

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

In the Matter of
Assessment and Collection of Regulatory Fees for
Fiscal Year 2011
MD Docket No. 11-76

REPORT AND ORDER

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By the Commission: Commissioner Copps issuing a statement.

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I. INTRODUCTION

1. In this *Report and Order*, we conclude the Assessment and Collection of Regulatory Fees for Fiscal Year (“FY”) 2011 proceeding to collect \$335,794,000 in regulatory fees for Fiscal Year (“FY”) 2011, 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 annual regulatory fee amount to be collected is established each year in the Commission’s Annual Appropriations Act which is adopted by Congress and signed by the President and which funds the Commission.² In this annual regulatory fee proceeding, we retain many of the established methods, policies, and procedures for collecting Section 9 regulatory fees adopted by the Commission in prior years. Consistent with our established practice, we intend to collect these regulatory fees during a September 2011 filing window in order to collect the required amount by the end of our fiscal year. Finally, we will initiate a further rulemaking that will update the record on regulatory fee rebalancing, as well as expand this inquiry to include new issues and services, by the end of this calendar year.

II. REPORT AND ORDER

2. On May 3, 2011, we released a *Notice of Proposed Rulemaking* (“FY 2011 NPRM”) seeking comment on regulatory fee issues for FY 2011.³ The section 9 regulatory fee proceeding is an

¹ 47 U.S.C. § 159(a).

² See The Full-Year Continuing Appropriations Act, 2011, Public Law 112-10, for the appropriations act language specifying that the applicable level of funding for fiscal year 2011 continues to be the amount provided by the Consolidated Appropriations Act, 2010, Public Law 111-117, for agencies previously funded by that Act. The level set by Congress in the Consolidated Appropriations Act, 2010 for the Commission was \$335,794,000 of offsetting collections to be assessed and collected by the Commission pursuant to Section 9 of the Communications Act.

³ See Assessment and Collection of Regulatory Fees for Fiscal Year 2011, *Notice of Proposed Rulemaking*, 76 FR 30605 (May 26, 2011) (“FY 2011 NPRM”).

annual rulemaking process for the Commission to collect the required fee amount each year. In the *FY 2011 NPRM*, we proposed to retain the section 9 regulatory fee methodology used in prior fiscal years, except as discussed below. We received six comments and one reply comment.⁴ We address the issues raised in our *FY 2011 NPRM* and these comments below.

A. FY 2011 Regulatory Fee Assessment Methodology

3. In our FY 2011 regulatory fee assessment, we will use the same Section 9 regulatory fee assessment methodology adopted in FY 2010 and in prior years. Each fiscal year, the Commission proportionally allocates the total amount that must be collected via Section 9 regulatory fees. The results of our FY 2011 regulatory fee assessment methodology (including a comparison to the prior year's results) are contained in Attachment B. To collect the \$335,794,000 required by Congress, we allocated this amount across the various fee categories. Consistent with past practice, we then divided the various fee categories by their respective number of estimated payment units 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 divided the resulting unit fee by the term of the license and then rounded these unit fees consistent with the requirements of Section 9(b)(2) of the Act.

4. In calculating the FY 2011 regulatory fees listed in Attachment C, we adjusted the FY 2011 list of payment units (see Attachment D) based upon licensee databases, industry and trade group projections, as well as prior year payment information. In some instances, Commission licensee databases are used; in other instances, actual prior year payment records and/or industry and trade association projections are used in determining the payment units.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 waivers and exemptions that may be filed in FY 2011, and fluctuations in the number of licenses or station operators due to economic, technical, or other reasons. Our estimated FY 2011 payment units, therefore, are based on several variable factors that are relevant to each fee category. The fee rate may also be rounded or adjusted slightly to account for these variables.

5. When calculating the fee methodology for AM and FM radio stations, we consider many factors, such as facility attributes and the population served by each station. The calculation of the population served is determined by coupling current United States Census Bureau data with technical and engineering data, as detailed in Attachment E. These population counts, along with the station's class and type of service, are the basis for determining regulatory fees. Although the 2010 Census data has been completed, the data is still subject to revisions. Also, because FY 2011 regulatory fees are determined on the basis of the station's attributes as of October 1, 2010, it would be inappropriate to apply incomplete 2010 Census data in determining FY 2011 regulatory fees for radio stations. Therefore, we will apply

⁴ See Appendix A for the list of commenters and abbreviated names.

⁵ In many instances, the regulatory fee amount is a flat fee per licensee or regulatee. 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 ("ITSP") fee). The payment unit is the measure upon which the fee is based, such as a licensee, regulatee, or subscriber fee.

⁶ The databases we consulted are the following: 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 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*, as well as industry sources including, but not limited to, *Television & Cable Factbook* by Warren Publishing, Inc. and the *Broadcasting and Cable Yearbook* by Reed Elsevier, Inc.

2010 Census data in determining the population counts of radio stations as of October 1, 2011, as part of our calculations of FY 2012 regulatory fees.

B. Regulatory Fee Obligations for Digital Low Power, Class A, and TV Translators/Boosters

6. The digital transition to full-service television stations was completed on June 12, 2009, but the digital transition for Low Power, Class A, and TV Translators/Boosters remains voluntary, and there is presently no set date for the completion of this transition. Historically, the discussion of digital transition conversion with respect to regulatory fees has applied only to full-service television stations. Hence, the “digital only” exemption does not impact this class of regulatees. Because the digital transition in the Low Power, Class A, and TV Translators/Booster facilities is still voluntary and the transition will occur over a period time, some facilities may still be in the process of converting from an analog to a digital service. During this transition period, licensees of Low Power, Class A, and TV Translator/Booster facilities may be operating in analog mode, in digital mode, or in an analog and digital simulcast mode. Therefore, for regulatory fee purposes, we conclude that a fee will be assessed for each facility operating either in an analog or digital mode. In instances in which a licensee is operating in both an analog and digital mode as a simulcast, a single regulatory fee will be assessed for this analog facility that has a digital companion channel. As greater numbers of facilities convert to digital mode, the Commission will provide revised instructions on how regulatory fees will be assessed.

C. Commercial Mobile Radio Service Messaging Service

7. Commercial Mobile Radio Service (“CMRS”) Messaging Service, which replaced the CMRS One-Way Paging fee category in 1997, includes all narrowband services.⁷ Since 1997, the number of subscribers has declined from 40.8 million to 4.9 million, and there does not appear to be any sign of recovery to the subscriber levels of 1997-1999.⁸ We sought comment on whether to continue to maintain the fee at the existing level of \$.08 per subscriber. We received one comment from the American Association of Paging Carriers (“AAPC”). AAPC contends that retaining the \$.08 per unit for CMRS Messaging is the minimum appropriate action for the Commission to undertake.⁹ Moreover, AAPC believes that after the Commission reviews its regulatory fee methodology, the Commission will find, as the paging industry believes it will, that the fee rate for the paging industry should be reduced.¹⁰ We agree with AAPC that the prevailing circumstances in FY 2003 still exists today,¹¹ and conclude that the FY 2011 CMRS Messaging regulatory fee should remain at a rate of \$.08 per subscriber.

D. Private Land Mobile Radio Service (“PLMRS”)

8. PLMRS systems are used by licensees, generally companies, local governments, and other organizations, for their own communications needs. The services included in PLMRS are Public Safety, Industrial/Business, Private Land Mobile Paging, and Radiolocation. In their comments, PCIA – The Wireless Infrastructure Association, contends that because the number of Private Land Mobile Radio

⁷ See *Assessment and Collection of Regulatory Fees for Fiscal Year 1997*, MD Docket No. 96-186, Report and Order, 12 FCC Rcd 17161, 17184-85, ¶ 60 (1997) (“*FY 1997 Report and Order*”).

⁸ Between FY 1997 and FY 2010, the subscriber base in the paging industry declined 89 percent from 40.8 million to 4.9 million subscribers, according to FY 2010 collections data as of September 30, 2010.

⁹ See American Association of Paging Carriers comments at page 2.

¹⁰ AAPC comments at page 3.

¹¹ Beginning in FY 2003, the Commission maintained the paging regulatory fee rate at \$.08 per subscriber, the same level as in FY 2002, and it has maintained this level of \$.08 per subscriber for all subsequent years. AAPC (at page 3) acknowledges that the circumstances that prompted the Commission to act in maintaining the fee rate at \$.08 per subscriber still exists today.

Service licenses have declined over 30 percent between 2006 and 2010,¹² it is inequitable to raise the ten-year license fee from \$20 per year to \$25 per year. Furthermore, PCIA asserts that PLMRS is a declining industry, and the Commission should “exercise its discretion in assessing how to regulate fees on industries with declining unit bases,” particularly in those instances where it is hard to pass on these regulatory fee costs to its customers.¹³

9. We agree with PCIA that those industries that are declining and also lack the ability to effectively pass the regulatory fees onto its customers should be given special consideration for fee relief.¹⁴ We note that the paging industry is in a similar situation with a declining subscriber base, and we have maintained their per unit regulatory fee at FY 2002 levels. Although PCIA projects the number of PLMRS licenses to increase slightly in 2011,¹⁵ the number of PLMRS licenses issued in FY 2011 are significantly lower than in FY 2004 and FY 2005 where the estimated number of PLMRS licenses issued were over four times greater.¹⁶ As a result, we believe the Commission should exercise its discretion to maintain the FY 2011 regulatory fee at \$20 per year. Based on an anticipated increase of 14 percent in the number of licenses,¹⁷ we will increase our unit estimate from 9,300 to 10,600, which will reduce the per year fee to \$22. However, we note that if it were not for our rules regarding rounding to the nearest \$5, the actual fee for PLMRS (Shared) would be \$22 per year, and not \$20 per year. But because of our rounding rules, we conclude that the FY 2011 regulatory fee rate for the PLMRS (Shared) fee category is \$20 per year for a ten-year license.

E. Interstate Telecommunications Service Provider (ITSP)

10. In our FY 2011 Regulatory Fee *Notice of Proposed Rulemaking*, we sought comment on our proposal to provide relief to the ITSP industry by assessing ITSP regulatory fees on all ITSP revenues that are reported on FCC Form 499-A, Lines 412 (e), 420 (d), and 420 (e), the lines upon which the Commission has traditionally assessed ITSP regulatory fees. We received three comments and one reply comment.¹⁸ In its comments, the United States Telecom Association (“USTelecom”) urges the Commission to take a comprehensive approach to reforming the regulatory fee structure, including an updated full-time employee (FTE) analysis, reallocation of the costs of the support bureaus, reexamination of the underlying assumptions of the current regulatory fee structure, and incorporation of changes that have occurred in the communications industry over time.¹⁹ While USTelecom supports

¹² See PCIA-The Wireless Infrastructure Association comments at page 2.

¹³ PCIA comments at page 5.

¹⁴ PCIA comments at page 5.

¹⁵ PCIA comments at page 2.

¹⁶ See Assessment and Collection of Regulatory Fees for Fiscal Year 2004, *Report and Order*, 19 FCC Rcd 11,662 MD Docket No. 04-73 in Attachment C (2004) (*FY 2004 Report and Order*), and Assessment and Collection of Regulatory Fees for Fiscal Year 2005, *Report and Order and Order on Reconsideration*, 20 FCC Rcd 12259, 12264 MD Docket No. 05-59, 04-73 in Attachment C (2005) (*FY 2005 R&O and Order on Reconsideration*).

¹⁷ PCIA comments at page 2

¹⁸ In the FY 2008 *Report and Order* and *Further Notice of Proposed Rulemaking* (“FY 2008 FNPRM”) (73 FR 50285 (August 26, 2008)), we asked for comment on this same issue, noting that the marketplace for ITSP service has changed since the fees were set and asking interested parties to comment on how the market had changed and the methodology we should use to determine the revision to ITSP's proportionate share of regulatory fees. We also asked for current information about the number of access lines, noting the success of the numbers-based approach on which CMRS regulatory fees are based. These issues remain outstanding, and we will include comments filed in response to the *FY 2008 FNPRM* in the further examination of these issues discussed in paragraph 27 of this document.

¹⁹ See comments of USTelecom at page 1.

limitations in the ITSP fee increase, it provides no support for action to effectuate such relief short of a complete overhaul of our regulatory fee methodology and the assumptions underlying it.²⁰ CTIA-The Wireless Association (“CTIA”) opposes the proposal to assess all ITSP revenues, arguing that the Commission lacks both legal authority and valid policy justification for its proposal.²¹ CTIA also interprets the Commission’s proposal as imposing a duplicative fee assessment on the CMRS industry, arguing that the move would result in an increase in regulatory fees of \$108 million on CMRS providers in addition to over \$52 million in fees that CMRS providers will pay on their subscriber fees.²² CTIA urges use of the same methodology as the Commission used last year – spreading the regulatory fees across other fee categories – while the Commission engages in a comprehensive review of its FTEs by core bureau.²³ In separate comments, Verizon Wireless also opposes the Commission’s proposal to apply the ITSP fee to the ITSP revenues of CMRS licensees.²⁴ Finally, in its reply comments, AT&T supports the comments of USTelecom and CTIA.²⁵

11. First, it is necessary to address any misconception about the impact, in terms of increased regulatory fees, our proposal would have on CMRS licensees. Contrary to CTIA’s assertions, the *Notice of Proposed Rulemaking* did not propose assessing \$108 million from wireless providers in addition to \$52 million in regulatory fees that CMRS licensees currently pay.²⁶ As Attachment B illustrates, the Commission proposed to collect \$52 million from CMRS providers and \$148 million from ALL ITSP providers; from within the \$148 million assessed to all ITSP revenues, the Commission estimated that only \$7.2 million would be derived from the ITSP revenues of predominantly non-ITSP providers (e.g. wireless, satellite, etc.) -- this \$7.2 million is the resulting additional amount in regulatory fees that is proposed in our *NPRM*’s proposed ITSP rate of \$.00361, which is based on approximately \$2 billion in ITSP revenues reported by these entities on Form 499-A Lines 412 (e), 420 (d), and 420 (e) – ITSP revenue on which they currently do not pay regulatory fees. Assessing this estimated \$2 billion in ITSP revenues would, in conjunction with the additional relief measure proposed in the *NPRM*, help reduce the impact of the fee burden on all ITSP payers by reducing the applicable ITSP fee rate from \$0.00402 to \$0.00361.

12. We are unpersuaded that assessing all ITSP revenues reported on Lines 412 (e), 420 (d), and 420 (e) on FCC Form 499-A exceeds our statutory authority under Section 159 (b) (2) (A). However, we acknowledge that the comments filed by USTelecom, CTIA, Verizon Wireless, and AT&T raise important concerns about the need for a more comprehensive approach to regulatory fee reform.²⁷ As stated in the *NPRM*, we fully intend to engage in that process as expeditiously as possible.²⁸ To that end, it is important that today we take only those measured steps necessary to complete the FY 2011 regulatory fee assessment, so that we can complete the regulatory fee assessment and collection in a timely manner. Our proposal in the *NPRM* to provide some measure of regulatory fee relief for ITSP

²⁰ See comments of USTelecom at page 3.

²¹ See CTIA comments at page 1.

²² See CTIA comments at page 8.

²³ See CTIA comments at pages 2-3.

²⁴ See Verizon Wireless comments at page 3.

²⁵ See AT&T reply comments at page 2.

²⁶ See CTIA comments at page 8.

²⁷ See para. 27 *supra*. This same argument was made by several commenters in response to the *FY2008 FNPRM* (73 FR 50285 (August 26, 2008) (2008)).

²⁸ See Assessment and Collection of Regulatory Fees for Fiscal Year FY 2011, MD Docket 11-76, *Notice of Proposed Rulemaking*, 76 FR 30605 (May 26, 2011) at para. 22 (2011) (“*FY 2011 NPRM*”).

providers has two components: 1) a 5.6 percent assessment across all other fee categories, and 2) an assessment of an estimated \$2 billion in ITSP revenues reported by non-ITSP providers. Of these two components, we will effectuate only one: a 5.6 percent assessment across all other fee categories. We will not, at this time, assess an estimated \$2 billion in ITSP revenues reported by non-ITSP providers.

13. Since we have already assessed a 5.6 percent assessment across all other fee categories to provide some measure of relief to the applicable ITSP rate, we will reduce the proposed ITSP revenue base by \$2.0 billion (from \$41 billion to \$39.0 billion), and re-calculate the ITSP fee rate on a revenue base of \$39 billion, as it would be untenable to pass on any further increases across all other fee categories. This approach provides some level of relief for the ever-increasing ITSP rate, yet leaves the issue of whether all providers who report ITSP revenues should pay on those revenues to be addressed in a broader context of regulatory fee reform.

14. This limited, temporary adjustment for FY 2011 produces an equitable result. If we provided no relief to limit the FY 2011 ITSP fee rate, the fee rate applicable to ITSP revenues would have been \$.00402 per revenue dollar, an increase of 15.2 percent from FY 2010 rates. Had we provided the full measure of relief proposed in the *NPRM*, the ITSP fee rate would have reduced to \$.00361 per revenue dollar, an increase of 3.4 percent from FY 2010 rates. However, since, for the reasons stated above, we take only limited action to reduce the increase to the ITSP rate, the action we take today will result in an ITSP fee rate of \$.00375 per revenue dollar, a 7.5 percent increase from FY 2010 rates.²⁹ This result is equitable not only for the ITSP industry, but also for the other fee categories that are bearing the fee burden associated with providing such relief. We conclude, therefore, that the FY 2011 ITSP regulatory fee rate is \$.00375 per revenue dollar.

F. Amateur Radio Vanity Call Signs

15. We received a general comment from Raymond Awe regarding the regulatory fees paid on Amateur Radio Vanity Call Signs. Mr. Awe urges the Commission to keep the fee amount minimal, and to consider assessing a Vanity fee only on the first issue of the Vanity call sign or change in call sign.³⁰

16. The Commission tries to keep the regulatory fee for Vanity call signs as minimal as possible. Between FY 2007 and FY 2010, the regulatory fee for Vanity call signs increased from \$1.17 (per year) to \$1.33 (per year), an increase of \$0.16 per year or \$1.60 over a ten-year license period.³¹ We do not believe this increase is inequitable, and the Commission will continue its efforts to keep this fee as minimal as possible. Regarding Mr. Awe's recommendation to assess regulatory fees only at first issue or at the time of a change in call sign, the fees that are collected from Vanity call signs are used to offset the cost of monitoring and researching new call sign requests to prevent the issuance of duplicate call signs. More than likely, fees that are collected only on new issues and at the time of changes in call signs will not generate sufficient revenues to offset the cost of managing and monitoring this work at the Commission. Therefore, we conclude that the basis upon which the Commission collects fees on Amateur Radio Vanity call signs will not change.

²⁹ In addition to reducing the FY 2011 ITSP revenue base from \$41.0 billion to \$39.0 billion because of our retraction, we were able to increase the FY 2011 ITSP revenue base from \$39.0 billion to \$39.5 billion because our more recent data estimates showed a slight increase in revenues from our previous estimate (March 2011).

³⁰ See comments of Raymond Awe at page 1.

³¹ See Assessment and Collection of Regulatory Fees for Fiscal Year FY 2007, MD Docket 07-81, *Report and Order*, 22 FCC Rcd 15712 in Attachment C ("*FY 2007 R&O*") and Assessment and Collection of Regulatory Fees for Fiscal Year FY 2010, MD Docket 10-87, *Report and Order*, 25 FCC Rcd 9278 in Appendix B ("*FY 2010 R&O*").

G. Fee Waiver Policies

17. In our FY 2011 *Notice of Proposed Rulemaking*, we stated that as our rules expressly provide, petitions for waiver of a regulatory fee must be accompanied by the required fee “unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.”³² Similarly, petitions for reduction of fees filed with less than the full fee due must be accompanied by a request for deferral “supported by documentation of financial hardship.”³³ However, citing section 1.1166 (b) of the rules, which states that “Deferrals of fees will be granted for a period of six months following the date that the fee is initially due,” it can be argued that, even where supporting documentation of financial hardship is not provided, a regulatee can delay its payment of the fees owed for up to six months simply by requesting the deferral.³⁴ That argument is inconsistent with sections 1.1166 (c) and (d) of our rules, which provide that petitions for waivers or reductions will be dismissed if they are not accompanied by the full fee owed, unless the regulatee requests a deferral of payment supported by documentation of financial hardship.³⁵ A regulatee’s mere allegation of financial hardship thus does not automatically entitle it to a deferral of its obligation to pay regulatory fees; only a properly supported claim of financial hardship will entitle the regulatee to a deferral. Accordingly, if a request for deferral is not supported by documentation of financial hardship, it will be denied, and an associated petition for waiver or reduction will be dismissed. A regulatee cannot delay payment on the theory that its deferral request triggered an automatic six-month extension of its obligation to pay. We sought comment on the proposal to amend section 1.1166 (b) of the Rules³⁶ to read, “Deferrals of fees, if granted, will be for a designated period of time not to exceed six months.” We received no comments or reply comments. Therefore, section 1.1166 (b) of the Rules³⁷ is amended to read, “Deferrals of fees, if granted, will be for a designated period of time not to exceed six months.”

H. Administrative and Operational Issues

18. In FY 2009, the Commission implemented several changes in procedures which simplified the payment and reconciliation processes of FY 2009 regulatory fees. These changes proved to be very helpful to both licensees and to the Commission. In FY 2011, the Commission will promote greater use of technology (and less use of paper) to improve the regulatory fee notification and collection process. We sought general comment on the specific initiatives discussed in the paragraphs below. We received no specific comments or reply comments on any steps to take to promote greater use of technology in collecting regulatory fees. The Commission will continue to promote greater efficiency in its regulatory fee notification and collection process.

1. Mandatory Use of Fee Filer

19. In *FY 2009*, we instituted a mandatory filing requirement using the Commission’s electronic filing and payment system (also known as “Fee Filer”).³⁸ Licensees filing their annual

³² 47 C.F.R. §1.1166 (c).

³³ 47 C.F.R. §1.1166 (d).

³⁴ Hypothetically speaking, the current rule can be interpreted to provide a regulatee an opportunity to file a waiver and a deferral on the fee due date, and not make a regulatory fee payment for a period of up to six months.

³⁵ 47 C.F.R. §1.1166 (c) and (d) (requests for waivers and reductions of fees “that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.”

³⁶ 47 C.F.R. §1.1166 (b).

³⁷ 47 C.F.R. §1.1166 (b).

³⁸ *FY 2009 Report and Order* at ¶¶ 20 and 21.

regulatory fee payments were required to begin the process by entering the Commission's Fee Filer system with a valid FRN and password.³⁹ This change was beneficial to both licensees and to the Commission. For licensees, the mandatory use of Fee Filer eliminates the need to manually complete and submit a hardcopy Form 159, and for the Commission, the data in electronic format made it much easier to process payments more efficiently and effectively. We sought comment on how to improve the mandatory use of Fee Filer for filing annual regulatory fees. We received no specific comments or reply comments on this issue. The mandatory use of Fee Filer does not mean that licensees are expected to pay only through Fee Filer – it is only mandatory for licensees to begin the process of filing their annual regulatory fees using Fee Filer.

2. Notification and Collection of Regulatory Fees

a. Pre-bills

20. In prior years, the Commission mailed pre-bills via surface mail to licensees in select regulatory fee categories: Interstate telecommunications service providers ("ITSPs"), Geostationary ("GSO") and Non-Geostationary ("NGSO") satellite space station licensees,⁴⁰ holders of Cable Television Relay Service ("CARS") licenses, and Earth Station licensees.⁴¹ The remaining regulatees did not receive pre-bills. In our *FY 2009 Report and Order*, the Commission decided to make the information contained in these pre-bills viewable in Fee Filer, rather than mailing pre-bills out to licensees via surface mail.⁴² In FY 2011, the Commission proposed to continue its practice of not mailing out hardcopy annual regulatory fee pre-bills, and instead place the pre-bill information on the Commission's website for licensees to access through the Commission's electronic filing and payment system ("Fee Filer"). Regulatees can also look to the Commission's website for information on upcoming events and deadlines relating to regulatory fees. We sought comment on other changes to our system of electronic notification that would more efficiently and effectively inform regulatees of information and procedures pertaining to regulatory fees. We received no specific comments or reply comments on this issue. The Commission will continue its efforts to improve its information and procedures relating to regulatory fees.

III. PROCEDURAL MATTERS

21. Included below are procedural items as well as our current payment and collection methods which we have revised over the past several years to expedite the processing of regulatory fee payments. We do not propose changes to these procedures. Rather, we include them here as a useful way of reminding regulatory fee payers and the public about these aspects of the annual regulatory fee collection process.

³⁹ Therefore, it is very important for licensees to have a current and valid FRN address on file in the Commission's Registration System (CORES).

⁴⁰ Geostationary orbit space station ("GSO") licensees received regulatory fee pre-bills 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 regulatory fee pre-bills for systems that were licensed by the Commission and operational on or before October 1 of the respective fiscal year.

⁴¹ 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.

⁴² *See FY 2009 Report and Order* at ¶¶ 24, 26.

A. Public Notices and Fact Sheets

22. Each year we post public notices and fact sheets pertaining to regulatory fees on our web site. These documents contain information about the payment due date and relevant regulatory fee payment procedures. We will continue to post this information on <http://www.fcc.gov/fees/regfees.html>, but as in previous years, we will not send out public notices and fact sheets to regulatees *en masse*.

B. Assessment Notifications**1. Media Services Licensees**

23. Beginning in FY 2003, we sent fee assessment notifications via surface mail to media services entities on a per-facility basis.⁴³ These 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 to be more electronic and paperless.⁴⁴ In our FY 2010 *Notice of Proposed Rulemaking*, we proposed to discontinue mailing the media notifications beginning in FY 2011, relying instead on information on the Commission's website and the use of the Commission-authorized website at www.fccfees.com.⁴⁵ We kept the comment and reply comment period open until September 30, 2010 to be receptive to the needs of media licensees. We received no comments or reply comments on this particular issue. Therefore, we conclude that beginning in FY 2011 the Commission will discontinue mailing hardcopy notification assessment letters to media licensees.

2. CMRS Cellular and Mobile Services Assessments

24. As we have done in prior years, our procedures for conveying CMRS subscriber counts to providers are as follows. We will mail an initial assessment letter to Commercial Mobile Radio Service (CMRS) providers using data from the Numbering Resource Utilization Forecast ("NRUF") report that is based on "assigned" number counts that have been adjusted for porting to net Type 0 ports ("in" and "out").⁴⁶ The letter will include a listing of the carrier's Operating Company Numbers ("OCNs") upon which the assessment is based.⁴⁷ The letters will not include OCNs with their respective assigned number counts, but rather, an aggregate total of assigned numbers for each carrier.

25. A carrier wishing to revise their subscriber count can access Fee Filer after they receive their initial CMRS assessment letter and revise their count. Providers should follow the prompts in Fee Filer to record their subscriber revisions, along with any supporting documentation.⁴⁸ The Commission will then review the revised count and supporting documentation and either approve or disapprove the

⁴³ 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.

⁴⁴ 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. The notifications also provide licensees with a telephone number to call in the event that they need customer assistance.

⁴⁵ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2010*, Report and Order, 25 FCC Rcd 9278 at para. 42 (2010) ("FY 2010 Report and Order")

⁴⁶ 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).

⁴⁷ *Id.*

⁴⁸ In the supporting documentation, the provider will need to state a reason for the change, such as a purchase or sale of a subsidiary, the date of the transaction, and any other pertinent information that will help to justify a reason for the change.

submission in Fee Filer. If the submission is disapproved, the Commission will attempt to contact the provider so that the provider will have an opportunity to discuss its revised subscriber count and/or provide additional supporting documentation. If we receive no response or correction to the initial assessment letter, or we do not reverse the disapproval of the provider's revised count submission, we will expect the fee payment to be based on the number of subscribers listed on the initial assessment letter. Once the timeframe for revision has passed, the subscriber counts will be finalized. These subscriber counts will then be the basis upon which CMRS regulatory fees will be expected. Providers will be able to view their final subscriber counts online in Fee Filer. A final CMRS assessment letter will not be mailed out.

26. Because some carriers do not file the NRUF report, they may not receive an initial letter of assessment. In these instances, the carriers should compute their fee payment using the standard methodology⁴⁹ that is currently in place for CMRS Wireless services (*e.g.*, compute their subscriber counts as of December 31, 2010), and submit their fee payment accordingly. Whether a carrier receives an assessment letter or not, the Commission reserves the right to audit the number of subscribers for which regulatory fees are paid. In the event that the Commission determines that the number of subscribers paid is inaccurate, the Commission will bill the carrier for the difference between what was paid and what should have been paid.

3. Submarine Cable Allocation

27. The Commission collects a revenue amount each year based on a Congressional mandate. Because the dollar amount differs each year, a revenue apportionment is necessary each year to determine the projected regulatory fee revenue that is to be collected from submarine cable providers and from terrestrial/satellite facilities.⁵⁰ Since FY 2009, the Commission has used the 87.4/12.6 percent allocation proposed in the Consensus Proposal as the percentage upon which to determine the regulatory fee revenue amounts for submarine cable providers and terrestrial/satellite facilities, respectively.⁵¹ Each year, the Commission reserves the right to revise this 87.4/12.6 allocation. Although we will continue to review this allocation as part of our annual regulatory fee proceeding, we do not at this time find any basis to alter the 87.4/12.6 percent revenue allocation for 2011 regulatory fees.

C. Re-Assessment of Regulatory Fee Issues in a *Further Notice of Proposed Rulemaking*

28. Since 1994 when the first regulatory fees were collected, the communications industry has undergone a rapid transformation. The current basis of how regulatory fees are assessed, however, has changed only slightly since its inception in 1994.⁵² In FY 2008, the Commission released a *Further Notice of Proposed Rulemaking* which identified some of the issues raised by commenters with regard to the need for fundamental reform of our regulatory fee assessment methodology⁵³ From this rulemaking, the Commission has already acted on three of the issues: 1) a change in the bearer circuit methodology for calculating regulatory fees, 2) the elimination of two regulatory fee categories, the *International Public Fixed Radio* and *International High Frequency Broadcast Stations*, and 3) the conversion of UHF and

⁴⁹ See, *e.g.*, Federal Communications Commission, *Regulatory Fees Fact Sheet: What You Owe - Commercial Wireless Services for FY 2010* at 1 (rel. September 2010).

⁵⁰ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Second Report and Order, 24 FCC Rcd 4208 at n. 35 (2009) ("*Submarine Cable Order*").

⁵¹ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2009*, Report and Order, 24 FCC Rcd 10301 at para. 8 (2009) ("*FY 2009 Report and Order*").

⁵² 47 U.S.C. § 159(a) and § 159(b).

⁵³ *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, MD Docket No. 08-65, RM-11312, Report and Order and Further Notice of Proposed Rulemaking, 73 FR 50201 (August 26, 2008) at paras. 38-41.

VHF Television stations from analog to digital television.⁵⁴ In our FY 2010 Regulatory Fees *Report & Order*, we stated that in a future proceeding, we will “further examine the nature and extent of all changes that need to be made to our regulatory fee schedule and calculations. In a separate and forthcoming action, we will call for comment on issues including, but not limited to, how changes in the telecommunications marketplace may warrant rebalancing of regulatory fees among existing service providers...”⁵⁵ In response to our FY 2011 *Notice of Proposed Rulemaking*, we have heard the call again from commenters and reply commenters to re-examine our regulatory fee structure. As our commitment to this “forthcoming action”, the Commission will by the end of calendar year 2011, initiate a further rulemaking that will update the record on regulatory fee rebalancing, as well as expand this inquiry to include new issues and services not covered by the 2008 *Further Notice of Proposed Rulemaking*, such as whether and how to re-assess the regulatory fee burden of all fee categories, whether to incorporate 499-A wireless revenue in the calculation of ITSP regulatory fees, and whether to eliminate the regulatory fee portion (but not the application fee portion) of General Mobile Radio Service (GMRS).

D. Streamlined Regulatory Fee Payment Process

1. Cable Television Subscribers

29. We will 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 report cable subscriber counts on a per community unit identifier (“CUID”) basis.

2. CMRS Cellular and Mobile Providers

30. In FY 2006, we streamlined the CMRS payment process by eliminating the requirement for CMRS providers to identify their individual call signs when making their regulatory fee payment, instead allowing CMRS providers to pay their regulatory fees only at the aggregate subscriber level without having to identify their various call signs.⁵⁶ We will continue this practice in FY 2011. In FY 2007, we consolidated the CMRS cellular and CMRS mobile fee categories into one fee category with a single fee code, thereby eliminating the requirement for CMRS providers to separate their subscriber counts into CMRS cellular and CMRS mobile fee categories during the regulatory fee payment process. This consolidation of fee categories enabled the Commission to process payments more quickly and accurately. For FY 2011, we will continue this practice of combining the CMRS cellular and CMRS mobile fee categories into one regulatory fee category.

3. Interstate Telecommunications Service Providers (“ITSP”)

31. In FY 2007, we adopted a proposal to round lines 14 (total subject revenues) and 16 (total regulatory fee owed) on FCC Form 159-W to the nearest dollar. This revision enabled the Commission to process the ITSP regulatory fee payments more quickly because rounding was performed in a consistent manner and eliminated processing issues that occurred in prior years. In FY 2011, we will continue rounding lines 14 and 16 when calculating the FY 2011 ITSP fee obligation. In addition, we will continue the practice of not mailing out Form 159-W via surface mail.

⁵⁴ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2009*, Report and Order, 24 FCC Rcd 10301 (2009) at paras. 7-13 (“FY 2009 Report and Order”).

⁵⁵ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2010*, MD Docket No. 10-87, Report and Order, 25 FCC Rcd 9278 ¶ 31 (2010).

⁵⁶ 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).

E. Payment of Regulatory Fees**1. Lock Box Bank**

32. All lock box payments to the Commission for FY 2011 will be processed by U.S. Bank, St. Louis, Missouri, and payable to the FCC. During the regulatory fee season, for those licensees paying by check, money order, or by credit card using Form 159-E remittance advice, the fee payment and Form 159-E remittance advice should be mailed to the following address: Federal Communications Commission, Regulatory Fees, P.O. Box 979084, St. Louis, MO 63197-9000. Additional payment options and instructions are posted at <http://www.fcc.gov/fees/regfees.html>.

2. Receiving Bank for Wire Payments

33. The receiving bank for all wire payments is the Federal Reserve Bank, New York, New York (TREAS NYC). When making a wire transfer, regulatees must fax a copy of their Fee Filer generated Form 159-E to U.S. Bank, St. Louis, Missouri at (314) 418-4232 at least one hour before initiating the wire transfer (but on the same business day), so as not to delay crediting their account. Regulatees should discuss arrangements (including bank closing schedules) with their bankers several days before they plan to make the wire transfer to allow sufficient time for the transfer to be initiated and completed before the deadline. Complete instructions for making wire payments are posted at <http://www.fcc.gov/fees/wiretran.html>.

3. De Minimis Regulatory Fees

34. Regulatees whose total FY 2011 regulatory fee liability, including all categories of fees for which payment is due, is less than \$10 are exempted from payment of FY 2011 regulatory fees.

4. Standard Fee Calculations and Payment Dates

35. The Commission will accept fee payments made in advance of the window for the payment of regulatory fees. The responsibility for payment of fees by service category is as follows:

- *Media Services*: Regulatory fees must be paid for initial construction permits that were granted on or before October 1, 2010 for AM/FM radio stations, VHF/UHF full service television stations, and satellite television stations. Regulatory fees must be paid for all broadcast facility licenses granted on or before October 1, 2010. In instances where a permit or license is transferred or assigned after October 1, 2010, responsibility for payment rests with the holder of the permit or license as of the fee due date.
- *Wireline (Common Carrier) Services*: Regulatory fees must be paid for authorizations that were granted on or before October 1, 2010. In instances where a permit or license is transferred or assigned after October 1, 2010, responsibility for payment rests with the holder of the permit or license as of the fee due date. We note that audio bridging service providers are included in this category.⁵⁷
- *Wireless Services*: CMRS cellular, mobile, and messaging services (fees based on number of subscribers or telephone number count): Regulatory fees must be paid for authorizations that were granted on or before October 1, 2010. The number of subscribers, units, or telephone

⁵⁷ Audio bridging services are toll teleconferencing services, and audio bridging service providers are required to contribute directly to the universal service fund based on revenues from these services. On June 30, 2008, the Commission released the *InterCall Order*, in which the Commission stated that InterCall, Inc. and all similarly situated audio bridging service providers are required to contribute directly to the universal service fund. See *Request for Review by InterCall, Inc. of Decision of Universal Service Administrator*, CC Docket No. 96-45, Order, 23 FCC Rcd 10731 (2008) (“*InterCall Order*”).

numbers on December 31, 2010 will be used as the basis from which to calculate the fee payment. In instances where a permit or license is transferred or assigned after October 1, 2010, responsibility for payment rests with the holder of the permit or license as of the fee due date.

- The first eleven regulatory fee categories in our Schedule of Regulatory Fees (*see* Attachment C) pay “small multi-year wireless regulatory fees.” Entities pay these regulatory fees in advance for the entire amount of their five-year or ten-year term of initial license, and only pay regulatory fees again when the license is renewed or a new license is obtained. We include these fee categories in our Schedule of Regulatory Fees to publicize our estimates of the number of “small multi-year wireless” licenses that will be renewed or newly obtained in FY 2011.
- *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, 2010.⁵⁸ Regulatory fees also must be paid for CARS licenses that were granted on or before October 1, 2010. In instances where a permit or license is transferred or assigned after October 1, 2010, responsibility for payment rests with the holder of the permit or license as of the fee due date.
- *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, 2010. In instances where a permit or license is transferred or assigned after October 1, 2010, responsibility for payment rests with the holder of the permit or license as of the fee due date.
- *International Services: Submarine Cable Systems*: Regulatory fees for submarine cable systems are to be paid on a per cable landing license basis based on circuit capacity as of December 31, 2010. In instances where a license is transferred or assigned after October 1, 2010, responsibility for payment rests with the holder of the license as of the fee due date. For regulatory fee purposes, the allocation in FY 2011 will remain at 87.6 percent for submarine cable and 12.4 percent for satellite/terrestrial facilities.
- *International Services: Terrestrial and Satellite Services*: Finally, regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers that have active (used or leased) international bearer circuits as of December 31, 2010 in any terrestrial or satellite 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. “Active circuits” for these purposes include backup and redundant circuits as of December 31, 2010. Whether circuits are used specifically for voice or data is not relevant for these purposes in determining that they are active circuits. In instances where a permit or license is transferred or assigned after October 1, 2010, responsibility for payment rests with the holder of the permit or license as of the fee due date. For regulatory fee purposes, the allocation in FY 2011 will remain at 87.6 percent for

⁵⁸ 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 2010, rather than on a count as of December 31, 2010.

submarine cable and 12.4 percent for satellite/terrestrial facilities.

F. Enforcement

36. To be considered timely, regulatory fee payments must be received and stamped at the lockbox bank by the last day of the regulatory fee filing window. Section 9(c) of the Act requires us to impose a late payment penalty of 25 percent of the unpaid amount to be assessed on the first day following the deadline date for filing of these fees.⁵⁹ Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including those set forth in section 1.1910 of the Commission's Rules⁶⁰ and in the Debt Collection Improvement Act of 1996 ("DCIA").⁶¹ 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 section 1.1940(d) of the Commission's Rules.⁶² 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.

37. 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.⁶³ 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).

G. Final Regulatory Flexibility Analysis

38. As required by the Regulatory Flexibility Act of 1980 ("RFA"),⁶⁴ the Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") relating to this Report and Order. The FRFA is set forth in Attachment F.

H. Final Paperwork Reduction Act of 1995 Analysis

39. This *Report and Order* does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506 (c) (4).

I. Congressional Review Act Analysis

40. The Commission will send a copy of this *Report and Order* to Congress and the

⁵⁹ 47 U.S.C. § 159(c).

⁶⁰ *See* 47 C.F.R. § 1.1910.

⁶¹ Delinquent debt owed to the Commission triggers application of the "red light rule" which requires offsets or holds on pending disbursements. 47 C.F.R. § 1.1910. In 2004, the Commission adopted rules implementing the requirements of the DCIA. *See Amendment of Parts 0 and 1 of the Commission's Rules*, MD Docket No. 02-339, Report and Order, 19 FCC Rcd 6540 (2004); 47 C.F.R. Part 1, Subpart O, Collection of Claims Owed the United States.

⁶² 47 C.F.R. § 1.1940(d).

⁶³ *See* 47 C.F.R. §§ 1.1161(c), 1.1164(f)(5), and 1.1910.

⁶⁴ *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 ("CWAAA").

Government Accountability Office pursuant to the Congressional Review Act.⁶⁵

IV. ORDERING CLAUSES

41. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended, 47 CFR 1.1166 (b) be AMENDED TO READ, “Deferrals of fees, if granted, will be for a designated period of time not to exceed six months.”

42. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended, 47 CFR 1.1164(c) be AMENDED TO READ, “If a regulatory fee is not paid in a timely manner, the regulatee will be notified of its deficiency. This notice will automatically assess a 25 percent penalty, subject the delinquent payor's pending applications to dismissal, and may require a delinquent payor to show cause why its existing instruments of authorization should not be subject to rescission.”

43. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 159, and 303(r), this Report and Order IS HEREBY ADOPTED.

44. 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, including the Final Regulatory Flexibility Analysis in Attachment F, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁶⁵ See 5 U.S.C. § 801(a)(1)(A). The Congressional Review Act is contained in Title II, § 251, of the CWAAA; see Pub. L. No. 104-121, Title II, § 251, 110 Stat. 868.

ATTACHMENT A**List of Commenters**

Commenter	Abbreviated name
American Association of Paging Carriers	“AAPC”
Raymond Awe	“Raymond Awe”
CTIA – The Wireless Association	“CTIA”
PCIA – The Wireless Infrastructure Association	“PCIA”
The United States Telecom Association	“USTelecom”
Verizon Wireless	“Verizon”

List of Reply Commenters

Commenter	Abbreviated name
AT&T Inc.	“AT&T”

ATTACHMENT B

Calculation of FY 2011 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 2011 Payment Units	Years	FY 2010 Revenue Estimate	Pro-Rated FY 2011 Revenue Requirement	Computed New FY 2011 Regulatory Fee	Round ed New FY 2011 Regula -tory Fee	Expected FY 2011 Revenue
PLMRS (Exclusive Use)	1,200	10	480,000	495,845	41	40	480,000
PLMRS (Shared use)	10,600	10	2,300,000	2,375,921	22	20	2,120,000
Microwave	10,200	10	2,375,000	2,324,270	23	25	2,550,000
218-219 MHz (Formerly IVDS)	3	10	1,950	2,015	67	65	1,950
Marine (Ship)	6,700	10	800,000	774,757	12	10	670,000
GMRS	9,300	5	242,500	284,078	6	5	232,500
Aviation (Aircraft)	4,600	10	230,000	361,553	8	10	460,000
Marine (Coast)	265	10	119,250	127,835	48	50	132,500
Aviation (Ground)	1,100	10	150,000	154,952	14	15	165,000
Amateur Vanity Call Signs	14,600	10	196,840	207,635	1.42	1.42	207,320
AM Class A ^{4a}	66	1	253,300	256,832	3,891	3,900	257,400
AM Class B ^{4b}	1,439	1	3,053,700	3,075,578	2,137	2,125	3,057,875
AM Class C ^{4c}	918	1	1,078,650	1,090,083	1,187	1,175	1,078,650
AM Class D ^{4d}	1,637	1	3,589,125	3,631,802	2,219	2,225	3,642,325
FM Classes A, B1 & C3 ^{4e}	3,114	1	7,372,000	7,652,108	2,457	2,450	7,629,300
FM Classes B, C, C0, C1 & C2 ^{4f}	3,111	1	9,308,775	9,400,580	3,022	3,025	9,410,775
AM Construction Permits	90	1	43,680	44,212	491	490	44,100
FM Construction Permits ¹	151	1	105,300	101,925	675	675	101,925
Satellite TV	133	1	163,800	167,270	1,258	1,250	166,250
Satellite TV Construction Permit	3	1	2,025	2,015	672	670	2,010
VHF Markets 1-10	20	1	1,631,000	1,692,381	84,619	84,625	1,692,500
VHF Markets 11-25	26	1	1,708,425	1,772,526	68,174	68,175	1,772,550
VHF Markets 26-50	36	1	1,404,150	1,457,127	40,476	40,475	1,457,100
VHF Markets 51-100	52	1	1,140,000	1,182,936	22,749	22,750	1,183,000

Fee Category	FY 2011 Payment Units	Years	FY 2010 Revenue Estimate	Pro-Rated FY 2011 Revenue Requirement	Computed New FY 2011 Regulatory Fee	Round ed New FY 2011 Regula-tory Fee	Expected FY 2011 Revenue
VHF Remaining Markets	127	1	747,250	774,447	6,098	6,100	774,700
VHF Construction Permits ¹	2	1	18,375	12,200	6,100	6,100	12,200
UHF Markets 1-10	113	1	3,776,175	3,915,430	34,650	34,650	3,915,450
UHF Markets 11-25	107	1	3,398,475	3,524,319	32,938	32,950	3,525,650
UHF Markets 26-50	144	1	2,910,600	3,016,311	20,947	20,950	3,016,800
UHF Markets 51-100	238	1	2,829,750	2,932,290	12,321	12,325	2,933,350
UHF Remaining Markets	264	1	835,700	866,787	3,283	3,275	864,600
UHF Construction Permits ¹	10	1	36,600	32,750	3,275	3,275	32,750
Broadcast Auxiliaries	26,850	1	275,000	284,078	11	10	268,500
LPTV/Translators/Boosters/Class A TV	3,607	1	1,411,000	1,425,553	395	395	1,424,765
CARS Stations	470	1	173,250	174,578	371	370	173,900
Cable TV Systems	63,400,000	1	57,405,000	58,633,597	0.92482	0.93	58,962,000
Interstate Telecommunication Service Providers	\$39,500,000,000	1	151,117,000	148,100,156	0.0037494	0.00375	148,125,000
CMRS Mobile Services (Cellular/Public Mobile)	298,000,000	1	50,940,000	51,562,378	0.1730	0.17	50,660,000
CMRS Messag. Services	4,200,000	1	480,000	376,000	0.0800	0.080	336,000
BRS ²	1,690	1	514,600	523,900	310	310	523,900
LMDS	520	1	158,100	161,200	310	310	161,200
Per 64 kbps Int'l Bearer Circuits Terrestrial (Common) & Satellite (Common & Non-Common)	3,247,195	1	1,130,233	1,143,849	.352	.35	1,136,518
Submarine Cable Providers (see chart in Appendix C) ³	39.375	1	7,983,860	8,080,736	205,225	205,225	8,080,734
Earth Stations	3,575	1	864,000	878,575	246	245	875,875

Fee Category	FY 2011 Payment Units	Years	FY 2010 Revenue Estimate	Pro-Rated FY 2011 Revenue Require- ment	Computed New FY 2011 Regulatory Fee	Round ed New FY 2011 Regula- -tory Fee	Expected FY 2011 Revenue
Space Stations (Geostationary)	87	1	11,129,475	11,429,445	131,373	131,375	11,429,625
Space Stations (Non-Geostationary)	6	1	828,300	850,528	141,755	141,750	850,500
***** Total Estimated Revenue to be Collected			336,712,213	337,295,342			336,599,048
***** Total Revenue Requirement			335,794,000	335,794,000			335,794,000
Difference			918,213	1,501,342			805,048

¹ The 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. The reductions in the FM Construction Permit revenues are offset by increases in the revenue totals for FM radio stations. Similarly, reductions in the VHF and UHF Construction Permit revenues are offset by increases in the revenue totals for VHF and UHF television stations, respectively.

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).

³ The chart at the end of Appendix B lists the submarine cable bearer circuit regulatory fees (common and non-common carrier basis) that resulted from the adoption of the following proceedings: *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Second Report and Order (MD Docket No. 08-65, RM-11312), released March 24, 2009; and *Assessment and Collection of Regulatory Fees for Fiscal Year 2009 and Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Notice of Proposed Rulemaking and Order (MD Docket No. 09-65, MD Docket No. 08-65), released on May 14, 2009.

⁴ The fee amounts listed in the column entitled "Rounded New FY 2011 Regulatory Fee" constitute a weighted average media regulatory fee by class of service. The actual FY 2011 regulatory fees for AM/FM radio station are listed on a grid located in Appendix B.

ATTACHMENT C

FY 2011 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)	40
Microwave (per license) (47 CFR part 101)	25
218-219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	65
Marine (Ship) (per station) (47 CFR part 80)	10
Marine (Coast) (per license) (47 CFR part 80)	50
General Mobile Radio Service (per license) (47 CFR part 95)	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	20
PLMRS (Shared Use) (per license) (47 CFR part 90)	20
Aviation (Aircraft) (per station) (47 CFR part 87)	10
Aviation (Ground) (per license) (47 CFR part 87)	15
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.42
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.17
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)	310
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	310
AM Radio Construction Permits	490
FM Radio Construction Permits	675
TV (47 CFR part 73) VHF Commercial	
Markets 1-10	84,625
Markets 11-25	68,175
Markets 26-50	40,475
Markets 51-100	22,750
Remaining Markets	6,100
Construction Permits	6,100

Fee Category	Annual Regulatory Fee (U.S. \$'s)
TV (47 CFR part 73) UHF Commercial	
Markets 1-10	34,650
Markets 11-25	32,950
Markets 26-50	20,950
Markets 51-100	12,325
Remaining Markets	3,275
Construction Permits	3,275
Satellite Television Stations (All Markets)	1,250
Construction Permits – Satellite Television Stations	670
Low Power TV, Class A TV, TV/FM Translators & Boosters (47 CFR part 74)	395
Broadcast Auxiliaries (47 CFR part 74)	10
CARS (47 CFR part 78)	370
Cable Television Systems (per subscriber) (47 CFR part 76)	.93
Interstate Telecommunication Service Providers (per revenue dollar)	.00375
Earth Stations (47 CFR part 25)	245
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100)	131,375
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	141,750
International Bearer Circuits - Terrestrial/Satellites (per 64KB circuit)	.35
International Bearer Circuits - Submarine Cable	See Table Below

FY 2011 SCHEDULE OF REGULATORY FEES (continued)

FY 2011 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	\$700	\$575	\$525	\$600	\$675	\$850
25,001 – 75,000	\$1,400	\$1,150	\$800	\$900	\$1,350	\$1,500
75,001 – 150,000	\$2,100	\$1,450	\$1,050	\$1,500	\$1,850	\$2,750
150,001 – 500,000	\$3,150	\$2,450	\$1,575	\$1,800	\$2,875	\$3,600
500,001 – 1,200,000	\$4,550	\$3,750	\$2,625	\$3,000	\$4,550	\$5,300
1,200,001 – 3,000,00	\$7,000	\$5,750	\$3,950	\$4,800	\$7,425	\$8,500
>3,000,000	\$8,400	\$6,900	\$5,000	\$6,000	\$9,450	\$11,050

FY 2011 SCHEDULE OF REGULATORY FEES
International Bearer Circuits - Submarine Cable

Submarine Cable Systems (capacity as of December 31, 2010)	Fee amount	Address
< 2.5 Gbps	\$12,825	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000
2.5 Gbps or greater, but less than 5 Gbps	\$25,650	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000
5 Gbps or greater, but less than 10 Gbps	\$51,300	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000
10 Gbps or greater, but less than 20 Gbps	\$102,625	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000
20 Gbps or greater	\$205,225	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000

ATTACHMENT D

Sources of Payment Unit Estimates for FY 2011

In order to calculate individual service fees for FY 2011, we adjusted FY 2010 payment units for each service to more accurately reflect expected FY 2011 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 sought verification for these estimates from multiple sources and, in all cases; we compared FY 2011 estimates with actual FY 2010 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 with sufficient accuracy. These include an unknown number of waivers and/or exemptions that may occur in FY 2011 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. When we note, for example, that our estimated FY 2011 payment units are based on FY 2010 actual payment units, it does not necessarily mean that our FY 2011 projection is exactly the same number as in FY 2010. We have either rounded the FY 2011 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 Cellular/Mobile Services	Based on WTB projection reports, and FY 10 payment data.
CMRS Messaging Services	Based on WTB reports, and FY 10 payment data.
AM/FM Radio Stations	Based on CDBS data, adjusted for exemptions, and actual FY 2010 payment units.
UHF/VHF Television Stations	Based on CDBS data, adjusted for exemptions, and actual FY 2010 payment units.
AM/FM/TV Construction Permits	Based on CDBS data, adjusted for exemptions, and actual FY 2010 payment units.
LPTV, Translators and Boosters, Class A Television	Based on CDBS data, adjusted for exemptions, and actual FY 2010 payment units.
Broadcast Auxiliaries	Based on actual FY 2010 payment units.
BRS (formerly MDS/MMDS) LMDS	Based on WTB reports and actual FY 2010 payment units. Based on WTB reports and actual FY 2010 payment units.

Cable Television Relay Service (“CARS”) Stations	Based on data from Media Bureau’s COALS database and actual FY 2010 payment units.
Cable Television System Subscribers	Based on publicly available data sources for estimated subscriber counts and actual FY 2010 payment units.
Interstate Telecommunication Service Providers	Based on FCC Form 499-Q data for the four quarters of calendar year 2010, the Wireline Competition Bureau projected the amount of calendar year 2009 revenue that will be reported on 2011 FCC Form 499-A worksheets in April, 2011.
Earth Stations	Based on International Bureau (“IB”) licensing data and actual FY 2010 payment units.
Space Stations (GSOs & NGSOs)	Based on IB data reports and actual FY 2010 payment units.
International Bearer Circuits	Based on IB reports and submissions by licensees.
Submarine Cable Licenses	Based on IB license information.

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.¹ 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 R3.² 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.³ 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.

ATTACHMENT F

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (“RFA”),¹ 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*. Written public comments were sought on the FY 2011 fees proposal, including comments on the IRFA. This Final Regulatory Flexibility Analysis (“FRFA”) conforms to the RFA.²

I. Need for, and Objectives of, the Notice:

2. This rulemaking proceeding was initiated for the Commission to amend its Schedule of Regulatory Fees in the amount of \$335,794,000, which is the amount that Congress has required the Commission to recover. The Commission seeks to collect the necessary amount through its revised Schedule of Regulatory Fees in the most efficient manner possible and without undue public burden.

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

3. No parties have raised issues in response to the IRFA.

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

4. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.³ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁴ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁵ 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.⁶

5. **Small Businesses.** Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.⁷

¹ 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”).

² 5 U.S.C. § 604.

³ 5 U.S.C. § 603(b)(3).

⁴ 5 U.S.C. § 601(6).

⁵ 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.”

⁶ 15 U.S.C. § 632.

⁷ See SBA, Office of Advocacy, “Frequently Asked Questions,” <http://web.sba.gov/faqs> (accessed Jan. 2009).

6. **Small Organizations.** Nationwide, as of 2002, there are approximately 1.6 million small organizations.⁸ A “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”⁹

7. **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.”¹⁰ Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.¹¹ We estimate that, of this total, 84,377 entities were “small governmental jurisdictions.”¹² Thus, we estimate that most governmental jurisdictions are small.

8. 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.”¹³ 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.¹⁴ 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.

9. **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.¹⁵ According to Commission data,¹⁶ 1,311 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,311 carriers, an estimated 1,024 have 1,500 or fewer employees and 287 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 our action.

10. **Competitive Local Exchange Carriers (“CLECs”), Competitive Access Providers (“CAPs”), “Shared-Tenant Service Providers,” and “Other Local Service Providers.”**

⁸ Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

⁹ 5 U.S.C. § 601(4).

¹⁰ 5 U.S.C. § 601(5).

¹¹ U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, Section 8, p. 272, Table 415.

¹² We assume that the villages, school districts, and special districts are small, and total 48,558. *See* U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, section 8, p. 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

¹³ 15 U.S.C. § 632.

¹⁴ 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).

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

¹⁶ FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, “*Trends in Telephone Service*” at Table 5.3, Page 5-5 (Aug. 2008) (“*Trends in Telephone Service*”). This source uses data that are current as of November 1, 2006.

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.¹⁷ According to Commission data,¹⁸ 1005 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 1005 carriers, an estimated 918 have 1,500 or fewer employees and 87 have more than 1,500 employees. In addition, 16 carriers have reported that they are “Shared-Tenant Service Providers,” and all 16 are estimated to have 1,500 or fewer employees. In addition, 89 carriers have reported that they are “Other Local Service Providers.” Of the 89, all have 1,500 or fewer 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 our action.

11. **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.¹⁹ According to Commission data,²⁰ 151 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 149 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 our action.

12. **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.²¹ According to Commission data,²² 815 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 787 have 1,500 or fewer employees and 28 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our action.

13. **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.²³ According to Commission data,²⁴ 526 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 524 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 our action.

14. **Interexchange Carriers (“IXCs”).** Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁵ According to

¹⁷ 13 C.F.R. § 121.201, NAICS code 517110.

¹⁸ “Trends in Telephone Service” at Table 5.3.

¹⁹ 13 C.F.R. § 121.201, NAICS code 517310.

²⁰ “Trends in Telephone Service” at Table 5.3.

²¹ 13 C.F.R. § 121.201, NAICS code 517310.

²² “Trends in Telephone Service” at Table 5.3.

²³ 13 C.F.R. § 121.201, NAICS code 517110.

²⁴ “Trends in Telephone Service” at Table 5.3.

²⁵ 13 C.F.R. § 121.201, NAICS code 517110.

Commission data,²⁶ 300 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 268 have 1,500 or fewer employees and 32 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXC are small entities that may be affected by our action.

15. **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.²⁷ According to Commission data,²⁸ 28 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 27 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our action.

16. **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.²⁹ According to Commission data,³⁰ 88 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated 85 have 1,500 or fewer employees and three have 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 our action.

17. **800 and 800-Like Service Subscribers.**³¹ 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.³² 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.³³ According to our data, at the end of December 2007, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,210,184; the number of 877 numbers assigned was 4,388,682; and the number of 866 numbers assigned was 7,029,116. 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 7,860,000 or fewer small entity 800 subscribers; 5,210,184 or fewer small entity 888 subscribers; 4,388,682 or fewer small entity 877 subscribers, and 7,029,116 or fewer entity 866 subscribers.

18. **Satellite Telecommunications and All Other Telecommunications.** These two economic census categories address the satellite industry. The first category has a small business size

²⁶ “Trends in Telephone Service” at Table 5.3.

²⁷ 13 C.F.R. § 121.201, NAICS code 517110.

²⁸ “Trends in Telephone Service” at Table 5.3.

²⁹ 13 C.F.R. § 121.201, NAICS code 517310.

³⁰ “Trends in Telephone Service” at Table 5.3.

³¹ We include all toll-free number subscribers in this category.

³² 13 C.F.R. § 121.201, NAICS code 517310.

³³ “Trends in Telephone Service” at Tables 18.4, 18.5, 18.6, and 18.7.

standard of \$15 million or less in average annual receipts, under SBA rules.³⁴ The second has a size standard of \$25 million or less in annual receipts.³⁵ The most current Census Bureau data in this context, however, are from the (last) economic census of 2002, and we will use those figures to gauge the prevalence of small businesses in these categories.³⁶

19. The category of Satellite Telecommunications “comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”³⁷ For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year.³⁸ Of this total, 307 firms had annual receipts of under \$10 million, and 26 firms had receipts of \$10 million to \$24,999,999.³⁹ Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

20. The second category of All Other Telecommunications comprises, *inter alia*, “establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.”⁴⁰ For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year.⁴¹ Of this total, 303 firms had annual receipts of under \$10 million and 15 firms had annual receipts of \$10 million to \$24,999,999.⁴² Consequently, we estimate that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

21. **Wireless Telecommunications Carriers (except Satellite).** Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.⁴³ Prior to that time, such firms were within the now-superseded categories of “Paging” and “Cellular and Other Wireless Telecommunications.”⁴⁴ Under the present and prior categories, the SBA has deemed a wireless

³⁴ 13 C.F.R. § 121.201, NAICS code 517410.

³⁵ 13 C.F.R. § 121.201, NAICS code 517919.

³⁶ 13 C.F.R. § 121.201, NAICS codes 517410 and 517910 (2002).

³⁷ U.S. Census Bureau, 2007 NAICS Definitions, “517410 Satellite Telecommunications”; <http://www.census.gov/naics/2007/def/ND517410.HTM>.

³⁸ 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).

³⁹ *Id.* An additional 38 firms had annual receipts of \$25 million or more.

⁴⁰ U.S. Census Bureau, 2007 NAICS Definitions, “517919 All Other Telecommunications”; <http://www.census.gov/naics/2007/def/ND517919.HTM#N517919>.

⁴¹ 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).

⁴² *Id.* An additional 14 firms had annual receipts of \$25 million or more.

⁴³ U.S. Census Bureau, 2007 NAICS Definitions, “517210 Wireless Telecommunications Categories (Except Satellite)”; <http://www.census.gov/naics/2007/def/ND517210.HTM#N517210>.

⁴⁴ U.S. Census Bureau, 2002 NAICS Definitions, “517211 Paging”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>; U.S. Census Bureau, 2002 NAICS Definitions, “517212 Cellular and Other Wireless Telecommunications”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

business to be small if it has 1,500 or fewer employees.⁴⁵ For the category of Wireless Telecommunications Carriers (except Satellite), preliminary data for 2007 show that there was 11,927 firms operating that year.⁴⁶ While the Census Bureau has not released data on the establishments broken down by number of employees, we note that the Census Bureau lists total employment for all firms in that sector at 281,262.⁴⁷ Since all firms with fewer than 1,500 employees are considered small, given the total employment in the sector, we estimate that the vast majority of wireless firms are small.

22. **Auctions.** Initially, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

23. **Common Carrier Paging.** As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite) firms within the broad economic census categories of “Cellular and Other Wireless Telecommunications.”⁴⁸ Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.⁴⁹ Prior to that time, such firms were within the now-superseded categories of “Paging” and “Cellular and Other Wireless Telecommunications.”⁵⁰ Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.⁵¹ Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year.⁵² Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.⁵³ For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year.⁵⁴ Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of

⁴⁵ 13 C.F.R. § 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

⁴⁶ U.S. Census Bureau, 2007 Economic Census, Sector 51, EC075111 Information: Industry Series: Preliminary Summary Statistics for the United States: 2007, NAICS code 517210 (issued Oct. 20, 2009), factfinder.census.gov/servlet/IBQTable?_fds_name=EC0700A1&-clearIBQ=Y&-ds_name=EC075111&-NAICS2007=51721 (visited Mar. 2, 2011).

⁴⁷ *Id.*

⁴⁸ 13 C.F.R. § 121.201, NAICS code 517212.

⁴⁹ U.S. Census Bureau, 2007 NAICS Definitions, “517210 Wireless Telecommunications Categories (Except Satellite)”;
<http://www.census.gov/naics/2007/def/ND517210.HTM#N517210>.

⁵⁰ U.S. Census Bureau, 2002 NAICS Definitions, “517211 Paging”;
<http://www.census.gov/epcd/naics02/def/NDEF517.HTM>; U.S. Census Bureau, 2002 NAICS Definitions, “517212 Cellular and Other Wireless Telecommunications”;
<http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

⁵¹ 13 C.F.R. § 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

⁵² 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).

⁵³ *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.”

⁵⁴ 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).

1,000 employees or more.⁵⁵ Thus, we estimate that the majority of wireless firms are small.

24. 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.⁵⁶ 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.⁵⁷ The SBA has approved this definition.⁵⁸ An initial auction of Metropolitan Economic Area (“MEA”) licenses was conducted in the year 2000. Of the 2,499 licenses auctioned, 985 were sold.⁵⁹ Fifty-seven companies claiming small business status won 440 licenses.⁶⁰ A subsequent auction of MEA and Economic Area (“EA”) licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold.⁶¹ One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.⁶²

25. Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service*, 281 carriers reported that they were engaged in the provision of “paging and messaging” services.⁶³ Of these, an estimated 279 have 1,500 or fewer employees and two have more than 1,500 employees.⁶⁴ We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

26. **2.3 GHz Wireless Communications Services.** This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined “small business” for the wireless communications services (“WCS”) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of \$15 million for each of the three preceding years.⁶⁵ The SBA

⁵⁵ *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.”

⁵⁶ *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems*, Second Report and Order, 12 FCC Rcd 2732, 2811-2812, paras. 178-181 (“*Paging Second Report and Order*”); see also *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems*, Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 10030, 10085-10088, ¶¶ 98-107 (1999).

⁵⁷ *Paging Second Report and Order*, 12 FCC Rcd at 2811, ¶ 179.

⁵⁸ See Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau (“WTB”), FCC (Dec. 2, 1998) (“*Alvarez Letter 1998*”).

⁵⁹ See “*929 and 931 MHz Paging Auction Closes*,” Public Notice, 15 FCC Rcd 4858 (WTB 2000).

⁶⁰ See *id.*

⁶¹ See “*Lower and Upper Paging Band Auction Closes*,” Public Notice, 16 FCC Rcd 21821 (WTB 2002).

⁶² See “*Lower and Upper Paging Bands Auction Closes*,” Public Notice, 18 FCC Rcd 11154 (WTB 2003). The current number of small or very small business entities that hold wireless licenses may differ significantly from the number of such entities that won in spectrum auctions due to assignments and transfers of licenses in the secondary market over time. In addition, some of the same small business entities may have won licenses in more than one auction.

⁶³ “Trends in Telephone Service” at Table 5.3.

⁶⁴ *Id.*

⁶⁵ *Amendment of the Commission’s Rules to Establish Part 27, the Wireless Communications Service (WCS)*, Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

approved these definitions.⁶⁶ The Commission conducted an auction of geographic area licenses in the WCS service in 1997. In the auction, seven bidders that qualified as very small business entities won licenses, and one bidder that qualified as a small business entity won a license.

27. **1670-1675 MHz Services.** This service can be used for fixed and mobile uses, except aeronautical mobile.⁶⁷ An auction for one license in the 1670-1675 MHz band was conducted in 2003. The winning bidder was not a small entity.

28. **Wireless Telephony.** Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite).⁶⁸ Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.⁶⁹ According to *Trends in Telephone Service* data, 413 carriers reported that they were engaged in wireless telephony.⁷⁰ Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.⁷¹ Therefore, more than half of these entities can be considered small.

29. **Broadband Personal Communications Service.** The broadband personal communications services (“PCS”) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission initially defined a “small business” for C- and F-Block licenses as an entity that has average gross revenues of \$40 million or less in the three previous years.⁷² For Block F licenses, an additional small business size standard for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three years.⁷³ These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.⁷⁴ No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that claimed small business status in the first two C Block auctions.⁷⁵ A total of 93 bidders that claimed “small” and “very small” business status won licenses in the first auction of the D, E, and F Blocks.⁷⁶ In 1999, the Commission completed a subsequent auction of C, D, E, and F Block licenses.⁷⁷ Of the 57 winning bidders in that auction, 48 claimed small business status

⁶⁶ See *Alvarez Letter 1998*.

⁶⁷ 47 C.F.R. § 2.106; see generally 47 C.F.R. §§ 27.1–.70.

⁶⁸ 13 C.F.R. § 121.201, NAICS code 517210.

⁶⁹ *Id.*

⁷⁰ “Trends in Telephone Service” at Table 5.3.

⁷¹ *Id.*

⁷² See Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap et al., *Report and Order*, 11 FCC Rcd 7824, 7850–52, ¶¶ 57–60 (1996) (“*PCS Report and Order*”); see also 47 C.F.R. § 24.720(b).

⁷³ See *PCS Report and Order*, 11 FCC Rcd at 7852, para. 60.

⁷⁴ See *Alvarez Letter 1998*.

⁷⁵ See *Entrepreneurs’ C Block Auction Closes*, *Public Notice*, DA 96-716 (1996); *Entrepreneurs C Block Reauction Closes*, *Public Notice*, DA 96-1153 (1996).

⁷⁶ See *Broadband PCS, D, E and F Block Auction Closes*, *Public Notice*, Doc. No. 89838 (rel. Jan. 14, 1997).

⁷⁷ See *C, D, E, and F Block Broadband PCS Auction Closes*, *Public Notice*, 14 FCC Rcd 6688 (1999). Before Auction No. 22, the Commission established a very small standard for the C Block to match the standard used for F Block. Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, WT Docket No. 97-82, *Fourth Report and Order*, 13 FCC Rcd 15,743, 15,768 ¶ 46 (1998).

and won 277 licenses.⁷⁸

30. In 2001, the Commission completed the auction of 422 C and F Block Broadband PCS licenses (Auction 35). Of the 35 winning bidders in that auction, 29 claimed small or very small businesses status.⁷⁹ Subsequent events concerning that Auction, including judicial and agency determinations, resulted in only a portion of those C and F Block licenses being available for grant. The Commission completed an auction of 188 C Block licenses and 21 F Block licenses in 2005. Of the 24 winning bidders in that auction, 16 claimed small business status and won 156 licenses.⁸⁰ In 2007, the Commission completed an auction of licenses in the A, C, and F Blocks.⁸¹ Of the 12 winning bidders in that auction, five claimed small business status and won 18 licenses.⁸² Most recently, in 2008, the Commission completed the auction of C, D, E, and F Block Broadband PCS licenses.⁸³ Of the eight winning bidders for Broadband PCS licenses in that auction, six claimed small business status and won 14 licenses.⁸⁴

31. **Advanced Wireless Services.** In 2006, the Commission conducted its first auction of Advanced Wireless Services licenses in the 1710-1755 MHz and 2110-2155 MHz bands (“AWS-1”), designated as Auction 66.⁸⁵ For the AWS-1 bands, the Commission has defined a “small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$40 million, and a “very small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$15 million.⁸⁶ In Auction 66, 31 winning bidders identified themselves as very small businesses and won 142 licenses.⁸⁷ Twenty-six of the winning bidders identified themselves as small businesses and won 73 licenses.⁸⁸ In a subsequent 2008 auction, the Commission offered 35 AWS-1 licenses.⁸⁹ Four winning bidders identifying themselves as very small businesses won 17 licenses, and

⁷⁸ See C, D, E, and F Block Broadband PCS Auction Closes, *Public Notice*, 14 FCC Rcd 6688 (1999).

⁷⁹ See “C and F Block Broadband PCS Auction Closes; Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 2339 (2001).

⁸⁰ See “Broadband PCS Spectrum Auction Closes; Winning Bidders Announced for Auction No. 58,” *Public Notice*, 20 FCC Rcd 3703 (2005).

⁸¹ See “Auction of Broadband PCS Spectrum Licenses Closes; Winning Bidders Announced for Auction No. 71,” *Public Notice*, 22 FCC Rcd 9247 (2007).

⁸² *Id.*

⁸³ See Auction of AWS-1 and Broadband PCS Licenses Closes; Winning Bidders Announced for Auction 78, *Public Notice*, 23 FCC Rcd 12,749 (2008).

⁸⁴ *Id.*

⁸⁵ See Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 66, AU Docket No. 06-30, *Public Notice*, 21 FCC Rcd 4562 (2006) (“*Auction 66 Procedures Public Notice*”);

⁸⁶ See Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, *Report and Order*, 18 FCC Rcd 25,162, App. B (2003), *modified by* Service Rules for Advanced Wireless Services In the 1.7 GHz and 2.1 GHz Bands, *Order on Reconsideration*, 20 FCC Rcd 14,058, App. C (2005).

⁸⁷ See Auction of Advanced Wireless Services Licenses Closes; Winning Bidders Announced for Auction No. 66, *Public Notice*, 21 FCC Rcd 10,521 (2006) (“*Auction 66 Closing Public Notice*”)

⁸⁸ *See id.*

⁸⁹ See *AWS-1 and Broadband PCS Procedures Public Notice*, 23 FCC Rcd at 7499. Auction 78 also included an auction of broadband PCS licenses.

three winning bidders identifying themselves as a small business won five AWS-1 licenses.⁹⁰

32. **Narrowband Personal Communications Services.** In 1994, the Commission conducted two auctions of Narrowband PCS licenses. For these auctions, the Commission defined a “small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$40 million.⁹¹ Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses.⁹² 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*.⁹³ 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.⁹⁴ 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.⁹⁵ The SBA has approved these small business size standards.⁹⁶ A third auction of Narrowband PCS licenses was conducted in 2001. In that auction, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses.⁹⁷ Three of the winning bidders claimed status as a small or very small entity and won 311 licenses.

33. **Lower 700 MHz Band Licenses.** The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.⁹⁸ The Commission defined a “small business” as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.⁹⁹ 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.¹⁰⁰ Additionally, the Lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area (“MSA/RSA”) licenses —“entrepreneur”— which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues

⁹⁰ See “Auction of AWS-1 and Broadband PCS Licenses Closes, Winning Bidders Announced for Auction 78, Down Payments Due September 9, 2008, FCC Forms 601 and 602 Due September 9, 2008, Final Payments Due September 23, 2008, Ten-Day Petition to Deny Period”, *Public Notice*, 23 FCC Rcd 12749-65 (2008).

⁹¹ *Implementation of Section 309(j) of the Communications Act – Competitive Bidding Narrowband PCS*, Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 10 FCC Rcd 175, 196, para. 46 (1994).

⁹² 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).

⁹³ *Amendment of the Commission’s Rules to Establish New Personal Communications Services, Narrowband PCS*, Second Report and Order and Second Further Notice of Proposed Rule Making, 15 FCC Rcd 10456, 10476, para. 40 (2000) (“*Narrowband PCS Second Report and Order*”).

⁹⁴ *Narrowband PCS Second Report and Order*, 15 FCC Rcd at 10476, para. 40.

⁹⁵ *Id.*

⁹⁶ See *Alvarez Letter 1998*.

⁹⁷ See “Narrowband PCS Auction Closes,” *Public Notice*, 16 FCC Rcd 18663 (WTB 2001).

⁹⁸ See *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, Report and Order, 17 FCC Rcd 1022 (2002) (“*Channels 52-59 Report and Order*”).

⁹⁹ See *Channels 52-59 Report and Order*, 17 FCC Rcd at 1087-88, ¶ 172.

¹⁰⁰ See *id.*

that are not more than \$3 million for the preceding three years.¹⁰¹ The SBA approved these small size standards.¹⁰² An auction of 740 licenses was conducted in 2002 (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)). Of the 740 licenses available for auction, 484 licenses were won by 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business, or entrepreneur status and won a total of 329 licenses.¹⁰³ A second auction commenced on May 28, 2003, closed on June 13, 2003, and included 256 licenses.¹⁰⁴ 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.¹⁰⁵ In 2005, the Commission completed an auction of 5 licenses in the lower 700 MHz band (Auction 60). All three winning bidders claimed small business status.

34. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order*.¹⁰⁶ An auction of A, B and E block licenses in the Lower 700 MHz band was held in 2008.¹⁰⁷ Twenty winning bidders claimed small business status (those with attributable average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years). Thirty three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed \$15 million for the preceding three years).

35. **Upper 700 MHz Band Licenses.** In the *700 MHz Second Report and Order*, the Commission revised its rules regarding Upper 700 MHz band licenses.¹⁰⁸ In 2008, the Commission conducted Auction 73 in which C and D block licenses in the Upper 700 MHz band were available.¹⁰⁹ Three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed \$15 million for the preceding three years).

36. **700 MHz Guard Band Licenses.** In 2000, the Commission adopted the *700 MHz Guard Band Report and Order*, in which it established rules for the A and B block licenses in the Upper 700 MHz band, including size standards for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits.¹¹⁰ A small business in this

¹⁰¹ See *id.*, 17 FCC Rcd at 1088, ¶ 173.

¹⁰² See Letter from Aida Alvarez, Administrator, SBA, to Thomas Sugrue, Chief, WTB, FCC (Aug. 10, 1999) (“*Alvarez Letter 1999*”).

¹⁰³ See “Lower 700 MHz Band Auction Closes,” *Public Notice*, 17 FCC Rcd 17272 (WTB 2002).

¹⁰⁴ See Lower 700 MHz Band Auction Closes, *Public Notice*, 18 FCC Rcd 11,873 (WTB 2003).

¹⁰⁵ See *id.*

¹⁰⁶ Service Rules for the 698-746, 747-762 and 777-792 MHz Band, WT Docket No. 06-150, *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephone, WT Docket No. 01-309, *Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services*, WT Docket No. 03-264, *Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission’s Rules*, WT Docket No. 06-169, *Implementing a Nationwide, Broadband Interoperable Public Safety Network in the 700 MHz Band*, PS Docket No. 06-229, *Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State, and Local Public Safety Communications Requirements Through the Year 2010*, WT Docket No. 96-86, *Second Report and Order*, 22 FCC Rcd 15289 (2007) (“*700 MHz Second Report and Order*”).

¹⁰⁷ See Auction of 700 MHz Band Licenses Closes, *Public Notice*, 23 FCC Rcd 4572 (WTB 2008).

¹⁰⁸ 700 MHz Second Report and Order, 22 FCC Rcd 15,289.

¹⁰⁹ See Auction of 700 MHz Band Licenses Closes, *Public Notice*, 23 FCC Rcd 4572 (2008).

¹¹⁰ See *Service Rules for the 746-764 MHz Bands, and Revisions to Part 27 of the Commission’s Rules*, Second Report and Order, 15 FCC Rcd 5299 (2000) (“*700 MHz Guard Band Report and Order*”).

service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.¹¹¹ 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.¹¹² SBA approval of these definitions is not required.¹¹³ An auction of these licenses was conducted in 2000.¹¹⁴ Of the 104 licenses auctioned, 96 licenses were won by nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses was held in 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business.¹¹⁵

37. **Specialized Mobile Radio.** The Commission adopted small business size standards for the purpose of determining eligibility for bidding credits in auctions of Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands. The Commission defined a “small business” as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.¹¹⁶ The Commission defined a “very small business” as an entity that together with its affiliates and controlling principals, has average gross revenues not exceeding \$3 million for the preceding three years.¹¹⁷ The SBA has approved these small business size standards for both the 800 MHz and 900 MHz SMR Service.¹¹⁸ The first 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 licenses in the 900 MHz SMR band. In 2004, the Commission held a second auction of 900 MHz SMR licenses and three winning bidders identifying themselves as very small businesses won 7 licenses.¹¹⁹ The auction of 800 MHz SMR licenses for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small or very small businesses under the \$15 million size standard won 38 licenses for the upper 200 channels.¹²⁰ A second auction of 800 MHz SMR licenses was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.¹²¹

38. The auction of the 1,053 800 MHz SMR licenses for the General Category channels was conducted in 2000. Eleven bidders who won 108 licenses for the General Category

¹¹¹ See *700 MHz Guard Band Report and Order*, 15 FCC Rcd at 5343, para. 108.

¹¹² See *id.*

¹¹³ See *id.*, 15 FCC Rcd 5299, 5343, para. 108 n.246 (for the 746-764 MHz and 776-794 MHz bands, the Commission is exempt from 15 U.S.C. § 632, which requires Federal agencies to obtain SBA approval before adopting small business size standards).

¹¹⁴ See “700 MHz Guard Bands Auction Closes: Winning Bidders Announced,” *Public Notice*, 15 FCC Rcd 18026 (2000).

¹¹⁵ See “700 MHz Guard Bands Auction Closes: Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 4590 (WTB 2001).

¹¹⁶ 47 C.F.R. §§ 90.810, 90.814(b), 90.912.

¹¹⁷ 47 C.F.R. §§ 90.810, 90.814(b), 90.912.

¹¹⁸ See *Alvarez Letter 1999*.

¹¹⁹ See 900 MHz Specialized Mobile Radio Service Spectrum Auction Closes: Winning Bidders Announced,” *Public Notice*, 19 FCC Rcd. 3921 (WTB 2004).

¹²⁰ 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).

¹²¹ See “Multi-Radio Service Auction Closes,” *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

channels in the 800 MHz SMR band qualified as small or very small businesses.¹²² In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded.¹²³ Of the 22 winning bidders, 19 claimed small or very small business status and won 129 licenses. Thus, combining all three auctions, 41 winning bidders for geographic licenses in the 800 MHz SMR band claimed to be small businesses.

39. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues not exceeding \$15 million. One firm has over \$15 million in revenues. In addition, we do not know how many of these firms have 1500 or fewer employees.¹²⁴ 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.

40. **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 Wireless Telecommunications Carriers (except Satellite).¹²⁵ This category provides that a small business is a wireless company employing no more than 1,500 persons.¹²⁶ The Commission estimates that most such licensees are small businesses under the SBA’s small business standard.

41. **220 MHz Radio Service – Phase II Licensees.** The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service licenses are assigned by auction, where mutually exclusive applications are accepted. In the *220 MHz Third Report and Order*, the Commission adopted small business size standards for defining “small” and “very small” businesses for the purpose of determining their eligibility for special provisions such as bidding credits, which are discounts on a winning bids.¹²⁷ that the Commission defined a “small business” as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.¹²⁸ The Commission defined a “very small business” 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.¹²⁹ The SBA has approved these small size standards.¹³⁰ The first auction of

¹²² 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).

¹²³ See, “800 MHz SMR Service Lower 80 Channels Auction Closes; Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 1736 (2000).

¹²⁴ See generally 13 C.F.R. § 121.201, NAICS code 517210.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Amendment of Part 90 of the Commission’s Rules to Provide For the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service*, Third Report and Order, 12 FCC Rcd 10943, 11068-70, paras. 291-295 (1997).

¹²⁸ *Id.* at 11068, para. 291.

¹²⁹ *Id.*

¹³⁰ See Letter from Aida Alvarez, Administrator, SBA, to Daniel Phythyon, Chief, WTB, FCC (Jan. 6, 1998) (“*Alvarez to Phythyon Letter 1998*”).

Phase II licenses was conducted in 1998.¹³¹ In that auction, 908 licenses were offered 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.¹³² Thirty-nine small or very small businesses won 373 licenses in the first 220 MHz auction. A second auction in 1999 offered 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming very small business status won 158 licenses.¹³³ 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.¹³⁴ In 2007, the Commission conducted a fourth auction of the 220 MHz licenses, designated as Auction 72.¹³⁵ Auction 72 offered 94 Phase II 220 MHz Service licenses.¹³⁶ In this auction, five winning bidders won a total of 76 licenses.¹³⁷ Two winning bidders that identified themselves as very small businesses won 56 of the 76 licenses. One winning bidder that identified itself as a small business won 5 licenses.

42. **Private Land Mobile Radio (“PLMR”).** PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee’s primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we use the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons.¹³⁸ 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.¹³⁹

43. As of March 2010, there were 424,162 PLMR licensees operating 921,909 transmitters in the PLMR bands below 512 MHz. We note that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

44. **Fixed Microwave Services.** Fixed microwave services include common carrier,¹⁴⁰ private operational-fixed,¹⁴¹ and broadcast auxiliary radio services.¹⁴² At present, there are

¹³¹ See generally “220 MHz Service Auction Closes,” *Public Notice*, 14 FCC Rcd 605 (1998).

¹³² 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).

¹³³ See “Phase II 220 MHz Service Spectrum Auction Closes,” *Public Notice*, 14 FCC Rcd 11218 (1999).

¹³⁴ See “Multi-Radio Service Auction Closes,” *Public Notice*, 17 FCC Rcd 1446 (2002).

¹³⁵ See “Auction of Phase II 220 MHz Service Spectrum Scheduled for June 20, 2007, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction 72,” *Public Notice*, 22 FCC Rcd 3404 (2007).

¹³⁶ *Id.*

¹³⁷ See “Auction of Phase II 220 MHz Service Spectrum Licenses Closes, Winning Bidders Announced for Auction 72, Down Payments due July 18, 2007, FCC Forms 601 and 602 due July 18, 2007, Final Payments due August 1, 2007, Ten-Day Petition to Deny Period,” *Public Notice*, 22 FCC Rcd 11573 (2007).

¹³⁸ See 13 C.F.R. § 121.201, NAICS code 517210.

¹³⁹ See generally 13 C.F.R. § 121.201.

¹⁴⁰ See 47 C.F.R. §§ 101 *et seq.* for common carrier fixed microwave services (except Multipoint Distribution Service).

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 Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees.¹⁴³ 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 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.

45. **39 GHz Service.** The Commission adopted small business size standards for 39 GHz licenses. A "small business" is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million in the preceding three years.¹⁴⁴ A "very small business" is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues of not more than \$15 million for the preceding three years.¹⁴⁵ The SBA has approved these small business size standards.¹⁴⁶ In 2000, the Commission conducted an auction of 2,173, 39 GHz licenses. A total of 18 bidders who claimed small or very small business status won 849 licenses.

46. **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.¹⁴⁷ The Commission established small business size standards for LMDS licenses. It defined a "small business" as an entity that has average gross revenues of not more than \$40 million in the three preceding years and defined a "very small business" as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the three preceding years.¹⁴⁸ The SBA

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¹⁴¹ 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.

¹⁴² 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.

¹⁴³ 13 C.F.R. § 121.201, NAICS code 517210.

¹⁴⁴ 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).

¹⁴⁵ *Id.*

¹⁴⁶ See Letter from Aida Alvarez, Administrator, SBA, to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, WTB, FCC (Feb. 4, 1998); see Letter from Hector Barreto, Administrator, SBA, to Margaret Wiener, Chief, Auctions and Industry Analysis Division, WTB, FCC (Jan. 18, 2002).

¹⁴⁷ 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 GHz 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) ("*LMDS Second Report and Order*").

¹⁴⁸ See *LMDS Second Report and Order*, 12 FCC Rcd at 12689-90, ¶ 348.

approved these small business size standards for auctions of LMDS licenses.¹⁴⁹ In 1998, an auction of 986 LMDS licenses was conducted. A total of 93 winning bidders that qualified as small or very small businesses won approximately 664 licenses. In 1999, the Commission conducted an auction of 161 LMDS licenses, and in this auction, 32 small and very small businesses won 119 licenses.

47. **218-219 MHz Service.** The first auction of 218-219 MHz Service (previously referred to as the Interactive and Video Data Service or IVDS) licenses resulted in 178 entities winning licenses for 594 Metropolitan Statistical Areas (“MSAs”).¹⁵⁰ Of the 594 licenses, 567 were won by 167 entities qualifying as a small business. For that auction, the Commission defined a small business as an entity that, together with its affiliates, has no more than a \$6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than \$2 million in annual profits each year for the previous two years.¹⁵¹ In the *218-219 MHz Report and Order and Memorandum Opinion and Order*, the Commission revised its small business size standards for the 218-219 MHz Service and defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not exceeding \$15 million for the preceding three years.¹⁵² The Commission defined a very small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not exceeding \$3 million for the preceding three years.¹⁵³ The SBA has approved these definitions.¹⁵⁴

48. **Location and Monitoring Service (“LMS”).** Multilateration LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For auctions of LMS licenses, the Commission has defined a “small business” as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$15 million.¹⁵⁵ 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.¹⁵⁶ These definitions have been approved by the SBA.¹⁵⁷ An auction of LMS licenses was conducted in 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses.

49. **Rural Radiotelephone Service.** The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.¹⁵⁸ A significant subset of the Rural

¹⁴⁹ See Alvarez to Phythyon Letter 1998.

¹⁵⁰ See “Interactive Video and Data Service (IVDS) Applications Accepted for Filing,” Public Notice, 9 FCC Rcd 6227 (1994).

¹⁵¹ *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Fourth Report and Order, 9 FCC Rcd 2330 (1994).

¹⁵² *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).

¹⁵³ *Id.*

¹⁵⁴ See Alvarez to Phythyon Letter 1998.

¹⁵⁵ *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) (“*Automatic Vehicle Monitoring Systems Second Report and Order*”); see also 47 C.F.R. § 90.1103.

¹⁵⁶ *Automatic Vehicle Monitoring Systems Second Report and Order*, 13 FCC Rcd at 15192, para. 20; see also 47 C.F.R. § 90.1103.

¹⁵⁷ See Alvarez Letter 1998.

¹⁵⁸ The service is defined in § 22.99 of the Commission’s Rules, 47 C.F.R. § 22.99.

Radiotelephone Service is the Basic Exchange Telephone Radio System (“BETRS”).¹⁵⁹ In the present context, we will use the SBA’s small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.*, an entity employing no more than 1,500 persons.¹⁶⁰ 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 our action.

50. **Air-Ground Radiotelephone Service.**¹⁶¹ The Commission has previously used the SBA’s small business definition applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.*, an entity employing no more than 1,500 persons.¹⁶² 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.¹⁶³ 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.¹⁶⁴ These definitions were approved by the SBA.¹⁶⁵ In 2006, the Commission completed an auction of nationwide commercial Air-Ground Radiotelephone Service licenses in the 800 MHz band (Auction 65). The auction closed with two winning bidders winning two Air-Ground Radiotelephone Services licenses. Neither of the winning bidders claimed small business status.

51. **Aviation and Marine Radio Services.** There are approximately 26,162 aviation, 34,555 marine (ship), and 3,296 marine (coast) licensees.¹⁶⁶ The Commission has not developed a small business size standard specifically applicable to all licensees. For purposes of this analysis, we will use the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees.¹⁶⁷ We are unable to determine how many of those licensed fall under this standard. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 62,969 licensees that are small businesses under the SBA standard.¹⁶⁸ In 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875-157.4500 MHz (ship

¹⁵⁹ BETRS is defined in §§ 22.757 and 22.759 of the Commission’s Rules, 47 C.F.R. §§ 22.757 and 22.759.

¹⁶⁰ 13 C.F.R. § 121.201, NAICS code 517210.

¹⁶¹ The service is defined in § 22.99 of the Commission’s Rules, 47 C.F.R. § 22.99.

¹⁶² 13 C.F.R. § 121.201, NAICS codes 517210.

¹⁶³ *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).

¹⁶⁴ *Id.*

¹⁶⁵ See Letter from Hector V. Barreto, Administrator, SBA, to Gary D. Michaels, Deputy Chief, Auctions and Spectrum Access Division, WTB, FCC (Sept. 19, 2005).

¹⁶⁶ Vessels that are not required by law to carry a radio and do not make international voyages or communications are not required to obtain an individual license. See Amendment of Parts 80 and 87 of the Commission’s Rules to Permit Operation of Certain Domestic Ship and Aircraft Radio Stations Without Individual Licenses, *Report and Order*, WT Docket No. 96-82, 11 FCC Rcd 14849 (1996).

¹⁶⁷ 13 C.F.R. § 121.201, NAICS code 517210.

¹⁶⁸ A licensee may have a license in more than one category.

transmit) and 161.775-162.0125 MHz (coast transmit) bands. For VHF Public Coast licenses, 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 exceeding \$15 million dollars. In addition, it defined a “very small” business as one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not exceeding \$3 million dollars.¹⁶⁹ The Commission also made available Automated Maritime Telecommunications System (“AMTS”) licenses in Auctions 57 and 61.¹⁷⁰ Winning bidders could claim status as a very small business or a very small business. For AMTS, the Commission defined a very small business as an entity with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years, and defined a small business as an entity with attributed average annual gross revenues not exceeding \$15 million for the preceding three years.¹⁷¹ Three of the winning bidders in Auction 57 qualified as small or very small businesses, and three winning bidders in Auction 61 qualified as very small businesses.

52. **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 states bordering the Gulf of Mexico.¹⁷² There is presently 1 licensee in this service. We do not have information whether that licensee would qualify as small under the SBA’s small business size standard for Wireless Telecommunications Carriers (except Satellite) services.¹⁷³ Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.¹⁷⁴

53. **Multiple Address Systems (“MAS”).** Entities using MAS spectrum, in general, fall into two categories: (1) those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses. The Commission defines a small business for MAS licenses as an entity that has average gross revenues of less than \$15 million in the preceding three calendar years.¹⁷⁵ A very small business is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$3 million for the preceding three calendar years.¹⁷⁶ The SBA has approved these definitions.¹⁷⁷ The majority of these entities will most likely be licensed in bands where the Commission has implemented a geographic area licensing approach that would require the use of competitive bidding procedures to resolve mutually exclusive applications. The Commission’s licensing database indicates that, as of March 5, 2010, there were over 11,500 MAS station authorizations. In 2001, an auction of 5,104 MAS licenses in 176 EAs was conducted in 2001.¹⁷⁸ Seven winning bidders claimed status as

¹⁶⁹ *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).

¹⁷⁰ See “*Automated Maritime Telecommunications System Spectrum Auction Scheduled for September 15, 2004, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures*,” Public Notice, 19 FCC Rcd 9518 (WTB 2004); “*Auction of Automated Maritime Telecommunications System Licenses Scheduled for August 3, 2005, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures for Auction No. 61*,” Public Notice, 20 FCC Rcd 7811 (WTB 2005).

¹⁷¹ 47 C.F.R. § 80.1252.

¹⁷² This service is governed by Subpart I of Part 22 of the Commission’s Rules. See 47 C.F.R. §§ 22.1001-22.1037.

¹⁷³ 13 C.F.R. § 121.201, NAICS code 517210.

¹⁷⁴ *Id.*

¹⁷⁵ See *Amendment of the Commission’s Rules Regarding Multiple Address Systems*, Report and Order, 15 FCC Rcd 11956, 12008, ¶ 123 (2000).

¹⁷⁶ *Id.*

¹⁷⁷ See *Alvarez Letter 1999*.

¹⁷⁸ See “*Multiple Address Systems Spectrum Auction Closes*,” Public Notice, 16 FCC Rcd 21011 (2001).

small or very small businesses and won 611 licenses. In 2005, the Commission completed an auction (Auction 59) of 4,226 MAS licenses in the Fixed Microwave Services from the 928/959 and 932/941 MHz bands. Twenty-six winning bidders won a total of 2,323 licenses. Of the 26 winning bidders in this auction, five claimed small business status and won 1,891 licenses.

54. With respect to entities that use, or seek to use, MAS spectrum to accommodate internal communications needs, we note that MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. For the majority of private internal users, the small business size standard developed by the SBA would be more appropriate. The applicable size standard in this instance appears to be that of Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons.¹⁷⁹ 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.

55. **1.4 GHz Band Licensees.** The Commission conducted an auction of 64 1.4 GHz band licenses in the paired 1392-1395 MHz and 1432-1435 MHz bands, and in the unpaired 1390-1392 MHz band in 2007.¹⁸⁰ For these licenses, the Commission defined "small business" as an entity that, together with its affiliates and controlling interests, had average gross revenues not exceeding \$40 million for the preceding three years, and a "very small business" as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding \$15 million for the preceding three years.¹⁸¹ Neither of the two winning bidders claimed small business status.¹⁸²

56. **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 Wireless Telecommunications Carriers (except Satellite). This category provides that such a company is small if it employs no more than 1,500 persons.¹⁸³ The 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, Teligent¹⁸⁴ 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.

57. **Future 24 GHz Licensees.** With respect to new applicants for licenses in the 24 GHz band, for the purpose of determining eligibility for bidding credits, the Commission established three small business definitions. An "entrepreneur" is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding \$40 million.¹⁸⁵ A "small business" is defined as an entity that, together with controlling interests and

¹⁷⁹ See 13 C.F.R. § 121.201, NAICS code 517210.

¹⁸⁰ See "Auction of 1.4 GHz Bands Licenses Scheduled for February 7, 2007," Public Notice, 21 FCC Rcd 12393 (WTB 2006); "Auction of 1.4 GHz Band Licenses Closes; Winning Bidders Announced for Auction No. 69," Public Notice, 22 FCC Rcd 4714 (2007) ("Auction No. 69 Closing PN").

¹⁸¹ Auction No. 69 Closing PN, Attachment C.

¹⁸² See Auction No. 69 Closing PN.

¹⁸³ 13 C.F.R. § 121.201, NAICS code 517210.

¹⁸⁴ 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.

¹⁸⁵ *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)(3).

affiliates, has average annual gross revenues for the three preceding years not exceeding \$15 million.¹⁸⁶ A “very small business” in the 24 GHz band is defined as an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding \$3 million for the preceding three years.¹⁸⁷ The SBA has approved these definitions.¹⁸⁸ In a 2004 auction of 24 GHz licenses, three winning bidders won seven licenses. Two of the winning bidders were very small businesses that won five licenses.

58. **Broadband Radio Service and Educational Broadband Service.** Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (“MDS”) and Multichannel Multipoint Distribution Service (“MMDS”) systems, and “wireless cable,” transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (“BRS”) and Educational Broadband Service (“EBS”) (previously referred to as the Instructional Television Fixed Service (“ITFS”).¹⁸⁹ In connection with the 1996 BRS auction, the Commission established a size standard that defined a “small business” as an entity that had annual average gross revenues of no more than \$40 million in the preceding three years.¹⁹⁰ The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (“BTAs”). Of the 67 winning bidders, 61 met the definition of a small business. At this time, we estimate that of the 61 small businesses that won BRS licenses in the 1996 auction, 48 remain small business licensees. BRS also includes licensees of stations authorized prior to the 1996 auction. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities.¹⁹¹ In 2008, the Commission adopted three small business definitions for BRS, for the purpose of determining eligibility for bidding credits. A “small business” is defined as an entity with attributed average annual gross revenues that do not exceed \$40 million for the preceding three years. A “very small business” is defined as an entity with attributed average annual gross revenues that do not exceed \$15 million for the preceding three years. An “entrepreneur” is defined as an entity with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years.¹⁹² In 2009, the Commission conducted Auction 86, which offered 78 BRS licenses.¹⁹³ Auction 86 concluded with the sale of 61 licenses.¹⁹⁴ Of the ten winning bidders,

¹⁸⁶ *24 GHz Report and Order*, 15 FCC Rcd at 16967 ¶ 77; see also 47 C.F.R. § 101.538(a)(2).

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

¹⁸⁸ See Letter from Gary M. Jackson, Assistant Administrator, SBA, to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, WTb, FCC (July 28, 2000).

¹⁸⁹ *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) (“*MDS Auction R&O*”).

¹⁹⁰ 47 C.F.R. § 21.961(b)(1).

¹⁹¹ 47 U.S.C. § 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA’s small business size standard.

¹⁹² *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, Fourth Memorandum Opinion and Order and Second Further Notice of Proposed Rulemaking, 23 FCC Rcd 5992, 6007 ¶ 28 (2008) (“*BRS/EBS 4th MO&O & 2nd FNPRM*”).

¹⁹³ Auction of Broadband Radio Service (BRS) Licenses, Scheduled for October 27, 2009, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 86, *Public Notice*, 24 FCC Rcd 8277 (2009).

three bidders that claimed small business status won 7 licenses, and two bidders that claimed entrepreneur status won six licenses. After adding the number of small businesses that won licenses in the Commission's BRS auctions to the approximately 392 incumbent BRS licensees who are considered small entities, we estimate that there are currently approximately 445 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules.

59. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities.¹⁹⁵ Thus, we estimate that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies."¹⁹⁶ The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having \$13.5 million or less in annual receipts.¹⁹⁷ According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year.¹⁹⁸ 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.¹⁹⁹ Thus, the majority of these firms can be considered small.

60. **Television Broadcasting.** This Economic Census category "comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public."²⁰⁰ The SBA has created the following small business size standard for Television Broadcasting firms: those having \$14 million or less in annual receipts.²⁰¹ The Commission has estimated the number of licensed commercial television stations to be 1,392.²⁰² In addition, according to

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¹⁹⁴ Auction of Broadband Radio Service Licenses Closes, Winning Bidders Announced for Auction 86, Down Payments Due November 23, 2009, Final Payments Due December 8, 2009, Ten-Day Petition to Deny Period, *Public Notice*, 24 FCC Rcd 13572 (2009).

¹⁹⁵ 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.

¹⁹⁶ U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition); <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

¹⁹⁷ 13 C.F.R. § 121.201, NAICS code 517110.

¹⁹⁸ 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 November 2005).

¹⁹⁹ *Id.* An additional 61 firms had annual receipts of \$25 million or more.

²⁰⁰ U.S. Census Bureau, 2007 NAICS Definitions, "515120 Television Broadcasting" (partial definition); <http://www.census.gov/naics/2007/def/ND515120.HTM#N515120>.

²⁰¹ 13 C.F.R. § 121.201, NAICS code 515120 (updated for inflation in 2008).

²⁰² See *FCC News Release*, "Broadcast Station Totals as of September 30, 2010," dated October 22, 2010; http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC-280836A1.pdf.

Commission staff review of the BIA Publications, Inc., Master Access Television Analyzer Database (BIA) on March 30, 2007, about 986 of an estimated 1,395 commercial television stations (or approximately 72 percent) had revenues of \$13 million or less.²⁰³ We therefore estimate that the majority of commercial television broadcasters are small entities.

61. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations²⁰⁴ must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of “small business” is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

62. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 391.²⁰⁵ These stations are non-profit, and therefore considered to be small entities.²⁰⁶

63. In addition, there are also 2,387 low power television stations (LPTV).²⁰⁷ 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.

64. **Radio Broadcasting.** This Economic Census category “comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources.”²⁰⁸ The SBA has established a small business size standard for this category, which is: such firms having \$7 million or less in annual receipts.²⁰⁹ According to Commission staff review of BIA Publications, Inc.’s *Master Access Radio Analyzer Database* on March 31, 2005, about 10,840 (95%) of 11,410 commercial radio stations had revenues of \$6 million or less. Therefore, the majority of such entities are small entities.

65. We note, however, that in assessing whether a business concern qualifies as small under the above size standard, business affiliations must be included.²¹⁰ In addition, to be determined to be a “small business,” the entity may not be dominant in its field of operation.²¹¹ We note that it is

²⁰³ We recognize that BIA’s estimate differs slightly from the FCC total given *supra*.

²⁰⁴ “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both.” 13 C.F.R. § 21.103(a)(1).

²⁰⁵ See *FCC News Release*, “Broadcast Station Totals as of September 30, 2010,” dated October 22, 2010; http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC-280836A1.pdf.

²⁰⁶ See generally 5 U.S.C. §§ 601(4), (6).

²⁰⁷ See *FCC News Release*, “Broadcast Station Totals as of September 30, 2010,” dated October 22, 2010; http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC-280836A1.pdf.

²⁰⁸ U.S. Census Bureau, 2007 NAICS Definitions, “515112 Radio Stations”; <http://www.census.gov/naics/2007/def/ND515112.HTM#N515112>.

²⁰⁹ 13 C.F.R. § 121.201, NAICS code 515112 (updated for inflation in 2008).

²¹⁰ “Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists.” 13 C.F.R. § 121.103(a)(1) (an SBA regulation).

²¹¹ 13 C.F.R. § 121.102(b) (an SBA regulation).

difficult at times to assess these criteria in the context of media entities, and our estimate of small businesses may therefore be over-inclusive.

66. **Auxiliary, Special Broadcast and Other Program Distribution Services.** This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. The applicable definitions of small entities are those, noted previously, under the SBA rules applicable to radio broadcasting stations and television broadcasting stations.²¹²

67. The Commission estimates that there are approximately 5,618 FM translators and boosters.²¹³ The Commission does not collect financial information on any broadcast facility, and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most commercial translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (\$7.0 million for a radio station or \$14.0 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a "small business concern" because they are not independently owned and operated.²¹⁴

68. **Cable Television Distribution Services.** Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies."²¹⁵ The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having \$13.5 million or less in annual receipts.²¹⁶ According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year.²¹⁷ 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.²¹⁸ Thus, the majority of these firms can be considered small.

69. **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

²¹² 13 C.F.R. 121.201, NAICS codes 515112 and 515120.

²¹³ See *supra* note 294.

²¹⁴ See 15 U.S.C. § 632.

²¹⁵ U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition); <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

²¹⁶ 13 C.F.R. § 121.201, NAICS code 517110.

²¹⁷ 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 November 2005).

²¹⁸ *Id.* An additional 61 firms had annual receipts of \$25 million or more.

“small cable company” is one serving 400,000 or fewer subscribers, nationwide.²¹⁹ Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.²²⁰ In addition, under the Commission’s rules, a “small system” is a cable system serving 15,000 or fewer subscribers.²²¹ Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have under 10,000 subscribers, and an additional 302 systems have 10,000-19,999 subscribers.²²² Thus, under this second size standard, most cable systems are small.

70. **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.”²²³ The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.²²⁴ Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.²²⁵ 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,²²⁶ and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

71. **Open Video Systems.** The open video system (“OVS”) framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers.²²⁷ The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,²²⁸ OVS falls within the SBA small business size standard covering cable services,

²¹⁹ 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).

²²⁰ 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.

²²¹ 47 C.F.R. § 76.901(c).

²²² Warren Communications News, *Television & Cable Factbook 2008*, “U.S. Cable Systems by Subscriber Size,” page F-2 (data current as of Oct. 2007). The data do not include 851 systems for which classifying data were not available.

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

²²⁴ 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).

²²⁵ 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.

²²⁶ 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).

²²⁷ 47 U.S.C. § 571(a)(3)-(4). See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Thirteenth Annual Report*, 24 FCC Rcd 542, 606 ¶ 135 (2009) (“*Thirteenth Annual Cable Competition Report*”).

²²⁸ See 47 U.S.C. § 573.

which is “Wired Telecommunications Carriers.”²²⁹ The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for such services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having \$13.5 million or less in annual receipts.²³⁰ According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year.²³¹ 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.²³² Thus, the majority of cable firms can be considered small. In addition, we note that the Commission has certified some OVS operators, with some now providing service.²³³ Broadband service providers (“BSPs”) are currently the only significant holders of OVS certifications or local OVS franchises.²³⁴ The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

72. **Cable Television Relay Service.** This service includes transmitters generally used to relay cable programming within cable television system distribution systems. This cable service is defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.”²³⁵ The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having \$13.5 million or less in annual receipts.²³⁶ According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year.²³⁷ 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.²³⁸ Thus, the majority of these firms can be considered small.

73. **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

²²⁹ U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers”; <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

²³⁰ 13 C.F.R. § 121.201, NAICS code 517110.

²³¹ 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 November 2005).

²³² *Id.* An additional 61 firms had annual receipts of \$25 million or more.

²³³ A list of OVS certifications may be found at <http://www.fcc.gov/mb/ovs/csovscer.html>.

²³⁴ See *Thirteenth Annual Cable Competition Report*, 24 FCC Rcd at 606-07 ¶ 135. BSPs are newer firms that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

²³⁵ U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers” (partial definition); <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

²³⁶ 13 C.F.R. § 121.201, NAICS code 517110.

²³⁷ 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 November 2005).

²³⁸ *Id.* An additional 61 firms had annual receipts of \$25 million or more.

defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. It defines a very small business as an entity with average annual gross revenues not exceeding \$3 million for the preceding three years; a small business as an entity with average annual gross revenues not exceeding \$15 million for the preceding three years; and an entrepreneur as an entity with average annual gross revenues not exceeding \$40 million for the preceding three years.²³⁹ These definitions were approved by the SBA.²⁴⁰ 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.²⁴¹ 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.²⁴²

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

75. **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 Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees.²⁴³ 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 VHF Public Coast licenses, the Commission defines 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 defined as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$3 million dollars.²⁴⁴ 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.

²³⁹ *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).

²⁴⁰ See Letter from Hector V. Barreto, Administrator, U.S. Small Business Administration, to Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, WTB, FCC (Feb.13, 2002).

²⁴¹ See “*Multichannel Video Distribution and Data Service Auction Closes*,” Public Notice, 19 FCC Rcd 1834 (2004).

²⁴² 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).

²⁴³ 13 C.F.R. § 121.201, NAICS code 517210.

²⁴⁴ *Amendment of the Commission’s Rules Concerning Maritime Communications*, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853 (1998).

76. **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.²⁴⁵ 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”).²⁴⁶ There are a variety of methods used to license the spectrum in these rule parts, from licensing by rule, to conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. Under the RFA, the Commission is required to make a determination of which small entities are directly affected by the rules being proposed. Since all such entities are wireless, we apply the definition of Wireless Telecommunications Carriers (except Satellite), pursuant to which a small entity is defined as employing 1,500 or fewer persons.²⁴⁷ Many of the licensees in these services are individuals, and thus are not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base an estimation of the number of small entities under an SBA definition that might be directly affected by our action.

77. **Public Safety Radio Services.** Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.²⁴⁸ There are a total of approximately 127,540 licensees in these services. Governmental entities²⁴⁹ 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.²⁵⁰

78. **Internet Service Providers.** The 2007 Economic Census places these firms,

²⁴⁵ 47 C.F.R. Part 90.

²⁴⁶ 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.

²⁴⁷ 13 C.F.R. § 121.201, NAICS Code 517210.

²⁴⁸ 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, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 C.F.R. §§ 90.33-90.55.

²⁴⁹ 47 C.F.R. § 1.1162.

²⁵⁰ 5 U.S.C. § 601(5).

whose services might include voice over Internet protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider's own telecommunications connections (*e.g.* cable and DSL, ISPs), or over client-supplied telecommunications connections (*e.g.* dial-up ISPs). The former are within the category of Wired Telecommunications Carriers,²⁵¹ which has an SBA small business size standard of 1,500 or fewer employees.²⁵² The latter are within the category of All Other Telecommunications,²⁵³ which has a size standard of annual receipts of \$25 million or less.²⁵⁴ The most current Census Bureau data for all such firms, however, are the 2002 data for the previous census category called Internet Service Providers.²⁵⁵ That category had a small business size standard of \$21 million or less in annual receipts, which was revised in late 2005 to \$23 million. The 2002 data show that there were 2,529 such firms that operated for the entire year.²⁵⁶ Of those, 2,437 firms had annual receipts of under \$10 million, and an additional 47 firms had receipts of between \$10 million and \$24,999,999.²⁵⁷ Consequently, we estimate that the majority of ISP firms are small entities.

79. The ISP industry has changed dramatically since 2002. The 2002 data cited above may therefore include entities that no longer provide Internet access service and may exclude entities that now provide such service. To ensure that this (IRFA/FRFA) describes the universe of small entities that our action might affect, we discuss in turn several different types of entities that might be providing Internet access service.

80. We note that, although we have no specific information on the number of small entities that provide Internet access service over unlicensed spectrum, we include these entities in our IRFA/FRFA.

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

81. 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, and pay a regulatory fee based on the number of licenses or call signs.²⁵⁸ In some

²⁵¹ U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers", <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

²⁵² 13 C.F.R. § 121.201, NAICS code 517110 (updated for inflation in 2008).

²⁵³ U.S. Census Bureau, 2007 NAICS Definitions, "517919 All Other Telecommunications"; <http://www.census.gov/naics/2007/def/ND517919.HTM#N517919>.

²⁵⁴ 13 C.F.R. § 121.201, NAICS code 517919 (updated for inflation in 2008).

²⁵⁵ U.S. Census Bureau, "2002 NAICS Definitions, "518111 Internet Service Providers"; <http://www.census.gov/eped/naics02/def/NDEF518.HTM>.

²⁵⁶ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 518111 (issued Nov. 2005).

²⁵⁷ An additional 45 firms had receipts of \$25 million or more.

²⁵⁸ See 47 C.F.R. § 1.1162 for the general exemptions from regulatory fees. *E.g.*, Amateur radio licensees (except applicants for vanity call signs) and operators in other non-licensed services (*e.g.*, Personal Radio, part 15, ship and aircraft). Governments and non-profit (exempt under section 501(c) of the Internal Revenue Code) entities are exempt from payment of regulatory fees and need not submit payment. Non-commercial educational broadcast licensees are exempt from regulatory fees as are licensees of auxiliary broadcast services such as low power auxiliary stations, television auxiliary service stations, remote pickup stations and aural broadcast auxiliary stations where such licenses are used in conjunction with commonly owned non-commercial educational stations. Emergency Alert System licenses for auxiliary service facilities are also exempt as are instructional television fixed service licensees. Regulatory fees are automatically waived for the licensee of any translator station that: (1) is not licensed to, in whole or in part, and does not have common ownership with, the licensee of a commercial broadcast station; (2) does not (continued....)

instances, licensees may decide to submit an FCC Form 159 Remittance Advice. 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. 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. 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 submit a regulatory fee payment, and it can be completed by the employees responsible for an entity's business records.

82. As discussed previously in this *Notice of Proposed Rulemaking*, the Commission concluded in its FY 2009 regulatory fee cycle that licensees filing their annual regulatory fee payments must begin the process by entering the Commission's Fee Filer system with a valid FRN and password. In some instances, it will be necessary to use a specific FRN and password that is linked to a particular regulatory fee bill. Going forward, the submission of hardcopy Form 159 documents will not be permitted for making a regulatory fee payment during the regulatory fee cycle. By requiring licensees to use Fee Filer to begin the regulatory fee payment process, errors resulting from illegible handwriting on hardcopy Form 159's will be reduced, and the Commission will be able to create an electronic record of licensee payment attributes that are more easily traceable than payments that were previously mailed in with a hardcopy Form 159.

83. 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.²⁵⁹ If payment is not received, new or pending applications may be dismissed, and existing authorizations may be subject to rescission.²⁶⁰ Further, in accordance with the DCIA, 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.²⁶¹ Nonpayment of regulatory fees is a debt owed to 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.²⁶²

84. 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.²⁶³ 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 (*e.g.* 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.

(Continued from previous page) _____

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.

²⁵⁹ 47 C.F.R. § 1.1164.

²⁶⁰ 47 C.F.R. § 1.1164(c).

²⁶¹ Public Law 104-134, 110 Stat. 1321 (1996).

²⁶² 31 U.S.C. § 7701(c)(2)(B).

²⁶³ 47 C.F.R. § 1.1166.

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

85. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.²⁶⁴ In our *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. We received no comments specifically in response to the IRFA.

86. Several categories of licensees and regulatees are exempt from payment of regulatory fees. Also, waiver procedures provide regulatees, including small entity regulatees, relief in exceptional circumstances. We note that small entities should be assisted by our implementation of the Fee Filer program, and that we have continued our practice of exempting fees whose total sum owed is less than \$10.00.

VI. Report to Congress:

87. The Commission will send a copy of this Report and Order, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.²⁶⁵ In addition, the Commission will send a copy of this Report and Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Report and Order and FRFA (or summaries thereof) will also be published in the Federal Register.²⁶⁶

²⁶⁴ 5 U.S.C. § 603.

²⁶⁵ See 5 U.S.C. § 801(a)(1)(A). The Congressional Review Act is contained in Title II, § 251, of the CWAAA; see Pub. L. No. 104-121, Title II, § 251, 110 Stat. 868.

²⁶⁶ See 5 U.S.C. § 604(b).

ATTACHMENT G

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: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 303(r), 309.

2. Section 1.1164 (c) is revised to read as follows:

“*****

(c) If a regulatory fee is not paid in a timely manner, the regulatee will be notified of its deficiency. This notice will automatically assess a 25 percent penalty, subject the delinquent payor's pending applications to dismissal, and may require a delinquent payor to show cause why its existing instruments of authorization should not be subject to rescission.

*****”

3. Section 1.1166 (b) is revised to read as follows:

“*****

(b) Deferrals of fees, if granted, will be for a designated period of time not to exceed six months.

*****”

4. Section 1.1152 is revised to read as follows:

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

Exclusive use services (per license)	Fee Amount ¹	Address
1. Land Mobile (Above 470 MHz and 220 MHz Local, Base Station & SMRS) (47 CFR, Part 90)		
a)New, Renew/Mod (FCC 601 & 159)	\$40.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000

¹ 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.

b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	\$40.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
c)Renewal Only (FCC 601 & 159)	\$40.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
d)Renewal Only (Electronic Filing) (FCC 601 & 159)	\$40.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
220 MHz Nationwide	\$40.00	FCC
a)New, Renew/Mod (FCC 601 & 159)		P.O. Box 979097 St. Louis, MO 63197-9000
b)New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	\$40.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
c)Renewal Only (FCC 601 & 159)	\$40.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
d)Renewal Only (Electronic Filing) (FCC 601 & 159)	\$40.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
2. Microwave (47 CFR Pt. 101) (Private)		
a)New, Renew/Mod (FCC 601 & 159)	\$25.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
b)New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	\$25.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
c)Renewal Only (FCC 601 & 159)	\$25.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
d)Renewal Only (Electronic Filing) (FCC 601 & 159)	\$25.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
3. 218-219 MHz Service		
a)New, Renew/Mod (FCC 601 & 159)	\$65.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000

b)New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	\$65.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
c)Renewal Only (FCC 601 & 159)	\$65.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
d)Renewal Only (Electronic Filing) (FCC 601 & 159)	\$65.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000

4. Shared Use Services

Land Mobile (Frequencies Below 470 MHz – except 220 MHz)

a)New, Renew/Mod (FCC 601 & 159)	\$20.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	\$20.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
c)Renewal Only (FCC 601 & 159)	\$20.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
d)Renewal Only (Electronic Filing) (FCC 601 & 159)	\$20.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000

General Mobile Radio Service

a)New, Renew/Mod (FCC 605 & 159)	\$5.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
b)New, Renew/Mod (Electronic Filing) (FCC 605 & 159)	\$5.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
c)Renewal Only (FCC 605 & 159)	\$5.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
d)Renewal Only (Electronic Filing) (FCC 605 & 159)	\$5.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000

Rural Radio (Part 22)

a)New, Additional Facility, Major Renew/Mod (Electronic Filing) (FCC 601 & 159)	\$20.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
b)Renewal, Minor Renew/Mod (Electronic Filing) (FCC 601 & 159)	\$20.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000

Marine Coast

a)New Renewal/Mod (FCC 601 & 159)	\$50.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
b)New, Renewal/Mod (Electronic Filing) (FCC 601 & 159)	\$50.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
c)Renewal Only (FCC 601 & 159)	\$50.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
d)Renewal Only (Electronic Filing) (FCC 601 & 159)	\$50.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000

Aviation Ground

a)New, Renewal/Mod (FCC 601 & 159)	\$15.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
b)New, Renewal/Mod (Electronic Filing) (FCC 601 & 159)	\$15.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
c)Renewal Only (FCC 601 & 159)	\$15.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
d)Renewal Only (Electronic Only) (FCC 601 & 159)	\$15.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000

Marine Ship

a)New, Renewal/Mod (FCC 605 & 159)	\$10.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
b)New, Renewal/Mod (Electronic Filing) (FCC 605 & 159)	\$10.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000

c)Renewal Only (FCC 605 & 159)	\$10.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
d)Renewal Only (Electronic Filing) (FCC 605 & 159)	\$10.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
Aviation Aircraft		
a)New, Renew/Mod (FCC 605 & 159)	\$10.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
b)New, Renew/Mod (Electronic Filing) (FCC 605 & 159)	\$10.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
c)Renewal Only (FCC 605 & 159)	\$10.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
d)Renewal Only (Electronic Filing) (FCC 605 & 159)	\$10.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
5. Amateur Vanity Call Signs	\$1.42	FCC
a)Initial or Renew (FCC 605 & 159)		P.O. Box 979097 St. Louis, MO 63197-9000
b)Initial or Renew (Electronic Filing) (FCC 605 & 159)	\$1.42	FCC P.O. Box 979097 St. Louis, MO 63197-9000
6. CMRS Cellular/Mobile Services (per unit) (FCC 159)	\$.17 ²	FCC P.O. Box 979084 St. Louis, MO 63197-9000
7. CMRS Messaging Services (per unit) (FCC 159)	\$.08 ³	FCC P.O. Box 979084 St. Louis, MO 63197-9000
8. Broadband Radio Service (formerly MMDS and MDS)	\$ 310	FCC, P.O. Box 979084 St. Louis, MO 63197-9000

² These are standard fees that are to be paid in accordance with § 1.1157(b) of this chapter.

³ These are standard fees that are to be paid in accordance with § 1.1157(b) of this chapter.

6.	<u>FM Classes A, B1 and C3</u>		
	<=25,000 population	\$675	FCC, Radio
	25,001-75,000 population	\$1,350	P.O. Box 979084
	75,001-150,000 population	\$1,850	St. Louis, MO
	150,001-500,000 population	\$2,875	63197-9000
	500,001-1,200,000 population	\$4,550	
	1,200,001-3,000,000 population	\$7,425	
	>3,000,000 population	\$9,450	
7.	<u>FM Classes B, C, C0, C1 and C2</u>		
	<=25,000 population	\$850	FCC, Radio
	25,001-75,000 population	\$1,500	P.O. Box 979084
	75,001-150,000 population	\$2,750	St. Louis, MO
	150,001-500,000 population	\$3,600	63197-9000
	500,001-1,200,000 population	\$5,300	
	1,200,001-3,000,000 population	\$8,500	
	>3,000,000 population	\$11,050	
8.	FM Construction Permits	\$675	FCC, Radio
			P.O. Box 979084
			St. Louis, MO
			63197-9000
TV (47 CFR, Part 73)			
VHF Commercial			
1.	Markets 1 thru 10	\$84,625	FCC, TV Branch
2.	Markets 11 thru 25	\$68,175	P.O. Box 979084
3.	Markets 26 thru 50	\$40,475	St. Louis, MO
4.	Markets 51 thru 100	\$22,750	63197-9000
5.	Remaining Markets	\$ 6,100	
6.	Construction Permits	\$ 6,100	
UHF Commercial			
1.	Markets 1 thru 10	\$34,650	FCC,UHF Commercial
2.	Markets 11 thru 25	\$32,950	P.O. Box 979084
3.	Markets 26 thru 50	\$20,950	St. Louis, MO
4.	Markets 51 thru 100	\$12,325	63197-9000
5.	Remaining Markets	\$3,275	
6.	Construction Permits	\$3,275	
Satellite UHF/VHF Commercial			
1.	All Markets	\$1,250	FCC Satellite TV
2.	Construction Permits	\$ 670	P.O. Box 979084
			St. Louis, MO 63197-9000
	Low Power TV, Class A TV, TV/FM Translator, & TV/FM Booster (47 CFR Part 74)	\$ 395	FCC, Low Power
			P.O. Box 979084
			St. Louis, MO 63197-9000

Broadcast Auxiliary \$ 10 FCC, Auxiliary
P.O. Box 979084
St. Louis, MO 63197-9000

6. 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)	\$25.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000

Carriers

1. Interstate Telephone Service Providers (per interstate and international end-user revenues (see FCC Form 499-A))	\$.00375	FCC, Carriers P.O. Box 979084 St. Louis, MO 63197-9000
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7. 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	\$370	FCC, Cable
2. Cable TV System (per subscriber)	\$.93	P.O. Box 979084 St. Louis, MO 63197-9000

8. Section 1.1156 is revised to read as follows:

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

a. The following schedule applies for the listed services:

Fee Category	Fee amount	Address
Space Stations (Geostationary Orbit)	\$131,375	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000
Space Stations (Non-Geostationary Orbit)	\$141,750	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000
Earth Stations: Transmit/Receive & Transmit only (per authorization or registration)	\$245	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000

b. *International Terrestrial and Satellite.* Regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers that have active (used or leased) international bearer circuits as of December 31, of the prior year in any terrestrial or satellite 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. "Active circuits" for these purposes include backup and redundant circuits. In addition, whether circuits are used specifically for voice or data is not relevant in determining that they are active circuits.

The fee amount, per active 64 KB circuit or equivalent will be determined for each fiscal year. Payment, if mailed, shall be sent to: FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000.

International Terrestrial and Satellite (capacity as of December 31, 2010)	Fee amount	Address
Terrestrial Common Carrier Satellite Common Carrier Satellite Non-Common Carrier	\$0.35 per 64 KB Circuit	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000

c. *Submarine cable:* Regulatory fees for submarine cable systems will be paid annually, per cable landing license, for all submarine cable systems operating as of December 31 of the prior year. The fee amount will be determined by the Commission for each fiscal year. Payment, if mailed, shall be sent to: FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000.

Submarine Cable Systems (capacity as of Dec. 31, 2010)	Fee amount	Address
< 2.5 Gbps	\$12,825	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000
2.5 Gbps or greater, but less than 5 Gbps	\$25,650	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000
5 Gbps or greater, but less than 10 Gbps	\$51,300	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000

10 Gbps or greater, but less than 20 Gbps	\$102,625	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000
20 Gbps or greater	\$205,225	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000

ATTACHMENT H

FY 2010 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)	40
Microwave (per license) (47 CFR part 101)	25
218-219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	65
Marine (Ship) (per station) (47 CFR part 80)	10
Marine (Coast) (per license) (47 CFR part 80)	45
General Mobile Radio Service (per license) (47 CFR part 95)	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	20
PLMRS (Shared Use) (per license) (47 CFR part 90)	20
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)	1.33
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)	310
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	310
AM Radio Construction Permits	390
FM Radio Construction Permits	675
TV (47 CFR part 73) VHF Commercial	
Markets 1-10	81,550
Markets 11-25	63,275
Markets 26-50	42,550
Markets 51-100	23,750
Remaining Markets	6,125

Fee Category	Annual Regulatory Fee (U.S. \$'s)
Construction Permits	6,125
TV (47 CFR part 73) UHF Commercial	
Markets 1-10	32,275
Markets 11-25	30,075
Markets 26-50	18,900
Markets 51-100	11,550
Remaining Markets	3,050
Construction Permits	3,050
Satellite Television Stations (All Markets)	1,300
Construction Permits – Satellite Television Stations	675
Low Power TV, Class A TV, TV/FM Translators & Boosters (47 CFR part 74)	415
Broadcast Auxiliaries (47 CFR part 74)	10
CARS (47 CFR part 78)	315
Cable Television Systems (per subscriber) (47 CFR part 76)	.89
Interstate Telecommunication Service Providers (per revenue dollar)	.00349
Earth Stations (47 CFR part 25)	240
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100)	127,925
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	138,050
International Bearer Circuits - Terrestrial/Satellites (per 64KB circuit)	.39
International Bearer Circuits - Submarine Cable	See Table Below

FY 2010 SCHEDULE OF REGULATORY FEES (continued)

FY 2010 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	\$675	\$550	\$500	\$575	\$650	\$825
25,001 – 75,000	\$1,350	\$1,075	\$750	\$875	\$1,325	\$1,450
75,001 – 150,000	\$2,025	\$1,350	\$1,000	\$1,450	\$1,825	\$2,725
150,001 – 500,000	\$3,050	\$2,300	\$1,500	\$1,725	\$2,800	\$3,550
500,001 – 1,200,000	\$4,400	\$3,500	\$2,500	\$2,875	\$4,450	\$5,225
1,200,001 – 3,000,00	\$6,750	\$5,400	\$3,750	\$4,600	\$7,250	\$8,350
>3,000,000	\$8,100	\$6,475	\$4,750	\$5,750	\$9,250	\$10,850

FY 2010 SCHEDULE OF REGULATORY FEES
International Bearer Circuits - Submarine Cable

Submarine Cable Systems (capacity as of December 31, 2009)	Fee amount	Address
< 2.5 Gbps	\$14,625	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000
2.5 Gbps or greater, but less than 5 Gbps	\$29,250	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000
5 Gbps or greater, but less than 10 Gbps	\$58,500	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000
10 Gbps or greater, but less than 20 Gbps	\$116,975	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000
20 Gbps or greater	\$233,950	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: *Assessment and Collection of Regulatory Fees for Fiscal Year 2011*, Report and Order,
MD Docket No. 11-76

I support today's order to collect the revenue target Congress has given us to fund the Commission's operations for Fiscal Year 2011. And I applaud the Chairman's commitment to initiate a long overdue comprehensive review of our regulatory fee program. Despite the requirement that our regulatory fee burdens reflect how much the Commission spends on each sector of the industry, we have stuck with the same, outdated structure for far too long, as I have pointed out many times. Clearly, the industry has changed substantially in the years since we last took a close look at the program. Equity and common sense require us to do this now, so I eagerly await the next step by the end of this calendar year.