2004, we converted our usage of the FCC Form 159-W from an “assessment of amount due” to a pre-bill. We have successfully used the Form 159-W as a pre-billing instrument in the fiscal years following, and we proposed to continue our ITSP pre-billing initiative in FY 2007 in our *FY 2007 NPRM*. We received no comment on this proposal, and will

[58] An assessment is a proposed statement of the amount of regulatory fees owed by an entity to the Commission (or proposed subscriber count to be ascribed for purposes of setting the entity’s regulatory fee) but it is not entered into the Commission’s accounting system as a current debt. A pre-bill is considered an account receivable in the Commission’s accounting system. Pre-bills reflect the amount owed and have a payment due date of the last day of the regulatory fee payment window. Consequently, if a pre-bill is not paid by the due date, it becomes delinquent and is subject to our debt collection procedures. *See also* 47 C.F.R. §§ 1.1161(c), 1.1164(f)(5), and 1.1910.

[59] *See FY 2007 NPRM*, 22 FCC Rcd at 7981, ¶ 19.

[60] ACA Comments at 4.

continue to mail pre-bills ITSPs in FY 2007.

32. This fiscal year, we will round lines 14 (total subject revenues) and 16 (total regulatory fee owed) on FCC Form 159-W to the nearest dollar. Line 14 must be rounded to a whole dollar amount because this data field is linked to the FCC Form 159 Remittance Advice Block 25A (quantity), which can only accept whole numbers. It logically follows that if line 14 must be rounded, then the form's final line that calculates the total fee owed (line 16) should be rounded to the nearest dollar, as well. Also, rounding lines 14 and 16 will nominally ease the filing and payment burdens of our Form 159-W filers. We received no comment on this administrative change as proposed in our *FY 2007 NPRM*, and will therefore implement the change for FY 2007.

b. Satellite Space Station Licensees

33. Beginning in FY 2004, we mailed regulatory fee pre-bills via surface mail to licensees in our two satellite space station service categories. Specifically, geostationary orbit space station ("GSO") licensees received bills requesting regulatory fee payment for satellites that (1) were licensed by the Commission and operational on or before October 1 of the respective fiscal year; and (2) were not co-located with and technically identical to another operational satellite on that date (*i.e.*, were not functioning as a spare satellite). Non-geostationary orbit space station ("NGSO") licensees received pre-bills requesting regulatory fee payment for systems that were licensed by the Commission and operational on or before October 1 of the respective fiscal year.

34. For FY 2007, we proposed to continue mailing pre-bills for our GSO and NGSO satellite space station categories.[61] We received no comment on this matter, and will continue to mail pre-bills to our GSO and NGSO satellite space station categories.

c. Media Services Licensees

35. Beginning in FY 2003, we sent fee assessment notifications via surface mail to media services entities on a per-facility basis. The notifications provided the assessed fee amount for the facility in question, as well as the data attributes that determined the fee amount. We have since refined this initiative with improved results.[62] In our *FY 2007 NPRM*, we proposed to continue our assessment initiative for media services licensees this year.[63] We received no comment on the proposal.

36. Consistent with procedures used last year, we will mail assessment notifications to licensees to their primary record of contact populated in CDBS (Consolidated Database System) and to their secondary record of contact, if available. We will continue to make the Commission-authorized web site available to licensees to update or correct any information concerning their facilities and to amend their fee-exempt status, if need be.[64] Licensees opting not to file their fee payment electronically through Fee

[61] *See FY 2007 NPRM,* 22 FCC Rcd at 7980-81, ¶ 17.

[62] Some of those refinements have been to provide licensees with a Commission-authorized web site to update or correct any information concerning their facilities, and to amend their fee-exempt status, if need be. Also, our notifications now provide licensees with a telephone number to call in the event that they need customer assistance. The notifications themselves have been refined so that licensees of fewer than four facilities receive individual fee assessment postcards for their facilities; whereas licensees of four or more facilities now receive a single assessment letter that lists all of their facilities and the associated regulatory fee obligation for each facility.

[63] Fee assessments were proposed again to be issued for AM and FM Radio Stations, AM and FM Construction Permits, FM Translators/Boosters, VHF and UHF Television Stations, VHF and UHF Television Construction Permits, Satellite Television Stations, Low Power Television ("LPTV") Stations, Class A Television Stations, and LPTV Translators/Boosters, to the extent that applicants, permittees and licensees of such facilities do not qualify as government entities or non-profit entities. Fee assessments have not been issued for broadcast auxiliary stations in prior years, nor will they be issued in FY 2007.

[64] The Commission-authorized web site for media services licensees is http://www.fccfees.com.

Filer must submit a completed hardcopy FCC Form 159 with their fee payment; *i.e.*, the assessment notifications cannot be used as a substitute for a completed Form 159.

d. Commercial Mobile Radio Service Cellular and Mobile Services Assessments

37. As we have done in prior years, we will send assessment letters to CMRS providers using Numbering Resource Utilization Forecast ("NRUF") data that is based on "assigned" number counts that have been adjusted for porting to net Type 0 ports ("in" and "out").[65] The letters will not include Operating Company Numbers ("OCNs") with their respective assigned number counts, but rather, OCNs with an aggregate total of assigned numbers for each carrier. As in prior years, carriers will be given an opportunity to amend their subscriber counts listed on the assessment letter.

38. If the number of subscribers on the assessment letter differs from the subscriber count the service provider provided on its NRUF form, the provider may correct its subscriber count by returning the assessment letter or by contacting the Commission and stating a reason for the change, such as the purchase or the sale of a subsidiary, including the date of the transaction, and any other information that will help to justify a reason for the change.

39. If we receive no response or correction to our initial assessment letter, we will expect the provider's section 9 fee payment to be based on the number of subscribers listed on that letter. We will review all amendments to assessment letters and determine whether a change in the number of subscribers is warranted. We will then generate and mail a final assessment letter. The final assessment letter will inform carriers as to whether or not we accept the amended subscriber count.

40. Although an initial and a final assessment letter will be mailed to CMRS providers that have filed an NRUF form, some providers may not be sent assessment letters if they did not file the NRUF form. These providers shall compute their section 9 fee payment using the standard methodology[66] that is currently in place for CMRS Wireless services (*e.g*., compute their subscriber counts as of December 31, 2006), and submit their payment accordingly, either via Fee Filer, or attached to a completed hardcopy FCC Form 159. However, regardless of whether a provider receives an assessment letter or calculates its subscriber count independently, the Commission may audit the number of subscribers for which section 9 fees are paid. In the event that the Commission determines that the number of subscribers is inaccurate or that an insufficient reason is given for making a correction on the initial assessment letter, the Commission will assess the carrier for the difference between what was paid and what should have been paid.

41. *Aggregate Subscriber Levels*. Also in our *FY 2007 NPRM*, we noted that last year we eliminated the requirement for CMRS providers to identify their individual call signs when making their section 9 fee payment. This simplified the payment process for all CMRS providers by enabling them to pay their section 9 fees at the aggregate level.[67] In our *FY 2007 NPRM*, we proposed to continue this practice and we received no comment. We shall therefore continue to allow CMRS providers to pay their section 9 fees at the aggregate subscriber level.

42. *Consolidated CMRS Section 9 Fee Categories*. Finally, in our *FY 2007 NPRM*, we proposed to consolidate the CMRS cellular and CMRS mobile fee categories into one CMRS fee category.

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[65] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2005 and Assessment and Collection of Regulatory Fees for Fiscal Year 2004,* MD Docket Nos. 05-59 and 04-73, Report and Order and Order on Reconsideration, 20 FCC Rcd 12259, 12264, ¶¶ 38-44 (2005).

[66] Federal Communications Commission, *Regulatory Fees Fact Sheet: What You Owe - Commercial Wireless Services for FY 2005* at 1 (rel. Jul. 2005).

[67] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2006,* MD Docket No. 06-68, Report and Order, 21 FCC Rcd 8092, 8105, ¶ 48 (2006).

This action would eliminate the need for CMRS providers to separate their subscriber counts into CMRS cellular and CMRS mobile fee categories during the fee payment process. At one time, the Commission perceived a need to monitor the CMRS cellular and CMRS mobile fee categories separately.[68] However, we deem this no longer necessary and therefore proposed to reduce administrative burdens on CMRS providers by consolidating the two categories into one. We received no specific comment on this proposal. We will therefore consolidate our CMRS mobile category (which would have been payment type code 0712 in FY 2007) into the CMRS cellular category (payment type code 0711 in FY 2007). On a going forward basis, all CMRS cellular and mobile providers shall make their section 9 fee payments using the Commission's payment type code __11. This procedural change does not affect CMRS Messaging (Paging) providers, who will continue to make their section 9 fee payment using fee code 0713 in FY 2007 and __13 in the outyears.

e. Cable Television Subscribers

43. In our *FY 2007 NRPM*, we proposed to continue to permit cable television operators to base their regulatory fee payment on their company's aggregate year-end subscriber count, rather than requiring them to sub-report subscriber counts on a per community unit identifier (CUID) basis.[69] This practice has worked well for the Commission the past three fiscal years and has eased administrative burdens for the cable television industry. One commenter supports this proposal.[70] We received no opposing comments, and will thereby continue to employ this payment procedure this fiscal year.

44. We also proposed to send an e-mail reminder to addresses populated in the Media Bureau's Cable Operations and Licensing System ("COALS"), as we did last year, to notify recipients of the FY 2007 regulatory fee payment due date and the fee amount for basic cable television subscribers. Cable television operators are required to file their cable-related forms at the Commission via the COALS website. To date, more than 98 percent of all cable operators have their email addresses recorded in the database. One commenter supports this proposal.[71] We received no opposing comments, and will therefore send an e-mail reminder to cable operators again this fiscal year.

45. Sending reminders via e-mail has proven to be an effective practice and we therefore proposed to discontinue our other practice of sending fee assessment letters via surface mail to cable television operators who are on file as having paid regulatory fees the previous fiscal year. One commenter asks the Commission to continue sending fee assessment letters via surface mail to cable operators that serve fewer than 5,000 subscribers, stating that these operators rely exclusively on the U.S. postal service for their day-to-day operations.[72] We decline the commenter's request. After conducting this assessment initiative for three years, we have concluded that it is inadequate for accurate assessment purposes and we will instead direct the Commission's resources towards more useful fee collection activities. In addition, we note that we make available all relevant regulatory fee material on our website. If regulatees cannot access the Internet to obtain the necessary information for paying their regulatory fees, they may request such information to be sent via surface mail by contacting the FCC Financial Operations HelpDesk at (877) 480-3201, Option 4.

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[68] In our *FY 1998 Report and Order*, the Commission classified Wireless Communications Service ("WCS"), which included Personal Communications Services (Part 24), as a CMRS Mobile Service, stating that CMRS is "an 'umbrella' descriptive term attributed to various existing broadband services authorized to provide interconnected mobile radio services"[68] However, beginning in FY 1998, a separate fee code was provided for Personal Communications Service ("PCS") to monitor the number of units in this service category.

[69] *See FY 2007 NPRM*, 22 FCC Rcd at 7983, ¶ 28.

[70] ACA Comments at 2.

[71] ACA Comments at 2.

[72] ACA Comments at 3.

III. FURTHER NOTICE OF PROPOSED RULEMAKING

46. In WT Docket No. 03-66 (the *BRS/EBS Proceeding*), the Commission sought comment on proposed changes to the regulatory fee structure for BRS.[73] In 2006, the Commission adopted a new regulatory fee structure for BRS (the *2006 Decision*).[74] Specifically, as noted in the *FY 2007 NPRM*, the Commission adopted a megahertz-based approach for BRS regulatory fees and, using a concept similar to the Commission's annual scale of regulatory fees for broadcast television stations, established in the *2006 Decision* three rate tiers based on the BTA ranking of each license.[75]

47. In the *FY 2007 NPRM*, we sought comment on the implementation of the new BRS fee structure. Specifically, we invited commenters to suggest a simple method of calculating BRS regulatory fees that incorporates the complexity of using both elements of the *2006 Decision*, namely, the three rate tiers, to be based on the BTA ranking of each license, and the per megahertz fee. In particular, we invited comment on a formula or method for calculating regulatory fees that incorporates the *2006 Decision* in a manner "sensitive to rural operators in less densely populated areas.[76] WCA, the only commenter addressing this issue, does not object to the Commission seeking comment on the methodology to use in feeing BRS.[77]

48. We clarify that our questions about BRS regulatory fees in the *FY 2007 NPRM* as well in this Further Notice are to implement the *2006 Decision*, and not to revisit the three-tier approach adopted in the *2006 Decision*.

49. Briefly, under the *2006 Decision*, BRS regulatory fees will use a MHz-based formula with three tiers of fees by markets. Instead of a flat fee amount per BRS license, BRS licensees will pay a fee in one of three fee categories based on Basic Trading Areas ("BTA") ranked by population size.[78] The highest fee will be assessed to licenses in BTAs ranked 1-60, licenses in BTAs ranked 61-200 will have a lesser fee, and licenses for BTAs ranked 201-493 will pay the lowest fee.[79] Although the revised framework for assessing BRS regulatory fees was adopted in the *2006 Decision*, the implementation of this new formula will require us to specify how each of the three BTA tiers should be weighted (in terms of fee amounts) relative to the others. We propose to use a weighted average approach based on the *2006 Decision* to establish three tiers of regulatory fees using a 3:2:1 ratio, *i.e.*, 3x for Tier 1, 2x for Tier 2, and 1x for Tier 3, where x equals the base fee amount (Pro-rated FY Revenue Requirement for BRS divided by the weighted total number of BRS payment units). In adopting three fee tiers for BRS, the Commission

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[73] *See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, WT Docket No. 03-66, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165, 14296, ¶ 357 ("*BRS/EBS Report and Order and FNPRM*").

[74] *See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, WT Docket No. 03-66, Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order, 21 FCC Rcd 5606, 5756-59, ¶¶ 367-376 (2006) ("*2006 Decision*").

[75] *See FY 2007 NPRM*, 22 FCC Rcd at 7978, ¶ 8 n.8, *citing the 2006 Decision.* The three tiers are based on three categories of Basic Trading Areas ("BTA") population rankings: BTAs 1-60, BTAs 61-200, and BTAs 201-493. For BRS licensees that are licensed by geographic licensed service area (GSA), the BTA is the geographic center point of where its GSA is located. *See the 2006 Decision*, 21 FCC Rcd at 5759, ¶ 376.

[76] *FY 2007 NPRM*, 22 FCC Rcd at 7978, ¶ 8.

[77] WCA Comments at 1-2.

[78] *See The 2006 Decision*, 21 FCC Rcd at 5759, ¶ 376.

[79] *Id*.

considered that BTAs ranked 1-60 generally have a population of greater than one million, BTAs ranked 61-200 generally have population of 250,000 to one million, and BTAs ranked 201-493 have a population of less than 250,000.[80] The Commission also concluded that the current methodology for assessing regulatory fees for BRS is particularly onerous for rural operators.[81] We seek comment on our proposal and specifically invite commenters to address whether it accurately implements the tiered approach adopted in the *2006 Decision*.

50. The second element of the *2006 Decision* involves setting a fee per megahertz of licensed BRS spectrum. However, throughout the nation, BTA-by-BTA, the BRS radio service and its licensees are in the midst of a multi-year transition to a new band plan that, among other things, is modifying the amount of spectrum designated and licensed for BRS.[82] Given the complexities associated with this "moving target," we tentatively conclude that the public interest would be best served by implementing the fee per megahertz approach after the BRS transition concludes nationwide. We seek comment on this tentative conclusion.

IV. PROCEDURAL MATTERS

A. Payment of Regulatory Fees

1. De Minimis Fee Payment Liability

51. Consistent with past practice, regulatees whose total FY 2007 regulatory fee liability, including all categories of fees for which payment is due, amounts to less than $10 will be exempted from payment of FY 2007 regulatory fees.

2. Standard Fee Calculations and Payment Dates

52. The Commission will, for the convenience of payers, accept fee payments made in advance of the window for the payment of regulatory fees. Licensees are reminded that, under our current rules, the responsibility for payment of fees by service category is as follows:

a) Media Services: Regulatory fees must be paid for initial construction permits that were granted on or before October 1, 2006 for AM/FM radio stations, VHF/UHF television stations and satellite television stations. Regulatory fees must be paid for all broadcast facility licenses granted on or before October 1, 2006. In instances where a permit or license is transferred or assigned after October 1, 2006, responsibility for payment rests with the holder of the permit or license as of the fee due date.

b) Wireline (Common Carrier) Services: Regulatory fees must be paid for authorizations that were granted on or before October 1, 2006. In instances where a permit or license is transferred or assigned after October 1, 2006, responsibility for payment rests with the holder of the permit or license as of the fee due date.

c) Wireless Services: CMRS cellular, mobile, and messaging services (fees based upon a subscriber, unit or circuit count): Regulatory fees must be paid for authorizations that

[80] *Id.,* 21 FCC Rcd at 5759, n. 947.

[81] *Id.,* 21 FCC Rcd at 5758, ¶ 374.

[82] The transition plan creates a process for relocating Educational Broadband Service ("EBS") licensees and BRS licensees from their current channel locations to their new spectrum blocks in the Lower Band Segment ("LBS"), Middle band Segment ("MBS"), or Upper Band Segment ("UBS"). The transition occurs by BTA and is undertaken by a proponent or multiple proponents. A proponent(s) must pay the cost of transitioning EBS licensees. The transition occurs in the following three phases: the Initiation Phase, the Transition Planning Phase, and the Transition Completion Phase.

were granted on or before October 1, 2006. The number of subscribers, units or circuits on December 31, 2006 will be used as the basis from which to calculate the fee payment.

The first eleven regulatory fee categories in our Schedule of Regulatory Fees (*see* Attachment D) pay what we refer to as "small multi-year wireless regulatory fees." Entities pay these regulatory fees in advance for the entire amount of their 5-year or 10-year term of initial license, and only pay regulatory fees again for the license at the time its next renewal. So while we include these eleven categories in our Schedule of Regulatory Fees to publicize the fee amounts, we do not actually collect these fees on an annual basis.

d) Multichannel Video Programming Distributor Services (cable television operators and CARS licensees): Regulatory fees must be paid for the number of basic cable television subscribers as of December 31, 2006.[83] Regulatory fees also must be paid for CARS licenses that were granted on or before October 1, 2006. In instances where a CARS license is transferred or assigned after October 1, 2006, responsibility for payment rests with the holder of the license as of the fee due date.

e) International Services: Regulatory fees must be paid for earth stations, geostationary orbit space stations and non-geostationary orbit satellite systems that were licensed and operational on or before October 1, 2006. In instances where a license is transferred or assigned after October 1, 2006, responsibility for payment rests with the holder of the license as of the fee due date. Regulatory fees must be paid for international bearer circuits, the payments of which are determined by the number of active circuits as of December 31, 2006.[84]

[83] Cable television system operators should compute their basic subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, *etc*.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Operators may base their count on "a typical day in the last full week" of December 2006, rather than on a count as of December 31, 2006.

[84] Regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers that have active international bearer circuits in any transmission facility for the provision of service to an end user or resale carrier, which includes active circuits to themselves or to their affiliates. In addition, non-common carrier satellite operators must pay a fee for each circuit sold or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. Non-common carrier submarine cable operators are also to pay fees for any and all international bearer circuits sold on an indefeasible right of use ("IRU") basis or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. *See Assessment and Collection of Regulatory Fees for Fiscal Year 2001*, MD Docket No. 01-76, Report and Order, 16 FCC Rcd 13525, 13593 (2001); *Regulatory Fees Fact Sheet: What You Owe – International and Satellite Services Licensees for FY 2004* at 3 (rel. July 2004) (the fact sheet is available on the FCC web-site at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-249904A4.pdf). On February 6, 2006, VSNL Telecommunications (US) Inc. filed a Petition for Rulemaking urging the Commission to reform the current International Bearer Circuit Fee rules and policies as applied to non-common carrier submarine cable operators. *See* Petition for Rulemaking of VSNL Telecommunications (US) Inc., RM-11312 (filed Feb. 6, 2006). This Petition remains pending before the Commission, which has issued a Public Notice requesting comment on the petition. *See* Consumer and Governmental Affairs Bureau, Reference Information Center, *Public Notice,* Report No. 2759 (rel. Feb. 15, 2006). The Commission intends to resolve the complex issues presented by this Petition separately, and any comments on these issues filed in the instant proceeding will be incorporated into, and addressed, with those filed on

(continued....)

B. Enforcement

53. As a reminder to all licensees, section 159(c) of the Act requires us to impose an additional charge as a penalty for late payment of any regulatory fee. As in years past, 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. Regulatory fee payment must be received and stamped at the lockbox bank by the last day of the regulatory fee filing window, and not merely postmarked by the last day of the window. Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including the Commission's Red Light Rule (*see* 47 C.F.R. § 1.1910) and the provisions set forth in the Debt Collection Improvement Act of 1996 ("DCIA"). We also assess administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the related debt pursuant to the DCIA and 47 C.F.R. §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. In case of partial payments (underpayments) of regulatory fees, the licensee will be given credit for the amount paid, but if it is later determined that the fee paid is incorrect or not timely paid, then the 25 percent late charge penalty (and other charges and/or sanctions, as appropriate) will be assessed on the portion that is not paid in a timely manner.

54. Furthermore, our regulatory fee rules provide that we will withhold action on any applications or other requests for benefits filed by anyone who is delinquent in any non-tax debts owed to the Commission (including regulatory fees) and will ultimately dismiss those applications or other requests if payment of the delinquent debt or other satisfactory arrangement for payment is not made. *See* 47 C.F.R. §§ 1.1161(c), 1.1164(f)(5), and 1.1910. Failure to pay regulatory fees can also result in the initiation of a proceeding to revoke any and all authorizations held by the entity responsible for paying the delinquent fee(s).

C. Final Paperwork Reduction Act of 1995 Analysis

This Report and Order and Further Notice of Proposed Rulemaking contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

D. Congressional Review Act Analysis

55. The Commission will send a copy of this Report and Order and Further Notice of Proposed Rulemaking in a report to be sent to Congress and the General Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

E. Ex Parte Rules

56. *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.[85] *Ex parte* presentations are permissible

(...continued from previous page)
the Petition for Rulemaking.

[85] *See* 47 C.F.R. § 1.1206(b); *see also* 47 C.F.R. §§ 1.1202, 1.1203.

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.[86] Additional rules pertaining to oral and written presentations are set forth in section 1.1206(b).

F. Filing Requirements

57. *Comments and Replies*. Pursuant to sections 1.415 and 1.419 of the Commission's rules,[87] 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.[88]

58. *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.

59. *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 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington, DC 20554.

60. *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

[86] *See* 47 C.F.R. § 1.1206(b)(2).

[87] *See id*. §§ 1.415, 1.419.

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

97, and/or Adobe Acrobat.

61. *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 FCC'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.

V. ORDERING CLAUSES

62. Accordingly, IT IS ORDERED pursuant to sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 159, and 303(r) that the FY 2007 section 9 regulatory fee assessment requirements ARE ADOPTED as specified herein.

63. IT IS FURTHER ORDERED that Part 1 of the Commission's Rules ARE AMENDED as set forth in Attachment H, and the these Rules shall become effective 30 days after publication in the Federal Register, except that changes to the Schedule of Regulatory Fees made pursuant to section 9(b)(3) of the Communications Act, and incorporating regulatory fee payment obligations for interconnected VoIP service providers, shall become effective 90 days after notification to Congress.

64. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order and Further Notice of Proposed Rulemaking, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

ATTACHMENT A1

Initial Regulatory Flexibility Analysis

65. As required by the Regulatory Flexibility Act ("RFA"),[89] 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 this Further Notice of Proposed Rulemaking ("FNPRM"). 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 herein. The Commission will send a copy of the FNPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[90] In addition, the FNPRM and IRFA (or summaries thereof) will be published in the Federal Register.[91]

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

66. On April 12, 2006, the Commission adopted a number of changes in the rules governing the 2500-2690 MHz band, for the Broadband Radio Service ("BRS") and the Educational Broadband Service ("EBS").[92] Among other things, the Commission adopted a megahertz ("MHz")-based formula for BRS licensees with tiered regulatory fees based on market size. The FNPRM seeks comment on a new regulatory fee schedule for BRS, based on the tiered structure set forth in the *BRS/EBS Second Report and Order*.

II. Legal Basis:

67. 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 ("the Act").[93]

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

68. 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.[94] The RFA generally defines the term "small entity" as having the same meaning as the terms, "small business," "small organization," and "small governmental jurisdiction."[95] In addition, the term "small business" has the same meaning as the

[89] 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").

[90] 5 U.S.C. § 603(a).

[91] *Id.*

[92] *See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands,* Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order, 21 FCC Rcd 5606 (2006) ("*BRS/EBS Second Report and Order*").

[93] 47 U.S.C. §§ 154(i) and (j), 159, and 303(r).

[94] 5 U.S.C. § 603(b)(3).

[95] 5 U.S.C. § 601(6).

term "small business concern" under the Small Business Act.[96] 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.[97] A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[98] Nationwide, as of 2002, there were approximately 1.6 million small organizations.[99] 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."[100] 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."[101] Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.[102] We estimate that, of this total, 84,377 entities were "small governmental jurisdictions."[103] Thus, we estimate that most governmental jurisdictions are small. Below, we discuss the total estimated numbers of small businesses that might be affected by our regulatory fee proceeding.

69. BRS, previously referred to as Multipoint Distribution Service ("MDS") and Multichannel Multipoint Distribution Service ("MMDS") systems, and "wireless cable," transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the BRS and Educational Broadband Service ("EBS") (previously referred to as the Instructional Television Fixed Service ("ITFS")).[104] In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years.[105] The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas ("BTAs"). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392

[96] 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." 5 U.S.C. § 601(3).

[97] 15 U.S.C. § 632.

[98] 5 U.S.C. § 601(4).

[99] Independent Sector, the New Nonprofit Almanac & Desk Reference (2002).

[100] 5 U.S.C. § 601(5).

[101] 5 U.S.C. § 601(5).

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

[103] 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, page 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.*

[104] *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, ¶ 7 (1995).

[105] 47 C.F.R. § 21.961(b)(1).

incumbent BRS licensees that are considered small entities.[106] After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. Some of those 440 small business licensees may be affected by this regulatory fee proceeding.

70. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating $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] Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the regulatory fee decisions we will reach in this proceeding. This SBA small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities.[110] Thus, we estimate that at least 1,932 licensees are small businesses. EBS is a non-profit non-broadcast service. We do not collect, nor are we aware of other collections of, annual revenue data for EBS licensees.

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

71. 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 Remittance Advice, and pay a regulatory fee based on the number of licenses or call signs.[111] Interstate telephone service providers must compute their

[106] 47 U.S.C. § 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of section 309(j) of the Act, 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard.

[107] 13 C.F.R. § 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 (issued Nov. 2005).

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

[110] The term "small entity" within SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)-(6). We do not collect annual revenue data on EBS licensees.

[111] 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 Educational Broadband Service (BRS) (previously referred to as 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.

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.

72. 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.

73. BRS licensees currently are subject to the Commission's regulatory fees. This FNPRM seeks comment on how to revise the current regulatory fee schedule to comply with the tiered regulatory fee schedule required by the Commission in the *BRS/EBS Second Report and Order*. As a consequence of any new regulatory fee structures adopted in this proceeding, BRS licensees may have to provide additional information than they have provided in the past and the regulatory fee schedule for these licensees will be modified.

74. 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.[112] If payment is not received, new or pending applications may be dismissed, and existing authorizations may be subject to rescission.[113] Further, in accordance with the Debt Collection Improvement Act of 1996 ("DCIA"), Public Law 194-134, 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.[114] Nonpayment of regulatory fees is a debt owed the United States pursuant to 31 U.S.C. 3711 *et seq*., and the DCIA. Appropriate enforcement measures as well as administrative and judicial remedies may be exercised by the Commission. Debts owed to the Commission may result in a person or entity being denied a federal loan or loan guarantee pending before another federal agency until such obligations are paid.[115]

75. 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.[116] 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:

[112] 47 C.F.R. § 1.1164.

[113] 47 C.F.R. § 1.1164(c).

[114] Public Law 104-134, 110 Stat. 1321 (1996).

[115] 31 U.S.C. § 7701(c)(2)(B).

[116] 47 C.F.R. § 1.1166.

76. 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.[117]

77. The Commission is obligated to collect regulatory fees each fiscal year to fund the Commission's operations. For example, the Omnibus Appropriations Act for FY 2007, Public Law 109-383, 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 Act, has required the Commission to collect for FY 2007.[118] With respect to BRS licensees, we are required to implement a tiered regulatory fee schedule based on market size and bandwidth. For this reason, we are seeking comment on an appropriate regulatory fee schedule for these licensees, to be implemented in the next fiscal year. Such a fee structure, when adopted, should result in a lower regulatory fee burden for smaller licensees, based on the licensees' market size and bandwidth.

78. We also note that the Commission's rules provide for relief in exceptional circumstances. Persons or entities may request a waiver, reduction or deferment of payment of the regulatory fee.[119] 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.

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

79. None.

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[117] 5 U.S.C. § 603.

[118] 47 U.S.C. § 159(a).

[119] 47 C.F.R. § 1.1166.

ATTACHMENT A2

Final Regulatory Flexibility Analysis

80. As required by the Regulatory Flexibility Act ("RFA"),[120] the Commission prepared an Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities by the policies and rules proposed in its *Notice of Proposed Rulemaking, In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2007*.[121] Written public comments were sought on the FY 2007 fees proposal, including comments on the IRFA. This present Final Regulatory Flexibility Analysis ("FRFA") conforms to the RFA.[122]

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

81. This rulemaking proceeding is initiated to amend the Schedule of Regulatory Fees in the amount of $290,295,160, 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:

82. None.

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

83. 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.[123] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[124] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[125] 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.[126]

84. **Small Businesses**. Nationwide, there are a total of 22.4 million small businesses,

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[120] 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").

[121] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, Notice of Proposed Rulemaking, 22 FCC Rcd 7975 (2007) ("*FY 2007 NPRM*").

[122] 5 U.S.C. § 604.

[123] 5 U.S.C. § 603(b)(3).

[124] 5 U.S.C. § 601(6).

[125] 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."

[126] 15 U.S.C. § 632.

according to SBA data.[127]

85. **Small Organizations**. Nationwide, there are approximately 1.6 million small organizations.[128]

86. **Small Governmental Jurisdictions**. 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."[129] Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.[130] We estimate that, of this total, 84,377 entities were "small governmental jurisdictions."[131] Thus, we estimate that most governmental jurisdictions are small.

87. We have included small incumbent local exchange carriers 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."[132] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope.[133] We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

88. **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.[134] According to Commission data,[135] 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.

89. **Competitive Local Exchange Carriers ("CLECs"), Competitive Access Providers**

[127] *See* SBA, Programs and Services, SBA Pamphlet No. CO-0028, at page 40 (July 2002).

[128] Independent Sector, The New Nonprofit Almanac & Desk Reference (2002).

[129] 5 U.S.C. § 601(5).

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

[131] 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, page 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.*

[132] 15 U.S. C. § 632.

[133] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, 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* 15 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. *See* 13 C.F.R. § 121.102(b).

[134] 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517110.

[135] 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*"). This source uses data that are current as of October 1, 2004.

("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.[136] According to Commission data,[137] 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.

90. **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.[138] According to Commission data,[139] 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.

91. **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.[140] According to Commission data,[141] 770 carriers have reported that they are engaged in the 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.

92. **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.[142] According to Commission data,[143] 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.

93. **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

[136] 13 C.F.R. § 121.201, NAICS code 517110.

[137] "Trends in Telephone Service" at Table 5.3.

[138] 13 C.F.R. § 121.201, NAICS code 517310.

[139] "Trends in Telephone Service" at Table 5.3.

[140] 13 C.F.R. § 121.201, NAICS code 517310.

[141] "Trends in Telephone Service" at Table 5.3.

[142] 3 C.F.R. § 121.201, NAICS code 517110.

[143] "Trends in Telephone Service" at Table 5.3.

standard, such a business is small if it has 1,500 or fewer employees.[144] According to Commission data,[145] 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.

94. **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.[146] According to Commission data,[147] 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.

95. **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.[148] According to Commission data,[149] 89 carriers have reported that they are 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.

96. **800 and 800-Like Service Subscribers**.[150] 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.[151] 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.[152] 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.

97. **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

[144] 13 C.F.R. § 121.201, NAICS code 517110.

[145] "*Trends in Telephone Service*" at Table 5.3.

[146] 13 C.F.R. § 121.201, NAICS code 517110.

[147] "*Trends in Telephone Service*" at Table 5.3.

[148] 13 C.F.R. § 121.201, NAICS code 517310.

[149] "*Trends in Telephone Service*" at Table 5.3.

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

[151] 13 C.F.R. § 121.201, NAICS code 517310.

[152] "*Trends in Telephone Service"* at Tables 18.4, 18.5, 18.6, and 18.7.

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.[153]

98. 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."[154] For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year.[155] Of this total, 307 firms had annual receipts of under $10 million, and 26 firms had receipts of $10 million to $24,999,999.[156] Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

99. 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."[157] For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year.[158] 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.[159] Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

100. **Wireless Service Providers**. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of "Paging"[160] and "Cellular and Other Wireless Telecommunications."[161] Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year.[162] Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.[163] Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census

[153] 13 C.F.R. § 121.201 , NAICS codes 517410 and 517910.

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

[155] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 517410 (issued Nov. 2005).

[156] *Id*. An additional 38 firms had annual receipts of $25 million or more.

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

[158] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 517910 (issued Nov. 2005).

[159] *Id*. An additional 14 firms had annual receipts of $25 million or more.

[160] 13 C.F.R. § 121.201, NAICS code 517211.

[161] 13 C.F.R. § 121.201, NAICS code 517212.

[162] 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).

[163] *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."

Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.[164] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[165] Thus, under this second category and size standard, the majority of firms can, again, be considered small.

101. **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."[166] Under the SBA size standard, such a business is small if it has average annual receipts of $21 million or less.[167] According to Census Bureau data for 1997, there were 2,751 firms in this category that operated for the entire year.[168] 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.[169] Thus, under this size standard, the great majority of firms can be considered small entities.

102. **Cellular Licensees**. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of "Paging"[170] and "Cellular and Other Wireless Telecommunications."[171] Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year.[172] Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.[173] Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.[174] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[175] Thus, under this second category and size standard, the majority of firms can, again, be considered small.

[164] 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).

[165] *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."

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

[167] 13 C.F.R. § 121.201, NAICS code 518111.

[168] 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 (issued Oct. 2000).

[169] *Id.*

[170] 13 C.F.R. § 121.201, NAICS code 517211.

[171] 13 C.F.R. § 121.201, NAICS code 517212.

[172] 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).

[173] *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."

[174] 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).

[175] *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."

103. **Common Carrier Paging**. As noted, the SBA has developed a small business size standard for wireless firms within the broad economic census categories of "Cellular and Other Wireless Telecommunications."[176] Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, U.S. Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year.[177] Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more.[178] Thus, under this category and associated small business size standard, the great majority of firms can be considered small.

104. In addition, in the Paging Second Report and Order, the Commission adopted a size standard for "small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[179] 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.[180] The SBA has approved this definition.[181] An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold.[182] Fifty-seven companies claiming small business status won 440 licenses.[183] An auction of MEA and Economic Area (EA) licenses commenced on October 30, 2001, and closed on December 5, 2001. Of the 15,514 licenses auctioned, 5,323 were sold.[184] One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs commenced on May 13, 2003, and closed on May 28, 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.[185] Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service*, 408 private and common carriers reported that they were engaged in the provision of either paging or "other mobile" services.[186] Of these, we estimate that 589 are small, under the SBA-approved small business size standard.[187] We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

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[176] 13 C.F.R. § 121.201, NAICS code 517212.

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

[178] U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued Oct. 2000). 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 1000 employees or more."

[179] *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems*, Second Report and Order, 12 FCC Rcd 2732, 2811-2812, ¶¶ 178-181 ("*Paging Second Report and Order*"); *see also Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems*, Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 10030, 10085-10088, ¶¶ 98-107 (1999).

[180] *Paging Second Report and Order*, 12 FCC Rcd at 2811, ¶ 179.

[181] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, from Aida Alvarez, Administrator, Small Business Administration, dated Dec. 2, 1998.

[182] *See* "929 and 931 MHz Paging Auction Closes," Public Notice, 15 FCC Rcd 4858 (WTB 2000).

[183] *Id*.

[184] *See* "Lower and Upper Paging Band Auction Closes," Public Notice, 16 FCC Rcd 21821 (WTB 2002).

[185] *See* "Lower and Upper Paging Bands Auction Closes," Public Notice, 18 FCC Rcd 11154 (WTB 2003).

[186] "*Trends in Telephone Service"* at Table 5.3.

[187] 13 C.F.R. § 121.201, NAICS code 517211.

105. **Wireless Communications Services**. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services ("WCS") auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years.[188] The SBA has approved these definitions.[189] The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity. An auction for one license in the 1670-1674 MHz band commenced on April 30, 2003 and closed the same day. One license was awarded. The winning bidder was not a small entity.

106. **Wireless Telephony**. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The SBA has developed a small business size standard for "Cellular and Other Wireless Telecommunications" services.[190] Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.[191] According to *Trends in Telephone Service* data, 437 carriers reported that they were engaged in wireless telephony.[192] We have estimated that 260 of these are small under the SBA small business size standard.

107. **Broadband Personal Communications Service**. The broadband personal communications services ("PCS") spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[193] For Block F, an additional small business size standard for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[194] These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.[195] No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that 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.[196] On March 23, 1999, the Commission reauctioned 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.[197]

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[188] *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS)*, Report and Order, 12 FCC Rcd 10785, 10879, ¶ 194 (1997).

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

[190] 13 C.F.R. § 121.201, NAICS code 517212.

[191] *Id.*

[192] "*Trends in Telephone Service*" at Table 5.3.

[193] *See Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, Report and Order, 11 FCC Rcd 7824, 7850-7852, ¶¶ 57-60 (1996); *see also* 47 C.F.R. § 24.720(b).

[194] *See Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, Report and Order, 11 FCC Rcd 7824, 7852, ¶ 60.

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

[196] FCC News, "Broadband PCS, D, E and F Block Auction Closes," No. 71744 (rel. Jan. 14, 1997).

[197] *See* "C, D, E, and F Block Broadband PCS Auction Closes," *Public Notice*, 14 FCC Rcd 6688 (WTB 1999).

108. 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.[198] Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. On February 15, 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction No. 58. There were 24 winning bidders for 217 licenses.[199] Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. On May 21, 2007, the Commission completed an auction of 38 Broadband PCS licenses in Auction No. 71, of which 26 were C block licenses and 6 were F block licenses. There were 12 winning bidders for the 33 C and F block licenses. Of the 12 winning bidders, four claimed small business status and won 16 licenses.

109. **Narrowband Personal Communications Services**. The Commission held an auction for Narrowband PCS licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second auction commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, "small businesses" were entities with average gross revenues for the prior three calendar years of $40 million or less.[200] Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses.[201] To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order.[202] 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.[203] 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.[204] The SBA has approved these small business size standards.[205] A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses.[206] Three of these claimed status as a small or very small entity and won 311 licenses.

110. **Lower 700 MHz Band Licenses**. We adopted criteria for defining three groups of small

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[198] *See* "C and F Block Broadband PCS Auction Closes; Winning Bidders Announced," *Public Notice*, 16 FCC Rcd 2339 (2001).

[199] *See* "Broadband PCS Spectrum Auction Closes; Winning Bidders Announced for Auction No. 58," *Public Notice,* 20 FCC Rcd 3703 (2005).

[200] *Implementation of Section 309(j) of the Communications Act – Competitive Bidding Narrowband PCS*, Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 10 FCC Rcd 175, 196, ¶ 46 (1994).

[201] *See* "Announcing the High Bidders in the Auction of ten Nationwide Narrowband PCS Licenses, Winning Bids Total $617,006,674," *Public Notice*, PNWL 94-004 (rel. Aug. 2, 1994); "Announcing the High Bidders in the Auction of 30 Regional Narrowband PCS Licenses; Winning Bids Total $490,901,787," *Public Notice*, PNWL 94-27 (rel. Nov. 9, 1994).

[202] *Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS*, Second Report and Order and Second Further Notice of Proposed Rule Making, 15 FCC Rcd 10456, 10476, ¶ 40 (2000).

[203] *Id*.

[204] *Id*.

[205] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated Dec. 2, 1998.

[206] *See* "Narrowband PCS Auction Closes," *Public Notice*, 16 FCC Rcd 18663 (WTB 2001).

businesses for purposes of determining their eligibility for special provisions such as bidding credits.[207] We have defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[208] A "very small business" is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[209] Additionally, the lower 700 MHz Service has a third category of small business status that may be claimed for Metropolitan/Rural Service Area (MSA/RSA) licenses. The third category is "entrepreneur," which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.[210] The SBA has approved these small size standards.[211] An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings ("EAGs")) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.[212] A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses.[213] Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.[214] On July 26, 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz band (Auction No. 60). There were three winning bidders for five licenses. All three winning bidders claimed small business status.

111. **Upper 700 MHz Band Licenses**. The Commission released a Report and Order, authorizing service in the upper 700 MHz band.[215] This auction, previously scheduled for January 13, 2003, has been postponed.[216]

112. **700 MHz Guard Band Licenses**. In the 700 MHz Guard Band Order, we adopted size standards for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[217] A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not

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[207] *See Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, Report and Order, 17 FCC Rcd 1022 (2002).

[208] *See Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, Report and Order, 17 FCC Rcd 1022, 1087-88, ¶ 172 (2002).

[209] *Id*.

[210] *See id.* at 1088, ¶ 173.

[211] *See* Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated Aug. 10, 1999.

[212] *See* "Lower 700 MHz Band Auction Closes," *Public Notice*, 17 FCC Rcd 17272 (WTB 2002).

[213] *See* "Lower 700 MHz Band Auction Closes," *Public Notice*, 18 FCC Rcd 11873 (WTB 2003).

[214] *See id.*

[215] *See Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules*, Second Memorandum Opinion and Order, 16 FCC Rcd 1239 (2001).

[216] *See* "Auction of Licenses for 747-762 and 777-792 MHz Bands (Auction No. 31) Is Rescheduled," *Public Notice*, 16 FCC Rcd 13079 (WTB 2003).

[217] *See Service Rules for the 746-764 MHz Bands, and Revisions to Part 27 of the Commission's Rules*, Second Report and Order, 15 FCC Rcd 5299 (2000).

exceeding $40 million for the preceding three years.[218] Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[219] SBA approval of these definitions is not required.[220] An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.[221] 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.[222]

113. **Specialized Mobile Radio**. The Commission awards "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.[223] The Commission awards "very small entity" bidding credits to firms that had revenues of no more than $3 million in each of the three previous calendar years.[224] The SBA has approved these small business size standards for the 900 MHz Service.[225] The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.[226] A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.[227]

114. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard.[228] In an auction completed on December 5, 2000, a total of

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[218] *See Service Rules for the 746-764 MHz Bands, and Revisions to Part 27 of the Commission's Rules*, Second Report and Order, 15 FCC Rcd 5299, 5343, ¶ 108 (2000).

[219] *See id*.

[220] *See id*. at 5343, n.246 (for the 746-764 MHz and 776-794 MHz bands, the Commission is exempt from 15 U.S.C. § 632, which requires Federal agencies to obtain SBA approval before adopting small business size standards).

[221] *See* "700 MHz Guard Bands Auction Closes: Winning Bidders Announced," *Public Notice*, 15 FCC Rcd 18026 (2000).

[222] *See* "700 MHz Guard Bands Auction Closes: Winning Bidders Announced," *Public Notice*, 16 FCC Rcd 4590 (WTB 2001).

[223] 47 C.F.R. § 90.814(b)(1).

[224] 47 C.F.R. § 90.814(b)(1).

[225] *See* Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated Aug. 10, 1999. We note that, although a request was also sent to the SBA requesting approval for the small business size standard for 800 MHz, approval is still pending.

[226] *See* "Correction to Public Notice DA 96-586 'FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,'" *Public Notice*, 18 FCC Rcd 18367 (WTB 1996).

[227] *See* "Multi-Radio Service Auction Closes," *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

[228] *See* "800 MHz Specialized Mobile Radio (SMR) Service General Category (851-854 MHz) and Upper Band (861-865 MHz) Auction Closes; Winning Bidders Announced," *Public Notice*, 15 FCC Rcd 17162 (2000).

2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold.[229] Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

115. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

116. **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 definition of 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 category provides that a small business is a wireless company employing no more than 1,500 persons.[230] The Commission estimates that most such licensees are small businesses under the SBA's small business standard.

117. **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 defining "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[231] This small business standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[232] A "very small business" is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years.[233] The SBA has approved these small size standards.[234] Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.[235] 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.[236] Thirty-nine small businesses won 373 licenses in the first 220

[229] *See* "800 MHz SMR Service Lower 80 Channels Auction Closes; Winning Bidders Announced," *Public Notice*, 16 FCC Rcd 1736 (2000).

[230] 13 C.F.R. § 121.201, NAICS code 517212.

[231] *Amendment of Part 90 of the Commission's Rules to Provide For the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service*, Third Report and Order, 12 FCC Rcd 10943, 11068-70, ¶¶ 291-295 (1997).

[232] *Id.* at 11068, ¶ 291.

[233] *Id.*

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

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

[236] *See* "FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made," *Public Notice*, 14 FCC Rcd 1085 (1999).

MHz auction. A second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.[237] A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses.[238]

118. **Private Land Mobile Radio ("PLMR")**. PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we use the broad census category, "Cellular and Other Wireless Telecommunications." This definition provides that a small entity is any such entity employing no more than 1,500 persons.[239] The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. We note that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.[240]

119. The Commission's 1994 Annual Report on PLMRs[241] indicates that at the end of fiscal year 1994, there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. We note that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that the revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

120. **Fixed Microwave Services**. Fixed microwave services include common carrier,[242] private operational-fixed,[243] and broadcast auxiliary radio services.[244] 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 small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees.[245] The Commission does not have data specifying the number of these licensees that have no more than 1,500 employees, and thus are unable at this time to estimate with greater precision

[237] *See* "Phase II 220 MHz Service Spectrum Auction Closes," *Public Notice*, 14 FCC Rcd 11218 (1999).

[238] *See* "Multi-Radio Service Auction Closes," *Public Notice*, 17 FCC Rcd 1446 (2002).

[239] *See* 13 C.F.R. § 121.201, NAICS code 517212.

[240] *See generally* 13 C.F.R. § 121.201.

[241] Federal Communications Commission, 60th Annual Report, Fiscal Year 1994, at ¶ 116.

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

[243] Persons eligible under parts 80 and 90 of the Commission's Rules can use Private Operational-Fixed Microwave services. *See* 47 C.F.R. 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.

[244] Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. *See* 47 C.F.R. 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.

[245] 13 C.F.R. § 121.201, NAICS code 517212.

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 22,015 or fewer common carrier fixed licensees and 61,670 or fewer private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies proposed herein. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

121. **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.[246] 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.[247] The SBA has approved these small business size standards.[248] 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.

122. **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.[249] The auction of the 986 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.[250] 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.[251] The SBA has approved these small business size standards in the context of LMDS auctions.[252] 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 32 small and very small businesses winning that won 119 licenses.

123. **218-219 MHz Service**. The first auction of 218-219 MHz (previously referred to as the Interactive and Video Data Service or IVDS) spectrum resulted in 178 entities winning licenses for 594 Metropolitan Statistical Areas ("MSAs").[253] Of the 594 licenses, 567 were won by 167 entities qualifying as a small business. For that auction, we defined a small business as an entity that, together with its

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[246] *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).

[247] *Id.*

[248] *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); *See* Letter to Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Hector Barreto, Administrator, SBA, (Jan. 18, 2002).

[249] *See Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, Reallocate the 29.5-30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making, 12 FCC Rcd 12545, 12689-90, ¶ 348 (1997).

[250] *See id*.

[251] *See id*.

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

[253] *See* "Interactive Video and Data Service (IVDS) Applications Accepted for Filing," *Public Notice*, 9 FCC Rcd 6227 (1994).

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.[254] In the 218-219 MHz Report and Order and Memorandum Opinion and Order, we defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not exceeding $15 million for the preceding three years.[255] A very small business is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not exceeding $3 million for the preceding three years.[256] The SBA has approved of these definitions.[257] A subsequent auction is not yet scheduled. Given the success of small businesses in the previous auction, and the prevalence of small businesses in the subscription television services and message communications industries, we assume for purposes of this analysis that in future auctions, many, and perhaps most, of the licenses may be awarded to small businesses.

124. **Location and Monitoring Service ("LMS")**. Multilateration LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For purposes of auctioning LMS licenses, the Commission has defined "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $15 million.[258] A "very small business" is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $3 million.[259] These definitions have been approved by the SBA.[260] An auction for LMS licenses commenced on February 23, 1999, and closed on March 5, 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses.

125. **Rural Radiotelephone Service**. The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.[261] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System ("BETRS").[262] In the present context, we will use the SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an entity employing no more than 1,500 persons.[263] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules adopted herein.

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[254] *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Fourth Report and Order, 9 FCC Rcd 2330 (1994).

[255] *Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service*, Report and Order and Memorandum Opinion and Order, 15 FCC Rcd 1497 (1999).

[256] *Id.*

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

[258] *Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems*, Second Report and Order, 13 FCC Rcd 15182, 15192, ¶ 20 (1998); *see also* 47 C.F.R. § 90.1103.

[259] *Id.*

[260] *See* Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated Feb. 22, 1999.

[261] The service is defined in § 22.99 of the Commission's rules, 47 C.F.R. § 22.99.

[262] BETRS is defined in §§ 22.757 and 22.759 of the Commission's rules, 47 C.F.R. §§ 22.757 and 22.759.

[263] 13 C.F.R. § 121.201, NAICS code 517212.

126. **Air-Ground Radiotelephone Service**.[264] We have previously used the SBA's small business definition applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an entity employing no more than 1,500 persons.[265] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and under that definition, we estimate that almost all of them qualify as small entities under the SBA definition. For purposes of assigning Air-Ground Radiotelephone Service licenses through competitive bidding, the Commission has defined "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $40 million.[266] A "very small business" is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $15 million.[267] These definitions were approved by the SBA.[268] In May 2006, the Commission completed an auction of nationwide commercial Air-Ground Radiotelephone Service licenses in the 800 MHz band (Auction No. 65). On June 2, 2006, the auction closed with two winning bidders winning two Air-Ground Radiotelephone Services licenses. Neither of the winning bidders claimed small business status.

127. **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, we will use the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees.[269] 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.[270] 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.

128. **Offshore Radiotelephone Service**. This service operates on several ultra high frequencies ("UHF") television broadcast channels that are not used for television broadcasting in the coastal areas of

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[264] The service is defined in § 22.99 of the Commission's rules, 47 C.F.R. § 22.99.

[265] 13 C.F.R. § 121.201, NAICS codes 517212.

[266] *Amendment of Part 22 of the Commission's Rules to Benefit the Consumers of Air-Ground Telecommunications Services, Biennial Regulatory Review – Amendment of Parts 1, 22, and 90 of the Commission's Rules, Amendment of Parts 1 and 22 of the Commission's Rules to Adopt Competitive Bidding Rules for Commercial and General Aviation Air-Ground Radiotelephone Service, WT Docket Nos. 03-103 and 05-42*, Order on Reconsideration and Report and Order, 20 FCC Rcd 19663, ¶¶ 28-42 (2005).

[267] *Id.*

[268] *See* Letter from Hector V. Barreto, Administrator, U.S. Small Business Administration, to Gary D. Michaels, Deputy Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission, dated Sept. 19, 2005.

[269] 13 C.F.R. § 121.201, NAICS code 517212.

[270] *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).

states bordering the Gulf of Mexico.[271] 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.[272] Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.[273]

129. **Multiple Address Systems ("MAS")**. Entities using MAS spectrum, in general, fall into two categories: (1) those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses. With respect to the first category, the Commission defines "small entity" for MAS licenses as an entity that has average gross revenues of less than $15 million in the three previous calendar years.[274] "Very small business" is defined as an entity that, together with its affiliates, has average gross revenues of not more than $3 million for the preceding three calendar years.[275] The SBA has approved of these definitions.[276] The majority of these entities will most likely be licensed in bands where the Commission has implemented a geographic area licensing approach that would require the use of competitive bidding procedures to resolve mutually exclusive applications. The Commission's licensing database indicates that, as of January 20, 1999, there were a total of 8,670 MAS station authorizations. Of these, 260 authorizations were associated with common carrier service. In addition, an auction for 5,104 MAS licenses in 176 EAs began November 14, 2001, and closed on November 27, 2001.[277] Seven winning bidders claimed status as small or very small businesses and won 611 licenses. On May 18, 2005, the Commission completed an auction (Auction No. 59) of 4,226 MAS licenses in the Fixed Microwave Services from the 928/959 and 932/941 MHz bands. Twenty-six winning bidders won a total of 2,323 licenses. Of the 26 winning bidders in this auction, five claimed small business status and won 1,891 licenses.

130. With respect to the second category, which consists of entities that use, or seek to use, MAS spectrum to accommodate internal communications needs, we note that MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. For the majority of private internal users, the small business size standard developed by the SBA would be more appropriate. The applicable size standard in this instance appears to be that of "Cellular and Other Wireless Telecommunications." This definition provides that a small entity is any such entity employing no more than 1,500 persons.[278] The Commission's licensing database indicates that, as of January 20, 1999, of the 8,670 total MAS station authorizations, 8,410 authorizations were for private radio service, and of these, 1,433 were for private land mobile radio service.

131. **Incumbent 24 GHz Licensees**. This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. 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

[271] This service is governed by Subpart I of Part 22 of the Commission's rules. *See* 47 C.F.R. §§ 22.1001-22.1037.

[272] 13 C.F.R. § 121.201, NAICS code 517212.

[273] *Id.*

[274] *See Amendment of the Commission's Rules Regarding Multiple Address Systems*, Report and Order, 15 FCC Rcd 11956, 12008, ¶ 123 (2000).

[275] *Id.*

[276] *See* Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA, (Jun. 4, 1999).

[277] *See* "Multiple Address Systems Spectrum Auction Closes," *Public Notice*, 16 FCC Rcd 21011 (2001).

[278] *See* 13 C.F.R. § 121.201, NAICS code 517212.

more than 1,500 persons.[279] For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year.[280] Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.[281] Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.[282] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[283] Thus, under this second category and size standard, the majority of firms can, again, 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[284] and TRW, Inc. It is our understanding that Teligent and its related companies have fewer 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.

132. **New 24 GHz Licensees**. With respect to new applicants in the 24 GHz band, we have defined an "entrepreneur" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding $40 million. "Small business" in the 24 GHz band is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding $15 million.[285] "Very small business" in the 24 GHz band is defined as an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years.[286] The SBA has approved these definitions.[287] On July 28, 2004, the Commission completed an auction of 880 licenses. There were three winning bidders that won seven licenses. Of the three winning bidders, two claimed small business status and won five licenses.

133. **Broadband Radio Service ("BRS") and Educational Broadband Service ("EBS").** Broadband Radio Service systems, previously referred to as Multipoint Distribution Service ("MDS") and Multichannel Multipoint Distribution Service ("MMDS") systems, and "wireless cable," transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service and Educational Broadband Service (previously referred to as the Instructional Television Fixed Service ("ITFS").[288] In connection with the 1996 BRS auction, the

[279] 13 C.F.R. § 121.201, NAICS code 517212.

[280] 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).

[281] *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."

[282] 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).

[283] *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."

[284] 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.

[285] *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, ¶ 77 (2000) ("*24 GHz Report and Order*"); *see also* 47 C.F.R. § 101.538(a)(2).

[286] *24 GHz Report and Order*, 15 FCC Rcd at 16967, ¶ 77; *see also* 47 C.F.R. § 101.538(a)(1).

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

[288] *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint*

(continued....)

Commission defined "small business" as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years.[289] The SBA has approved of this standard.[290] The BRS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas ("BTAs").[291] Of the 67 auction winners, 61 claimed status as a small business. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. BRS also includes licensees of stations authorized prior to the auction. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities.[292] After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licenses that are defined as small businesses under either the SBA or the Commission's rules.

134. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution,[293] which includes all such companies generating $13.5 million or less in annual receipts.[294] According to the Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.[295] 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.[296] 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 is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities.[297] Thus, we estimate that at least 1,932 licensees are small entities. EBS is a non-profit non-broadcast service. We do not collect, nor are we aware of other collections of, annual revenue data for EBS licensees.

135. **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

(...continued from previous page)
Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act – Competitive Bidding, Report and Order, 10 FCC Rcd 9589, 9593, ¶ 7 (1995) ("*MDS Auction R&O*").

[289] 47 C.F.R. § 21.961(b)(1).

[290] *See* Letter to Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Gary Jackson, Assistant Administrator for Size Standards, SBA, (Mar. 20, 2003) (noting approval of $40 million size standard for MDS auction).

[291] BTAs were designed by Rand McNally and are the geographic areas by which MDS was auctioned and authorized. *See MDS Auction R&O*, 10 FCC Rcd at 9608, ¶ 34.

[292] For the incumbent BRS licensees who are granted licenses prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j), the applicable standard is SBA's small business size standard.

[293] 13 C.F.R. § 121.201, NAICS code 517510.

[294] *Id.*

[295] U.S. Census Bureau 202 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the Untied States: 2002, NAICS code 517510 (issued Nov. 2005).

[296] *Id.* An additional 61 firms had annual receipts of $25 million or more.

[297] The term "small entity" within SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)-(6). We do not collect annual revenue data on EBS licensees.

of programs to the public."[298] 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.[299] 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 had revenues of $12 (twelve) million or less. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations[300] 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.

136. 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.

137. There are also 2,117 low power television stations (LPTV).[301] 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.

138. **Radio Broadcasting**. The SBA defines a radio broadcast entity that has $6 million or less in annual receipts as a small business.[302] Business concerns included in this industry are those "primarily engaged in broadcasting aural programs by radio to the public.[303] 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[304] are included.[305] Our estimate, therefore likely overstates the number of small businesses that might be affected by the rules adopted herein.

139. **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

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

[299] 13 C.F.R. § 121.201, NAICS code 515120.

[300] "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 C.F.R. § 21.103(a)(1).

[301] *FCC News Release*, "Broadcast Station Totals as of September 30, 2005."

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

[303] *Id.*

[304] "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 C.F.R. § 121.103(a)(1).

[305] "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 C.F.R. § 121(a)(4).

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.[306]

140. The Commission estimates that there are approximately 3,868 FM translators and boosters.[307] 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. [308]

141. **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."[309] 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.[310] According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.[311] 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.[312] Thus, under this size standard, the majority of firms can be considered small.

142. **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.[313] Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.[314] In addition, under the

[306] 13 C.F.R. § 121.201, NAICS codes 513111 and 513112.

[307] FCC News Release, "Broadcast Station Totals as of September 30, 2004."

[308] 15 U.S.C. § 632.

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

[310] 13 C.F.R. § 121.201, NAICS code 517510.

[311] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued Nov. 2005).

[312] *Id*. An additional 61 firms had annual receipts of $25 million or more.

[313] 47 C.F.R. § 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).

[314] These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, "Top 25 Cable/Satellite Operators," pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, "Ownership of Cable Systems in the United States," pages D-1805 to D-1857.

Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[315] 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.[316] Thus, under this second size standard, most cable systems are small.

143. **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."[317] The Commission has determined that an operator serving fewer than 645,000 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.[318] Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.[319] 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,[320] and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

144. **Open Video Services**. Open Video Service ("OVS") systems provide subscription services.[321] The SBA has created a small business size standard for Cable and Other Program Distribution.[322] 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.[323] 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 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.

145. **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

[315] 47 C.F.R. § 76.901(c).

[316] 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.

[317] 47 U.S.C. § 543(m)(2); *see* 47 C.F.R. § 76.901(f) & nn. 1-3.

[318] 47 C.F.R. § 76.901(f); *see* Public Notice*, FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, DA 01-158 (Cable Services Bureau, Jan. 24, 2001).

[319] These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, "Top 25 Cable/Satellite Operators," pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, "Ownership of Cable Systems in the United States," pages D-1805 to D-1857.

[320] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission's rules. *See* 47 C.F.R. § 76.909(b).

[321] *See* 47 U.S.C. § 573.

[322] 13 C.F.R. § 121.201, NAICS code 517510.

[323] *See* http://www.fcc.gov/csb/ovs/csovscer.html (current as of March 2002).

million or less in annual receipts.[324] According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.[325] 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.[326] Thus, under this size standard, the majority of firms can be considered small.

146. **Multichannel Video Distribution and Data Service**. MVDDS is a terrestrial fixed microwave service operating in the 12.2-12.7 GHz band. The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. It 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 years.[327] These definitions were approved by the SBA.[328] 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.[329] 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.[330]

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

148. **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.[331] 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

[324] 13 C.F.R. § 121.201, NAICS code 517510.

[325] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued Nov. 2005).

[326] *Id*. An additional 61 firms had annual receipts of $25 million or more.

[327] *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, ¶ 252 (2002).

[328] *See* Letter from Hector V. Barreto, Administrator, U.S. Small Business Administration, to Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, dated Feb. 13, 2002.

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

[330] *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).

[331] 13 C.F.R. § 121.201, NAICS code 517212.

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.[332] 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.

149. **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.[333] 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").[334] 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.[335] 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.

150. **Public Safety Radio Services**. Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.[336] There are a

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

[333] 47 C.F.R. Part 90.

[334] 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 C.F.R. Part 95.

[335] 13 C.F.R. § 121.201, NAICS Code 517212.

[336] With the exception of the special emergency service, these services are governed by Subpart B of part 90 of the Commission's Rules, 47 C.F.R. §§ 90.15-90.27. The police service includes approximately 27,000 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes approximately 23,000 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service 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 C.F.R. §§ 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,

(continued....)

total of approximately 127,540 licensees in these services. Governmental entities[337] 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.[338]

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

151. 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 Remittance Advice, and pay a regulatory fee based on the number of licenses or call signs.[339] 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.

152. 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.

153. 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.[340] If payment is not received, new or pending applications may be dismissed, and existing authorizations may be subject to rescission.[341] Further, in accordance with the Debt Collection Improvement Act of 1996 (DCIA), Public Law 194-134, federal agencies may bar a person or entity from

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establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 C.F.R. §§ 90.33-90.55.

[337] 47 C.F.R. § 1.1162.

[338] 5 U.S.C. § 601(5).

[339] 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 Educational Broadband Service (EBS) (previously referred to as istructional 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.

[340] 47 C.F.R. § 1.1164.

[341] 47 C.F.R. § 1.1164(c).

obtaining a federal loan or loan insurance guarantee if that person or entity fails to pay a delinquent debt owed to any federal agency.[342] Nonpayment of regulatory fees is a debt owed the United States pursuant to 31 U.S.C. 3711 *et seq*., and the DCIA. Appropriate enforcement measures as well as administrative and judicial remedies, may be exercised by the Commission. Debts owed to the Commission may result in a person or entity being denied a federal loan or loan guarantee pending before another federal agency until such obligations are paid.[343]

154. 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.[344] 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:

155. 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.[345] In the *NPRM*, we sought comment on alternatives that might simplify our fee procedures or otherwise benefit filers, including small entities, while remaining consistent with our statutory responsibilities in this proceeding.

156. The Omnibus Appropriations Act for FY 2007, Public Law 109-383, 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 FY 2007.[346] As noted, we sought comment on the proposed methodology for implementing these statutory requirements and any other potential impact of these proposals on small entities.

157. Several categories of licensees and regulatees are exempt from payment of regulatory fees. *See, e.g.,* footnote 340, *supra.* Also, waiver procedures provide regulatees, including small entity regulatees, relief in exceptional circumstances. See Section IV, *supra*.

158. 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*.

159. Report to Congress: The Commission will send a copy of this FRFA, 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).

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[342] Public Law 104-134, 110 Stat. 1321 (1996).

[343] 31 U.S.C. § 7701(c)(2)(B).

[344] 47 C.F.R. § 1.1166.

[345] 5 U.S.C. § 603.

[346] 47 U.S.C. § 159(a).

ATTACHMENT B

Sources Of Payment Unit Estimates For FY 2007

In order to calculate individual service fees for FY 2007, we adjusted FY 2006 payment units for each service to more accurately reflect expected FY 2007 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. The databases we consulted include our Universal Licensing System (ULS), International Bureau Filing System (IBFS), Consolidated Database System (CDBS) and Cable Operations and Licensing System (COALS), as well as reports generated within the Commission such as the Wireline Competition Bureau's *Trends in Telephone Service* and the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast*.

We tried to obtain verification for these estimates from multiple sources and, in all cases; we compared FY 2007 estimates with actual FY 2006 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 2007 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 2007 payment units are based on FY 2006 actual payment units, it does not necessarily mean that our FY 2007 projection is exactly the same number as FY 2006. It means that we have either rounded the FY 2007 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 reports.
CMRS Messaging Services	Based on Wireless Telecommunications Bureau Competition Report findings.
AM/FM Radio Stations	Based on CDBS data, adjusted for exemptions, and actual FY 2006 payment units.
UHF/VHF Television Stations	Based on CDBS data, adjusted for exemptions, and actual FY 2006 payment units.
AM/FM/TV Construction Permits	Based on CDBS data, adjusted for exemptions, and actual FY 2006 payment units.
LPTV, Translators and Boosters, Class A Television	Based on CDBS data, adjusted for exemptions, and actual FY 2006 payment units.
Broadcast Auxiliaries	Based on actual FY 2006 payment units.
BRS (formerly MDS/MMDS)	Based on Wireless Telecommunications Bureau reports and actual FY 2006 payment units.
Cable Television Relay Service	Based on data from Media Bureau's COALS database and actual

(CARS) Stations	FY 2006 payment units.
Cable Television System Subscribers	Based on publicly available data sources for estimated subscriber counts and actual FY 2006 payment units.
Interstate Telecommunication Service Providers	Based on actual FY 2006 interstate revenues reported on Telecommunications Reporting Worksheet, adjusted for FY 2007 revenue growth/decline for industry, and projections by the Wireline Competition Bureau.
Earth Stations	Based on International Bureau reports and actual FY 2006 payment units.
Space Stations (GSOs & NGSOs)	Based on International Bureau reports and actual FY 2006 payment units.
International Bearer Circuits	Based on International Bureau reports and actual FY 2006 payment units.
International HF Broadcast Stations, International Public Fixed Radio Service	Based on International Bureau reports and actual FY 2006 payment units.

ATTACHMENT C

Calculation Of FY 2007 Revenue Requirements And Pro-Rata Fees

Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted along with the application at the time the application is filed.

Fee Category	FY 2007 Payment Units	Years	FY 2006 Revenue Estimate	Pro-Rated FY 2007 Revenue Require-ment*	Computed New FY 2007 Regulatory Fee	Rounded New FY 2007 Regula-tory Fee	Expected FY 2007 Revenue
PLMRS (Exclusive Use)	1,250	10	440,000	426,300	34	35	437,500
PLMRS (Shared use)	15,500	10	2,500,000	2,422,162	16	15	2,325,000
Microwave	4,350	10	1,700,000	1,647,070	38	40	1,740,000
218-219 MHz (Formerly IVDS)	3	10	1,650	1,599	53	55	1,650
Marine (Ship)	8,000	10	800,000	775,092	10	10	800,000
GMRS	16,000	5	425,000	411,768	5	5	400,000
Aviation (Aircraft)	8,800	10	300,000	290,659	3	5	440,000
Marine (Coast)	360	10	120,000	116,264	32	30	108,000
Aviation (Ground)	1,650	10	150,000	145,330	9	10	165,000
Amateur Vanity Call Signs	14,700	10	177,116	171,601	1.17	1.17	171,990
AM Class A	68	1	217,350	210,428	3,095	3,100	210,800
AM Class B	1,567	1	2,619,500	2,534,141	1,617	1,625	2,546,375
AM Class C	937	1	921,500	890,541	950	950	890,150
AM Class D	1,705	1	3,095,750	2,994,982	1,757	1,750	2,983,750
FM Classes A, B1 & C3	3,027	1	6,519,500	6,311,615	2,085	2,075	6,281,025
FM Classes B, C, C0, C1 & C2	3,002	1	7,924,300	7,675,996	2,557	2,550	7,655,100
AM Construction Permits	65	1	37,525	26,003	400	400	26,000
FM Construction Permits[1]	205	1	115,000	117,898	575	575	117,875
Satellite TV	125	1	141,450	137,046	1,096	1,100	137,500
Satellite TV Construction Permit	3	1	1,710	1,657	552	550	1,650

Fee Category	FY 2007 Payment Units	Years	FY 2006 Revenue Estimate	Pro-Rated FY 2007 Revenue Require-ment*	Computed New FY 2007 Regulatory Fee	Rounded New FY 2007 Regula-tory Fee	Expected FY 2007 Revenue
VHF Markets 1-10	43	1	2,850,100	2,765,285	64,309	64,300	2,764,900
VHF Markets 11-25	61	1	2,914,275	2,827,462	46,352	46,350	2,827,350
VHF Markets 26-50	77	1	2,465,625	2,392,781	31,075	31,075	2,392,775
VHF Markets 51-100	115	1	2,372,200	2,300,839	20,007	20,000	2,300,000
VHF Remaining Markets	198	1	1,045,200	1,012,657	5,114	5,125	1,014,750
VHF Construction Permits	3	1	30,600	15,377	5,126	5,125	15,375
UHF Markets 1-10	91	1	1,846,750	1,787,645	19,644	19,650	1,788,150
UHF Markets 11-25	76	1	1,528,000	1,478,819	19,458	19,450	1,478,200
UHF Markets 26-50	115	1	1,284,075	1,242,489	10,804	10,800	1,242,000
UHF Markets 51-100	168	1	1,092,000	1,056,977	6,292	6,300	1,058,400
UHF Remaining Markets	183	1	331,925	321,590	1,757	1,750	320,250
UHF Construction Permits[1]	22	1	33,725	38,517	1,751	1,750	38,500
Broadcast Auxiliaries	27,000	1	240,000	232,528	9	10	270,000
LPTV/Trans-lators/Boosters/ Class A TV	3,400	1	1,218,000	1,180,077	347	345	1,173,000
CARS Stations	780	1	148,750	144,119	185	185	144,300
Cable TV Systems	64,500,000	1	49,770,000	48,220,399	0.74760	0.75	48,375,000
Interstate Tele-communication Service Providers	51,000,000,000	1	140,184,000	135,819,336	0.00266312	0.00266	135,660,000
CMRS Mobile Services (Cellular/Public Mobile)	229,000,000	1	42,000,000	40,596,052	0.177	0.18	41,220,000
CMRS Messag. Services	7,500,000	1	520,000	600,077	0.08	0.08	600,000

Fee Category	FY 2007 Payment Units	Years	FY 2006 Revenue Estimate	Pro-Rated FY 2007 Revenue Require-ment*	Computed New FY 2007 Regulatory Fee	Rounded New FY 2007 Regula-tory Fee	Expected FY 2007 Revenue
BRS[2]	1,300	1	485,925	425,139	327	325	422,500
LMDS	410	1	90,750	134,077	327	325	133,250
International Bearer Circuits	7,200,000	1	7,791,000	7,548,425	1.05	1.05	7,560,000
International Public Fixed	1	1	1,925	1,865	1,865	1,875	1,875
Earth Stations	3,900	1	752,500	729,071	187	185	721,500
International HF Broadcast	5	1	4,100	3,972	794	795	3,975
Space Stations (Geostationary)	86	1	9,693,975	9,392,151	109,211	109,200	9,391,200
Space Stations (Non-Geostationary	6	1	721,350	698,891	116,482	116,475	698,850
****** Total Estimated Revenue to be Collected			299,624,101	290,274,768			291,055,465
****** Total Revenue Requirement			298,771,000	290,295,160			290,295,160
Difference			853,101	(20,392)			760,305

* -0.028369018 factor applied based on the amount Congress designated for recovery through regulatory fees (Public Law 109-108 and 47 U.S.C. § 159(a)(2)).

[1] The AM and FM Construction Permit revenues and the VHF and UHF Construction Permit revenues were adjusted to set the regulatory fee to an amount no higher than the lowest licensed fee for that class of service.

[2] MDS/MMDS category was renamed Broadband Radio Service (BRS). *See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Report & Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165, 14169, ¶ 6 (2004) *(R&O and FNPRM)*.

ATTACHMENT D

FY 2007 Schedule Of Regulatory Fees

Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted along with the application at the time the application is filed.

Fee Category	Annual Regulatory Fee (U.S. $'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	35
Microwave (per license) (47 CFR part 101)	40
218-219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	55
Marine (Ship) (per station) (47 CFR part 80)	10
Marine (Coast) (per license) (47 CFR part 80)	30
General Mobile Radio Service (per license) (47 CFR part 95)	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	15
PLMRS (Shared Use) (per license) (47 CFR part 90)	15
Aviation (Aircraft) (per station) (47 CFR part 87)	5
Aviation (Ground) (per license) (47 CFR part 87)	10
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.17
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.18
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08
Broadband Radio Service (formerly MMDS/ MDS) (per license) (47 CFR part 21) Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	325 325
AM Radio Construction Permits	400
FM Radio Construction Permits	575
TV (47 CFR part 73) VHF Commercial	
Markets 1-10	64,300
Markets 11-25	46,350
Markets 26-50	31,075
Markets 51-100	20,000
Remaining Markets	5,125
Construction Permits	5,125

Fee Category	Annual Regulatory Fee (U.S. $'s)
TV (47 CFR part 73) UHF Commercial	
Markets 1-10	19,650
Markets 11-25	19,450
Markets 26-50	10,800
Markets 51-100	6,300
Remaining Markets	1,750
Construction Permits	1,750
Satellite Television Stations (All Markets)	1,100
Construction Permits – Satellite Television Stations	550
Low Power TV, Class A TV, TV/FM Translators & Boosters (47 CFR part 74)	345
Broadcast Auxiliaries (47 CFR part 74)	10
CARS (47 CFR part 78)	185
Cable Television Systems (per subscriber) (47 CFR part 76)	.75
Interstate Telecommunication Service Providers (per revenue dollar)	.00266
Earth Stations (47 CFR part 25)	185
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100)	109,200
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	116,475
International Bearer Circuits (per active 64KB circuit)	1.05
International Public Fixed (per call sign) (47 CFR part 23)	1,875
International (HF) Broadcast (47 CFR part 73)	795

FY 2007 Schedule Of Regulatory Fees (continued)

FY 2007 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	625	475	400	475	575	725
25,001 – 75,000	1,225	925	600	725	1,150	1,250
75,001 – 150,000	1,825	1,150	800	1,200	1,600	2,300
150,001 – 500,000	2,750	1,950	1,200	1,425	2,475	3,000
500,001 – 1,200,000	3,950	2,975	2,000	2,375	3,900	4,400
1,200,001 – 3,000,00	6,075	4,575	3,000	3,800	6,350	7,025
>3,000,000	7,275	5,475	3,800	4,750	8,075	9,125

ATTACHMENT E

Factors, Measurements And Calculations That Go Into Determining Station Signal Contours And Associated Population Coverages

AM Stations

For stations with nondirectional daytime antennas, the theoretical radiation was used at all azimuths. For stations with directional daytime antennas, specific information on each day tower, including field ratio, phasing, spacing and orientation was retrieved, as well as the theoretical pattern root-mean-square of the radiation in all directions in the horizontal plane (RMS) figure milliVolt per meter (mV/m) @ 1 km) for the antenna system. The standard, or modified standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in §§73.150 and 73.152 of the Commission's rules.[347] Radiation values were calculated for each of 360 radials around the transmitter site. Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure R3[348]. Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the principal community (5 mV/m) contour was predicted for each of the 360 radials. The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 block centroids were contained in the polygon. (A block centroid is the center point of a small area containing population as computed by the U.S. Census Bureau.) The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

FM Stations

The greater of the horizontal or vertical effective radiated power (ERP) (kW) and respective height above average terrain (HAAT) (m) combination was used. Where the antenna height above mean sea level (HAMSL) was available, it was used in lieu of the average HAAT figure to calculate specific HAAT figures for each of 360 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the Field Strength (50-50) propagation curves specified in 47 C.F.R. § 73.313 of the Commission's rules to predict the distance to the principal community (70 dBu (decibel above 1 microVolt per meter) or 3.17 mV/m) contour for each of the 360 radials.[349] The resulting distance to principal community 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 principal community coverage area.

[347] 47 C.F.R. §§ 73.150 and 73.152.

[348] *See Map of* Estimated *Effective Ground Conductivity in the United States*, 47 C.F.R. § 73.190 Figure R3.

[349] 47 C.F.R. § 73.313.

ATTACHMENT F

FY 2006 Schedule Of Regulatory Fees

Fee Category	Annual Regulatory Fee (U.S. $'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	20
Microwave (per license) (47 CFR part 101)	85
218-219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	55
Marine (Ship) (per station) (47 CFR part 80)	10
Marine (Coast) (per license) (47 CFR part 80)	20
General Mobile Radio Service (per license) (47 CFR part 95)	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	10
PLMRS (Shared Use) (per license) (47 CFR part 90)	10
Aviation (Aircraft) (per station) (47 CFR part 87)	5
Aviation (Ground) (per license) (47 CFR part 87)	10
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	2.08
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.20
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08
Multipoint Distribution Services (MMDS/ MDS) (per license sign) (47 CFR part 21) Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	275 275
AM Radio Construction Permits	395
FM Radio Construction Permits	575
TV (47 CFR part 73) VHF Commercial	
Markets 1-10	64,775
Markets 11-25	47,775
Markets 26-50	32,875
Markets 51-100	20,450
Remaining Markets	5,025
Construction Permits	3,400
TV (47 CFR part 73) UHF Commercial	
Markets 1-10	20,750
Markets 11-25	19,100

Fee Category	Annual Regulatory Fee (U.S. $'s)
Markets 26-50	10,975
Markets 51-100	6,500
Remaining Markets	1,775
Construction Permits	1,775
Satellite Television Stations (All Markets)	1,150
Construction Permits – Satellite Television Stations	570
Low Power TV, TV/FM Translators & Boosters (47 CFR part 74)	420
Broadcast Auxiliary (47 CFR part 74)	10
CARS (47 CFR part 78)	175
Cable Television Systems (per subscriber) (47 CFR part 76)	.79
Interstate Telecommunication Service Providers (per revenue dollar)	.00264
Earth Stations (47 CFR part 25)	215
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)	111,425
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	120,225
International Bearer Circuits (per active 64KB circuit)	1.47
International Public Fixed (per call sign) (47 CFR part 23)	1,925
International (HF) Broadcast (47 CFR part 73)	820

FY 2006 Schedule Of Regulatory Fees (continued)

FY 2006 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	625	500	400	475	575	750
25,001 – 75,000	1,225	950	600	725	1,150	1,325
75,001 – 150,000	1,850	1,200	800	1,200	1,575	2,450
150,001 – 500,000	2,775	2,025	1,200	1,425	2,450	3,200
500,001 – 1,200,000	4,000	3,100	2,000	2,375	3,875	4,700
1,200,001 – 3,000,00	6,150	4,750	3,000	3,800	6,325	7,500
>3,000,000	7,375	5,700	3,800	4,750	8,050	9,750

ATTACHMENT G

Parties Filing Comments on the Notice of Proposed Rulemaking

American Association of Paging Carriers ("AAPC")
ARCOS-1 USA, Inc., Brasil Telecom of American, Inc., Caribbean Crossing Ltd., Global Crossing Ltd., Hibernia Atlantic, Pacific Crossing Limited and PC Landing Corp. ("Joint Comments")
Comcast Corporation ("Comcast")
Iowa Utilities Board ("IUB")
National Telecommunications Cooperative Association ("NTCA")
Nuvio Corporation ("Nuvio")
USA Mobility, Inc. ("USA Mobility")
Voice on the Net Coalition ("VON Coalition")
Dave Wilson
Wireless Communications Association International, Inc. ("WCA")

Parties Filing Reply Comments

American Cable Association ("ACA")
Enterprise Wireless Alliance ("EWA")
National Cable & Telecommunication Association ("NCTA")
National Exchange Carrier Association, Inc. ("NECA"); the National Telecommunications Cooperative Association ("NTCA"); the Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO"); and the Western Telecommunications Alliance ("WTA") ("the Associations")
Voice on the Net Coalition ("VON Coalition")
Wireless Communications Association International, Inc. ("WCA")

ATTACHMENT H

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 1.1152 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 [350]	Address
1. Land Mobile (Above 470 MHz and 220 MHz Local, Base Station & SMRS) (47 CFR, Part 90)		
a)New, Renew/Mod (FCC 601 & 159)	$35.00	FCC P.O. Box 358130 Pittsburgh, PA 15251-5130
b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	$35.00	FCC P.O. Box 358994 Pittsburgh, PA 15251-5994
c)Renewal Only (FCC 601 & 159)	$35.00	FCC P.O. Box 358245 Pittsburgh, PA 15251-5245
d)Renewal Only (Electronic Filing) (FCC 601 & 159)	$35.00	FCC P.O. Box 358994 Pittsburgh, PA 15251-5994

[350] Note that "small fees" are collected in advance for the entire license term. Therefore, the annual fee amount shown in this table that is a small fee (categories 1 through 5) must be multiplied by the 5- or 10-year license term, as appropriate, to arrive at the total amount of regulatory fees owed. It should be further noted that application fees may also apply as detailed in §1.1102 of this chapter.

220 MHz Nationwide a)New, Renew/Mod (FCC 601 & 159)	$35.00	FCC P.O. Box 358130 Pittsburgh, PA 15251-5130
b)New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	$35.00	FCC P.O. Box 358994 Pittsburgh, PA 15251-5994
c)Renewal Only (FCC 601 & 159)	$35.00	FCC P.O. Box 358245 Pittsburgh, PA 15251-5245
d)Renewal Only (Electronic Filing) (FCC 601 & 159)	$35.00	FCC P.O. Box 358994 Pittsburgh, PA 15251-5994
2. Microwave (47 CFR Pt. 101) (Private)		
a)New, Renew/Mod (FCC 601 & 159)	$40.00	FCC P.O. Box 358130 Pittsburgh, PA 15251-5130
b)New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	$40.00	FCC P.O. Box 358994 Pittsburgh, PA 15251-5994
c)Renewal Only (FCC 601 & 159)	$40.00	FCC P.O. Box 358245 Pittsburgh, PA 15251-5245
d)Renewal Only (Electronic Filing) (FCC 601 & 159)	$40.00	FCC P.O. Box 358994 Pittsburgh, PA 15251-5994
3. 218-219 MHz Service		
a)New, Renew/Mod (FCC 601 & 159)	$55.00	FCC P.O. Box 358130 Pittsburgh, PA 15251-5130
b)New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	$55.00	FCC P.O. Box 358994 Pittsburgh, PA 15251-5994

c)Renewal Only (FCC 601 & 159)	\$55.00	FCC P.O. Box 358245 Pittsburgh, PA 15251-5245
d)Renewal Only (Electronic Filing) (FCC 601 & 159)	\$55.00	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)	\$15.00	FCC P.O. Box 358130 Pittsburgh, PA 15251-5130
b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	\$15.00	FCC P.O. Box 358994 Pittsburgh, PA 15251-5994
c)Renewal Only (FCC 601 & 159)	\$15.00	FCC P.O. Box 358245 Pittsburgh, PA 15251-5245
d)Renewal Only (Electronic Filing) (FCC 601 & 159)	\$15.00	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)	$15.00	FCC P.O. Box 358994 Pittsburgh, PA 15251-5994
b)Renewal, Minor Renew/Mod (Electronic Filing) (FCC 601 & 159)	$15.00	FCC P.O. Box 358994 Pittsburgh, PA 15251-5994
Marine Coast		
a)New Renewal/Mod (FCC 601 & 159)	$30.00	FCC P.O. Box 358130 Pittsburgh, PA 15251-5130
b)New, Renewal/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
Aviation Ground		
a)New, Renewal/Mod (FCC 601 & 159)	$10.00	FCC P.O. Box 358130 Pittsburgh, PA 15251-5130
b)New, Renewal/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 Only) (FCC 601 & 159)	$10.00	FCC P.O. Box 358994 Pittsburgh, PA 15251-5994
Marine Ship		
a)New, Renewal/Mod (FCC 605 & 159)	$10.00	FCC P.O. Box 358130 Pittsburgh, PA 15251-5130
b)New, Renewal/Mod (Electronic Filing) (FCC 605 & 159)	$10.00	FCC P.O. Box 358994 Pittsburgh, PA 15251-5994
c)Renewal Only (FCC 605 & 159)	$10.00	FCC P.O. Box 358245 Pittsburgh, PA 15251-5245
d)Renewal Only (Electronic Filing) (FCC 605 & 159)	$10.00	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)	$1.17	FCC P.O. Box 358130 Pittsburgh, PA 15251-5130

b)Initial or Renew (Electronic Filing) (FCC 605 & 159)	$1.17	FCC P.O. Box 358994 Pittsburgh, PA 15251-5994
6. CMRS Mobile Services (per unit) (FCC 159)	$ .18[351]	FCC P.O. Box 358835 Pittsburgh, PA 15251-5835
7. CMRS Messaging Services (per unit) (FCC 159)	$ .08[352]	FCC P.O. Box 358835 Pittsburgh, PA 15251-5835
8. Broadband Radio Service (formerly MMDS and MDS)	$ 325	FCC, Multipoint P.O. Box 358835 Pittsburgh, PA 15251-5835
9. Local Multipoint Distribution Service	$ 325	FCC, Multipoint P.O. Box 358835 Pittsburgh, PA 15251-5835

3. 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	$625	FCC, Radio
25,001-75,000 population	$1,225	P.O. Box 358835
75,001-150,000 population	$1,825	Pittsburgh, PA
150,001-500,000 population	$2,750	15251-5835
500,001-1,200,000 population	$3,950	
1,200,001-3,000,000 population	$6,075	
>3,000,000 population	$7,275	
2. AM Class B		
<=25,000 population	$475	
25,001-75,000 population	$925	
75,001-150,000 population	$1,150	
150,001-500,000 population	$1,950	
500,001-1,200,000 population	$2,975	
1,200,001-3,000,000 population	$4,575	
>3,000,000 population	$5,475	

[351] These are standard fees that are to be paid in accordance with § 1.1157(b) of this chapter.

[352] These are standard fees that are to be paid in accordance with § 1.1157(b) of this chapter.

3. AM Class C

<=25,000 population	$400
25,001-75,000 population	$600
75,001-150,000 population	$800
150,001-500,000 population	$1,200
500,001-1,200,000 population	$2,000
1,200,001-3,000,000 population	$3,000
>3,000,000 population	$3,800

4. AM Class D

<=25,000 population	$475
25,001-75,000 population	$725
75,001-150,000 population	$1,200
150,001-500,000 population	$1,425
500,001-1,200,000 population	$2,375
1,200,001-3,000,000 population	$3,800
>3,000,000 population	$4,750

5. AM Construction Permit $400

6. FM Classes A, B1 and C3

<=25,000 population	$575
25,001-75,000 population	$1,150
75,001-150,000 population	$1,600
150,001-500,000 population	$2,475
500,001-1,200,000 population	$3,900
1,200,001-3,000,000 population	$6,350
>3,000,000 population	$8,075

7. FM Classes B, C, C0, C1 and C2

<=25,000 population	$725
25,001-75,000 population	$1,250
75,001-150,000 population	$2,300
150,001-500,000 population	$3,000
500,001-1,200,000 population	$4,400
1,200,001-3,000,000 population	$7,025
>3,000,000 population	$9,125

8. FM Construction Permits $575

TV (47 CFR, Part 73)
VHF Commercial

1.	Markets 1 thru 10	$64,300	FCC, TV Branch
2.	Markets 11 thru 25	$46,350	P.O. Box 358835
3.	Markets 26 thru 50	$31,075	Pittsburgh, PA
4.	Markets 51 thru 100	$20,000	15251-5835
5.	Remaining Markets	$ 5,125	
6.	Construction Permits	$ 5,125	

UHF Commercial

1.	Markets 1 thru 10	$19,650	FCC,UHFCommercial
2.	Markets 11 thru 25	$19,450	P.O. Box 358835
3.	Markets 26 thru 50	$10,800	Pittsburgh, PA
4.	Markets 51 thru 100	$ 6,300	15251-5835
5.	Remaining Markets	$ 1,750	
6.	Construction Permits	$ 1,750	

Satellite UHF/VHF Commercial

1.	All Markets	$1,100	FCC Satellite TV
2.	Construction Permits	$ 550	P.O. Box 358835
			Pittsburgh, PA
			15251-5835

Low Power TV, Class A TV, TV/FM	$ 345	FCC, Low Power
Translator,& TV/FM Booster		P.O. Box 358835
(47 CFR Part 74)		Pittsburgh, PA
		15251-5835
Broadcast Auxiliary	$ 10	FCC, Auxiliary
		P.O. Box 358835
		Pittsburgh, PA
		15251-5835

4. Section 1.1154 is revised to read as follows:

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

Radio Facilities		**Fee Amount**	**Address**
1.	Microwave (Domestic Public Fixed) (Electronic Filing) (FCC Form 601 & 159)	$40.00	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)	$ .00266	FCC, Carriers P.O. Box 358835 Pittsburgh, PA 15251-5835

5. Section 1.1155 is revised to read as follows:

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

		Fee Amount	Address
1.	Cable Television Relay Service	$185	FCC, Cable
2.	Cable TV System (per subscriber)	$ .75	P.O. Box 358835 Pittsburgh, PA 15251-5835

6. Section 1.1156 is revised to read as follows:

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

Radio Facilities	**Fee Amount**	**Address**
1. International (HF) Broadcast	$795	FCC, International P.O. Box 358835 Pittsburgh, PA 15251-5835
2. International Public Fixed	$1,875	FCC, International P.O. Box 358835 Pittsburgh, PA 15251-5835
Space Stations (Geostationary Orbit)	$109,200	FCC, Space Stations P.O. Box 358835 Pittsburgh, PA 15251-5835
Space Stations (Non-Geostationary Orbit)	$116,475	FCC, Space Stations P.O. Box 358835 Pittsburgh, PA 15251-5835
Earth Stations Transmit/Receive & Transmit Only (per authorization or registration)	$185	FCC, Earth Station P.O. Box 358835 Pittsburgh, PA 15251-5835
Carriers		
International Bearer Circuits (per active 64KB circuit or equivalent)	$ 1.05	FCC, International P.O. Box 358835 Pittsburgh, PA 15251-5835

STATEMENT OF
COMMISSIONER MICHAEL J. COPPS
APPROVING IN PART, CONCURRING IN PART

Re: Assessment and Collection of Regulatory Fees for Fiscal Year 2007, Report and Order and Further Notice of Proposed Rulemaking in MD Docket 07-81

I concur in today's item to emphasize my long-held and oft-repeated belief that the Commission should consider opening a formal rulemaking to address the adjustment of regulatory fees pursuant to section 9(b)(3) of the Act. In a rapidly-evolving communications marketplace, we need to look for ways to ensure that our regulatory fee methodologies continue to reflect the industries we regulate. In the absence of a separate rulemaking, I would have preferred to address the submarine cable issue in the *Further Notice* adopted herein. I hope that we act on the pending petition for rulemaking quickly.

CONCURRING STATEMENT OF
COMMISSIONER JONATHAN ADELSTEIN

Re: Assessment and Collection of Regulatory Fees for Fiscal Year 2007, Report and Order and Further Notice of Proposed Rulemaking, MD Docket No. 07-81

As in years past, I must concur to our Regulatory Fee Order because I remain troubled with the Commission's inability and reluctance to consider changes that occur from time to time in the costs of regulatory fees for individual services. It is particularly disappointing that the Commission misses an opportunity to address in this Further Notice the regulatory fees paid by submarine cable operators, who have argued that the current fee structure results in certain operators paying fees that can approach the wholesale prices they receive from their consumers. Given that these operators have pending a petition for rulemaking before the Commission, it is high time for the Commission to seek comment on these issues and is regrettable that we do not do so here. I encourage the Commission to continue to improve its regulatory fee assessment processes so that in the future we are more able to make adjustments as appropriate.