

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

In the Matter of	)	
	)	
Assessment and Collection of Regulatory Fees for	)	MD Docket No. 16-166
Fiscal Year 2016	)	

**NOTICE OF PROPOSED RULEMAKING**

**Adopted: May 18, 2016**

**Released: May 19, 2016**

By the Commission:

**Comment Date:** June 20, 2016

**Reply Comment Date:** July 5, 2016

**I. INTRODUCTION**

1. In this Notice of Proposed Rulemaking (Notice), we seek comment on the Federal Communications Commission’s (FCC’s or Commission’s) proposed regulatory fees for fiscal year (FY) 2016. Specifically, we propose to collect \$384,012,497.00 in regulatory fees as detailed in the proposed fee schedule attached to this Notice in Appendix B. As explained in this Notice, the proposed fee schedule includes adjustments to the table used to assess regulatory fees on broadcasters.

**II. BACKGROUND**

2. The Commission is required by Congress to assess regulatory fees each year in an amount that can reasonably be expected to equal the amount of its appropriation.<sup>1</sup> Regulatory fees are mandated by Congress and are collected “to recover the costs of . . . enforcement activities, policy and rulemaking activities, user information services, and international activities.”<sup>2</sup> Regulatory fees are to “be derived by determining the full-time equivalent number of employees performing” these activities, “adjusted to take into account factors that are reasonably related to the benefits provided to the payer of the fee by the Commission’s activities . . .”<sup>3</sup> Regulatory fees recover direct costs, such as salary and expenses; indirect costs, such as overhead functions; and support costs, such as rent, utilities, or equipment.<sup>4</sup> Regulatory fees also cover the costs incurred in regulating entities that are statutorily exempt

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<sup>1</sup> 47 U.S.C. § 159(b)(1)(B). The Commission collected \$7.67 million above the required regulatory fee target goal in FY 2015, which the Commission deposited into the U.S. Treasury. The cumulative over collection is \$98.367 million as of September 30, 2015.

<sup>2</sup> 47 U.S.C. § 159(a).

<sup>3</sup> 47 U.S.C. § 159(b)(1)(A).

<sup>4</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, Report and Order, 19 FCC Rcd 11662, 11666, para. 11 (2004) (*FY 2004 Report and Order*).

from paying regulatory fees,<sup>5</sup> entities whose regulatory fees are waived,<sup>6</sup> and entities that provide services for which we do not assess regulatory fees.

3. Congress sets the amount the Commission must collect each year in the Commission's fiscal year appropriations. Section 9(a)(2) of the Communications Act of 1934, as amended (Communications Act or Act) requires the Commission to collect fees sufficient to offset the amount appropriated.<sup>7</sup> To calculate regulatory fees, the Commission allocates the total collection target across all regulatory fee categories. The allocation of fees to fee categories is based on the Commission's calculation of FTEs<sup>8</sup> in each regulatory fee category. FTEs are classified as "direct" if the employee is in one of the four "core" bureaus; otherwise, that employee is considered an "indirect" FTE.<sup>9</sup> The total FTEs for each fee category includes the direct FTEs associated with that category, plus a proportional allocation of indirect FTEs. The Commission then allocates the total amount to be collected among the various regulatory fee categories. Each regulatee within a fee category pays its proportionate share based on an objective measure, e.g., revenues, number of subscribers, or licenses.<sup>10</sup>

4. The Commission annually reviews the regulatory fee schedule, proposes changes to the schedule to reflect changes in the amount of its appropriation, and proposes increases or decreases to the schedule of regulatory fees.<sup>11</sup> The Commission will make changes to the regulatory fee schedule "if the Commission determines that the schedule requires amendment to comply with the requirements"<sup>12</sup> of section 9(b)(1)(A) of the Act.<sup>13</sup> The Commission may also add, delete, or reclassify services in the fee schedule to reflect additions, deletions, or changes in the nature of its services "as a consequence of Commission rulemaking proceedings or changes in law."<sup>14</sup>

5. The Commission continues to improve the regulatory fee process by ensuring a more equitable distribution of the regulatory fee burden among categories of Commission licensees under the statutory framework in section 9 of the Communications Act. Specifically, in the *FY 2013 Report and Order*, the Commission adopted updated FTE allocations to more accurately reflect the number of FTEs

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<sup>5</sup> For example, governmental and nonprofit entities are exempt from regulatory fees under section 9(h) of the Communications Act of 1934, as amended (Communications Act or Act). 47 U.S.C. § 159(h); 47 CFR § 1.1162.

<sup>6</sup> 47 CFR § 1.1166.

<sup>7</sup> 47 U.S.C. § 159(a)(2).

<sup>8</sup> One FTE, a "Full Time Equivalent" or "Full Time Employee," is a unit of measure equal to the work performed annually by a full time person (working a 40 hour workweek for a full year) assigned to the particular job, and subject to agency personnel staffing limitations established by the U.S. Office of Management and Budget.

<sup>9</sup> The core bureaus are the Wireline Competition Bureau (165 FTEs), Wireless Telecommunications Bureau (92 FTEs), Media Bureau (151 FTEs), and part of the International Bureau (24 FTEs), totaling 432 direct FTEs. The indirect FTEs are the employees from the following bureaus and offices: Enforcement Bureau, Consumer & Governmental Affairs Bureau, Public Safety and Homeland Security Bureau, part of the International Bureau, Chairman and Commissioners' offices, Office of the Managing Director, Office of General Counsel, Office of the Inspector General, Office of Communications Business Opportunities, Office of Engineering and Technology, Office of Legislative Affairs, Office of Strategic Planning and Policy Analysis, Office of Workplace Diversity, Office of Media Relations, and Office of Administrative Law Judges, totaling 1,046 indirect FTEs. These totals are as of Oct. 1, 2015 and exclude auctions funded FTEs.

<sup>10</sup> See *Procedures for Assessment and Collection of Regulatory Fees*, Notice of Proposed Rulemaking, 27 FCC Rcd 8458, 8461-62, paras. 8-11 (2012) (*FY 2012 NPRM*).

<sup>11</sup> 47 U.S.C. § 159(b)(1)(B).

<sup>12</sup> 47 U.S.C. § 159(b)(2).

<sup>13</sup> 47 U.S.C. § 159(b)(1)(A).

<sup>14</sup> 47 U.S.C. § 159(b)(3).

working on regulation and oversight of the regulatees in the various fee categories;<sup>15</sup> reallocated some FTEs from the International Bureau as “indirect;”<sup>16</sup> combined the UHF and VHF television stations into one regulatory fee category;<sup>17</sup> and created a regulatory fee category that included Internet Protocol Television (IPTV).<sup>18</sup> Subsequently, in the *FY 2014 Report and Order and FNPRM*, the Commission adopted a new fee subcategory (within the Interstate Telecommunications Service Provider (ITSP) category) for toll free numbers;<sup>19</sup> increased the *de minimis* threshold for annual regulatory fee payors;<sup>20</sup> and eliminated several categories from the regulatory fee schedule.<sup>21</sup> In the *FY 2015 NPRM and Report and Order*, the Commission added a subcategory for Direct Broadcast Satellite (DBS) providers (in the cable television and IPTV regulatory fee category) based on the finding that Media Bureau FTEs work on issues and proceedings that include DBS as well as other multichannel video programming distributors (MVPDs).<sup>22</sup> In addition, in the *FY 2015 NPRM and Report and Order*, we sought comment on revising the regulatory fee schedule for broadcasters.<sup>23</sup>

### III. DISCUSSION

#### A. Notice of Proposed Rulemaking

6. We propose to collect \$384,012,497 in regulatory fees for FY 2016, pursuant to section 9 of the Communications Act.<sup>24</sup> Of this amount, we project approximately \$21.4 million (5.56 percent of the total FTE allocation) in fees from the International Bureau regulatees;<sup>25</sup> \$81.9 million (21.3 percent of

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<sup>15</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2013*, Report and Order, 28 FCC Rcd 12351, 12354-58, paras 10-20 (2013) (*FY 2013 Report and Order*). This was recommended in a report issued by the Government Accountability Office (GAO) in 2012. See GAO “Federal Communications Commission Regulatory Fee Process Needs to be Updated,” GAO-12-686 (Aug. 2012) (GAO Report) at 36, ([available at http://www.gao.gov/products/GAO-12-686](http://www.gao.gov/products/GAO-12-686)).

<sup>16</sup> *FY 2013 Report and Order*, 28 FCC Rcd at 12355-58, paras. 13-20.

<sup>17</sup> *Id.*, 28 FCC Rcd at 12361-62, paras. 29-31.

<sup>18</sup> *Id.*, 28 FCC Rcd at 12362-63, paras. 32-33.

<sup>19</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2014*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 10767, 10777-79, paras. 25-28 (2014) (*FY 2014 Report and Order and FNPRM*).

<sup>20</sup> *FY 2014 Report and Order and FNPRM*, 29 FCC Rcd at 10774-76, paras. 18-21.

<sup>21</sup> *Id.*, 29 FCC Rcd at 10776-77, paras. 22-24.

<sup>22</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2015*, Notice of Proposed Rulemaking, Report and Order, and Order, 30 FCC Rcd 5354, 5364-5373, paras. 28-41 (2015) (*FY 2015 NPRM and Report and Order*). We also eliminated two fee categories. See *id.*, 30 FCC Rcd at 5361-62, paras. 19-22.

<sup>23</sup> *Id.*, 30 FCC Rcd at 5359, para. 13. In the *FY 2015 Report and Order and FNPRM*, we sought further comment on the broadcast regulatory fees issue and also sought comment on ITTA’s proposal to reallocate FTEs in the Wireline Competition Bureau. *Assessment and Collection of Regulatory Fees for Fiscal Year 2015*, Report and Order and Further Notice of Proposed Rulemaking, 30 FCC Rcd 10268, 10279-282, paras. 27-34 (2015) (*FY 2015 Report and Order and FNPRM*).

<sup>24</sup> 47 U.S.C. § 159. The proposed regulatory fee rates for FY 2016 include \$339,844,000 for operational expenses and an additional one time amount of \$44,168,497 to offset facilities reduction costs, i.e., to reduce our office space footprint and/or move the FCC office location if necessary. Consolidated Appropriations Act, 2016, Public Law No. 114-113, Dec. 18, 2015. See FCC’s Lease Prospectus, [available at http://www.gsa.gov/portal/category/100435](http://www.gsa.gov/portal/category/100435). Due to the facilities reduction costs, regulatees’ aggregate fees by category increased on average by approximately 11-13 percent for 2016.

<sup>25</sup> Includes satellites, earth stations, submarine cable, and bearer circuits.

the total FTE allocation) in fees from the Wireless Telecommunications Bureau regulatees;<sup>26</sup> \$133.97 million (34.95 percent of the total FTE allocation) from the Media Bureau regulatees;<sup>27</sup> and \$146.8 million (38.19 percent of the total FTE allocation) from Wireline Competition Bureau regulatees.<sup>28</sup>

7. These regulatory fees are mandated by Congress and are collected “to recover the costs of ... enforcement activities, policy and rulemaking activities, user information services, and international activities.”<sup>29</sup> We seek comment on the proposed regulatory fee schedule in Appendix B.

### 1. DBS Regulatory Fees as a Subcategory in the Cable Television and IPTV Category

8. This proposed fee schedule includes an updated regulatory fee for DBS, a subcategory in the cable television and IPTV category.<sup>30</sup> In 2015, we adopted the initial regulatory fee for DBS, as a subcategory in the cable television and IPTV category, of 12 cents per year per subscriber, or one cent per month.<sup>31</sup> At that time, we stated that we would update the rate for FY 2016, as necessary for ensuring an appropriate level of regulatory parity and considering the resources dedicated to this subcategory.<sup>32</sup> When we adopted this regulatory fee subcategory for DBS, we observed that numerous regulatory developments had increased the Media Bureau FTE activity involving regulation and oversight of MVPDs, including DBS providers.<sup>33</sup> For example, DBS providers (and cable television operators) are permitted to file program access complaints<sup>34</sup> and complaints seeking relief under the retransmission consent good faith rules;<sup>35</sup> DBS providers are subject to MVPD requirements such as those pertaining to program carriage;<sup>36</sup> and they are subject to the requirement to negotiate retransmission consent in good faith.<sup>37</sup> In addition, the Commission, in recent years, adopted numerous requirements that apply to all MVPDs, and thus DBS providers, as part of its implementation of the Commercial Advertisement Loudness Mitigation Act (CALM Act),<sup>38</sup> the Twenty-First Century Communications and Video

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<sup>26</sup> Includes Commercial Mobile Radio Service (CMRS), CMRS messaging, Broadband Radio Service/Local Multipoint Distribution Service (BRS/LMDS), and multi-year wireless licensees.

<sup>27</sup> Includes AM radio, FM radio, television, low power/FM, cable television and IPTV, DBS, and Cable Television Relay Service (CARS) licenses.

<sup>28</sup> Includes Interstate Telecommunications Service Providers (ITSP) and toll free numbers.

<sup>29</sup> 47 U.S.C. § 159(a).

<sup>30</sup> DBS also pays a regulatory per operational station in geostationary orbit.

<sup>31</sup> *FY 2015 Report and Order and FNPRM*, 30 FCC Rcd at 10276-77, paras. 19-20.

<sup>32</sup> *Id.*, 30 FCC Rcd at 10277, para. 20.

<sup>33</sup> *See FY 2015 NPRM and Report and Order*, 30 FCC Rcd at 5367-68, para. 31.

<sup>34</sup> 47 U.S.C. § 548; 47 CFR § 76.1000-1004.

<sup>35</sup> 47 U.S.C. §§ 325(b)(1), (3)(C)(ii); 47 CFR § 76.65(b).

<sup>36</sup> 47 U.S.C. § 536; 47 CFR §§ 76.1300-1302.

<sup>37</sup> 47 U.S.C. § 325(b)(3)(C)(iii); 47 CFR § 76.65(a)-(b).

<sup>38</sup> *See Implementation of the Commercial Advertisement, Loudness Mitigation (CALM) Act*, Report and Order, 26 FCC Rcd 17222 (2011) (*CALM Act Report and Order*).

Accessibility Act of 2010 (CVAA),<sup>39</sup> as well as the Satellite Television Extension and Localism Act (STELA) Reauthorization Act of 2014 (STELAR).<sup>40</sup>

9. FY 2015 was the first time the Commission assessed a regulatory fee for DBS based on Media Bureau FTEs. At that time, we concluded an initial rate of 12 cents per subscriber per year was a sensible fee supported by data and analysis for FY 2015.<sup>41</sup> In adopting the regulatory fee for DBS as a subcategory of the cable television and IPTV category, the Commission explained that “although DBS is not identical to cable television and IPTV, the services all receive oversight and regulation as a result of the work of Media Bureau FTEs on MVPD issues. The burden imposed on the Commission is therefore similar.”<sup>42</sup> At the same time, the Commission also explained that it would examine the appropriate allocation between and among MVPD regulatees in the coming years as the Commission implemented the new DBS fee.<sup>43</sup> Such examination is consistent with a report issued by the Government Accountability Office (GAO) in 2012, which observed it is important for the Commission to “regularly update analyses to ensure that fees are set based on relevant information.”<sup>44</sup>

10. In addition to the activities described in our FY 2015 regulatory fee proceeding, DBS, along with other MVPDs, continues to receive oversight and regulation as a result of the work of Media Bureau FTEs. For example, the Commission recently adopted a Report and Order requiring cable operators, DBS providers, and certain other licensees to post their public file documents to the FCC-hosted online database.<sup>45</sup> In addition, the Commission recently released a Notice of Proposed

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<sup>39</sup> Pub. L. No. 111-260, 124 Stat. 2751 (2010). See also *Amendment of Twenty-First Century Communications and Video Accessibility Act of 2010*, Pub. L. No. 111-265, 124 Stat. 2795 (2010) (making corrections to the CVAA); 47 CFR Part 79; *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Notice of Proposed Rulemaking, 31 FCC Rcd 2463 (2016).

<sup>40</sup> The STELAR Reauthorization Act of 2014 (STELAR), Pub. L. No. 113-200, 128 Stat. 2059 (2014). STELAR was enacted on Dec. 4, 2014 (H.R. 5728, 113th Cong.). Commission work on implementation of the Act was immediate. See, e.g., *Implementation of Sections 101, 103 and 105 of the STELAR Reauthorization Act of 2014*, Order, 30 FCC Rcd 2380 (2015) (implementing certain STELAR provisions under the “good cause” exception to the Administrative Procedure Act); *Amendment to the Commission’s Rules Concerning Market Modification, Implementation of Section 102 of the STELAR Reauthorization Act of 2014*, Report and Order, 30 FCC Rcd 10406 (2015) (adopting satellite television market modification rules to enable satellite carriers, cable operators, and commercial television stations to better serve the interests of their local communities); *Implementation of Section 103 of the STELAR Reauthorization Act of 2014*, Notice of Proposed Rulemaking, 30 FCC Rcd 10327 (2015) (seeking comment on potential updates to the “totality of the circumstances” test for good faith negotiation of retransmission consent); Final Report of the DSTAC, available at <https://transition.fcc.gov/dstac/dstac-report-final-08282015.pdf>; “Media Bureau Seeks Comment on DSTAC Report,” Public Notice, 30 FCC Rcd 15293 (MB 2015); “Media Bureau Seeks Comment for Report Required by the STELAR Reauthorization Act of 2014,” Public Notice, 30 FCC Rcd 1904 (2015) (seeking information for a report to Congress on designated market areas and considerations for fostering increased localism).

<sup>41</sup> See *FY 2015 Report and Order and FNPRM*, 30 FCC Rcd at 10276-77, para. 20. The agency is not required to calculate its costs with “scientific precision.” *Central & Southern Motor Freight Tariff Ass’n v. United States*, 777 F.2d 722, 736 (D.C. Cir. 1985). Reasonable approximations will suffice. *Id.*; *Mississippi Power & Light*, 601 F.2d 223, 232 (5<sup>th</sup> Cir. 1979); *National Cable Television Ass’n v. FCC*, 554 F.2d 1094, 1105 (D.C. Cir. 1976).

<sup>42</sup> *FY 2015 NPRM and Report and Order*, 30 FCC Rcd at 5369, para. 33.

<sup>43</sup> *FY 2015 NPRM and Report and Order*, 30 FCC Rcd at 5367-68, para. 34, n.129 (The Commission explained that “[e]ven when an industry has oversight generally by one organizational unit within the Commission, we are sensitive to the fact that balance between members of the same industry may require adjustments to FTE allocations.”).

<sup>44</sup> GAO Report at 12.

<sup>45</sup> *Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, Report and Order, 31 FCC Rcd 526 (2016).

Rulemaking regarding unlocking the set-top box of cable and DBS operators.<sup>46</sup> Thus, for reasons similar to those discussed in the *FY 2015 NPRM and Report and Order*,<sup>47</sup> and based on our analysis of the resources dedicated to this subcategory, including the resources dedicated to the pending portfolio of MVPD proceedings, we propose to revise the DBS fee rate. Specifically, in this FY 2016 regulatory fee proceeding, we seek comment on a higher regulatory fee rate of 27 cents per subscriber per year for FY 2016, as set forth in the proposed fee schedule. This fee includes a 24 cent per subscriber baseline with a proportional adjustment of three cents per subscriber associated with facilities reduction costs.

## 2. Broadcaster Regulatory Fees

11. The Commission assesses regulatory fees on radio broadcasters based on type and class of service and on the population served. Upon occasion, the Commission makes adjustments to the methodology for assessing regulatory fees on radio broadcasters. For example, concerning population served, the Commission adopted a methodology that relied on the radio station's calculated field strength signal contour overlaid upon U.S. Census data to obtain an estimate of the population coverage for each station.<sup>48</sup> Subsequently, licensees complained to the Commission that the contours exaggerated actual market areas and populations served. The Commission addressed these concerns through revising the methodology for calculating the fees.<sup>49</sup> Similarly, in 2003, due to a trend toward more powerful stations and general increases in the overall population, an increasing number of stations were grouped in the one million-plus population category of the grid and the Commission expanded the AM and FM radio station grid to include wider population thresholds and extended the population category to an amount "greater than three million."<sup>50</sup>

12. In the *FY 2015 Report and Order and FNPRM*, we proposed to include a higher population row in the table for AM and FM broadcasters, i.e., to divide broadcasters that serve 3,000,001-6,000,000 from those that have a higher population coverage.<sup>51</sup> Similarly in the *FY 2015 Report and Order and FNPRM*, we also proposed to standardize the incremental increase in fees as the population served increases<sup>52</sup> and to more consistently assess fees based on the type and class of service.<sup>53</sup> No comments were received by the Commission concerning this proposal. We now tentatively conclude adopting these proposals will make the regulatory fees for AM and FM radio more rational and address,

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<sup>46</sup> *Expanding Consumers' Video Navigation Choices, Commercial Availability of Navigation Devices*, Notice of Proposed Rulemaking and Memorandum Opinion and Order, 31 FCC Rcd 1544 (2016). See also *Promoting the Availability of Diverse and Independent Sources of Video Programming*, Notice of Inquiry, 31 FCC Rcd 1610 (2016).

<sup>47</sup> *FY 2015 NPRM and Report and Order*, 30 FCC Rcd at 5367-5373, paras. 31-41.

<sup>48</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 1997*, Report and Order, 12 FCC Rcd 17161, 17179-17184, paras. 47-56 (1997).

<sup>49</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 1998*, Report and Order, 13 FCC Rcd 19820, 19830-33, paras. 31-41 (1998).

<sup>50</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2003*, Report and Order, 18 FCC Rcd 15985, 15986-87, paras. 4-5 (2003).

<sup>51</sup> *FY 2015 Report and Order and FNPRM*, 30 FCC Rcd at 10280, para. 28.

<sup>52</sup> *Id.* Specifically, we sought comment on standardizing the incremental increase in fees as radio broadcasters increase the population they serve, such as by requiring that fee adjustments between tiers monotonically increase as the population served increases. *Id.*

<sup>53</sup> *Id.* We sought comment on assessing fees based on the relative type and class of service, such as by assessing FM class B, C, C0, C1, & C2 stations at twice the rate of AM class C stations, and FM class A, B1, & C3 stations assessed at 75 percent more than AM class C stations. For AM stations, we sought comment on assessing AM class A stations at 60 percent more, AM class B stations at 15 percent more, and AM class D stations at 10 percent more than AM class C stations. *Id.*

in part, the problem of a large number of stations in the highest grid.<sup>54</sup> We seek comment on the following proposed table of regulatory fees for AM and FM radio broadcasters, which includes fees based on the adoption of both options.<sup>55</sup>

<b>FY 2016 RADIO STATION REGULATORY FEES (proposed)</b>						
<b>Population Served</b>	<b>AM Class A</b>	<b>AM Class B</b>	<b>AM Class C</b>	<b>AM Class D</b>	<b>FM Classes A, B1 &amp; C3</b>	<b>FM Classes B, C, C0, C1 &amp; C2</b>
<b>&lt;=25,000</b>	\$1,100	\$795	\$690	\$760	\$1,200	\$1,375
<b>25,001 – 75,000</b>	\$1,650	\$1,200	\$1,025	\$1,150	\$1,800	\$2,050
<b>75,001 – 150,000</b>	\$2,200	\$1,600	\$1,375	\$1,525	\$2,400	\$2,750
<b>150,001 – 500,000</b>	\$3,300	\$2,375	\$2,075	\$2,275	\$3,600	\$4,125
<b>500,001 – 1,200,000</b>	\$5,500	\$3,975	\$3,450	\$3,800	\$6,000	\$6,875
<b>1,200,001 – 3,000,00</b>	\$8,250	\$5,950	\$5,175	\$5,700	\$9,000	\$10,300
<b>3,000,001 – 6,000,00</b>	\$11,000	\$7,950	\$6,900	\$7,600	\$12,000	\$13,750
<b>&gt;6,000,000</b>	\$13,750	\$9,950	\$8,625	\$9,500	\$15,000	\$17,175

13. Concerning television broadcasters, in the *FY 2015 Report and Order and FNPRM* we proposed to readjust the table to restore the traditional determination that Top 10 stations should pay about twice what stations in markets 26-50 pay.<sup>56</sup> We did not receive comments on this proposal. At this time, we tentatively conclude that this proposal will make the regulatory fees for television broadcasters more rational. Accordingly, we seek comment on the regulatory fees for television broadcasters as set forth below and in Appendix B.<sup>57</sup>

<sup>54</sup> *FY 2015 Report and Order and FNPRM*, 30 FCC Rcd at 10279-280, paras. 27-28.

<sup>55</sup> The increase in proposed FY 2016 fees in this table is largely attributable to the facilities reduction cost adjustment. *See supra* note 24. The aggregate impact of fees related to the facilities reduction cost adjustment for these radio station categories of broadcasters is approximately \$3.8 million.

<sup>56</sup> *FY 2015 Report and Order and FNPRM*, 30 FCC Rcd at 10280-81, para. 29.

<sup>57</sup> The aggregate impact of fees related to the facilities reduction cost adjustment for these categories of broadcasters is approximately \$3.1 million.

<b>FY 2016 TELEVISION STATION REGULATORY FEES (proposed)</b>		
<b>Digital TV (47 CFR part 73) VHF and UHF Commercial</b>	<b>FY 2015 Fee Rates</b>	<b>FY 2016 Proposed Fee Rates</b>
Markets 1-10	\$46,825	\$60,775
Markets 11-25	\$43,200	\$45,750
Markets 26-50	\$27,625	\$30,575
Markets 51-100	\$16,275	\$15,225
Remaining Markets	\$4,850	\$5,000
Construction Permits	\$4,850	\$5,000

14. We also recognize that the incentive auction scheduled for 2016 is a substantial event for the television broadcast industry. As a result, in the *FY 2015 Report and Order and FNPRM*, we sought comment on whether, when, and how the Commission should adjust its methodology for assessing regulatory fees on television stations to respond to such potential changed circumstances consistent with the provisions of section 9 of the Communications Act.<sup>58</sup> While we received comments on the issue,<sup>59</sup> it is too early to revise our regulatory fee apportionment because of the uncertainty in events that have yet to happen. We intend to consider any changed circumstances due to the incentive auction as part of the FY 2017 regulatory fee proceeding.

### **3. International Services: Terrestrial and Satellite Services**

15. Facilities-based common carriers must pay regulatory fees for terrestrial and satellite International Bearer Circuits (IBCs) active (used or leased) 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.<sup>60</sup> In the *FY 2015 Report and Order and FNPRM*, the Commission asked facilities-based common carriers to review their reporting processes to ensure that they accurately calculate and report IBCs.<sup>61</sup> We reminded facilities-based common carriers that they must include all common carrier circuits used by themselves or their affiliates when calculating the number of active circuits. We also indicated that we will review the processes for reporting IBCs in the near future to ensure that all carriers are reporting IBCs in the same manner, consistent with our rules. In this regard, we seek comment on how we can ensure that all providers are calculating and reporting IBCs in the same manner. What criteria do providers use to distinguish common carrier terrestrial circuits from non-common carrier terrestrial circuits for regulatory fee purposes?

16. As we have stated in the past, non-common carrier terrestrial circuits play an important role in the provision of international services through microwave and fiber links across the U.S.-Canada and U.S.-Mexico borders, and the Commission regularly engages with counterparts in Canada and

<sup>58</sup> *FY 2015 Report and Order and FNPRM*, 30 FCC Rcd at 10281, para. 30.

<sup>59</sup> NAB Comments at 2-7.

<sup>60</sup> See para. 22 *infra*.

<sup>61</sup> *FY 2015 Report and Order and FNPRM*, 30 FCC Rcd 10268, 10283-85, para. 40 & n.128.

Mexico on a wide range of issues related to cross-border communications.<sup>62</sup> In 2009, the Commission explored whether carriers should be assessed regulatory fees for their terrestrial non-common carrier circuits, but declined to do so at that time because of the “complexity of the legal, policy and equity issues involved.”<sup>63</sup> Since that time, the telecommunications industry and Commission’s rules have evolved, and we now seek comment on whether it would be more equitable to no longer distinguish common carrier terrestrial circuits from non-common carrier terrestrial circuits for regulatory fee purposes. If we require carriers providing international service over terrestrial circuits to pay IBC regulatory fees for their non-common carrier circuits, what is the least burdensome methodology for calculating fees? For example, should the Commission require carriers to report the total amount of international revenue rather than the number of circuits? How do carriers identify their international revenues? How can we ensure carriers are accurately reporting both common carrier and non-common carrier terrestrial circuits? Finally, how can we improve our requirements and regulatory treatment of terrestrial and satellite services for purposes of regulatory fees?

#### 4. Other Regulatory Fee Reform

##### a. ITTA proposal

17. In the *FY 2015 Report and Order and FNPRM*, we sought comment on ITTA’s proposals to combine wireless voice and wireline services into the ITSP category<sup>64</sup> or, alternatively, to re-assign certain Wireline Competition Bureau FTEs to other fee categories, for regulatory fee purposes. We also sought comment on adopting a new regulatory fee category for CMRS, as a subcategory of the ITSP regulatory fee category.<sup>65</sup> We have had an opportunity to further review ITTA’s proposals and, as we explain below, we tentatively conclude that combining the wireline and wireless categories, reassigning Wireline Competition Bureau FTEs to the Wireless Telecommunications Bureau, and/or adopting a new subcategory for CMRS in the ITSP regulatory fee category are not consistent with Commission orders implementing section 9 of the Communications Act.

18. The Commission has stated that “[g]iven the significant implications of reassignment of FTEs in our fee calculation, we make changes to FTE classifications only after performing considerable

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<sup>62</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2009*, Notice of Proposed Rulemaking and Order, 24 FCC Rcd 5966, 5971, para. 14 (2009).

<sup>63</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2009*, Report and Order, 24 FCC Rcd 10301, 10306-307, paras. 16-17 (2009). On March 17, 2009, the Commission adopted in the *Submarine Cable Order* a new submarine cable bearer circuit methodology that allocates IBC costs among service providers in an equitable and competitively neutral manner, without distinguishing between common carriers and non-common carriers, by assessing a flat per cable landing license fee for all submarine cable systems. *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Second Report and Order, 24 FCC Rcd 4208, 4214-16, paras. 13-17 (2009) (*Submarine Cable Order*).

<sup>64</sup> ITTA Comments at 4-9. See *FY 2015 Report and Order and FNPRM*, 30 FCC Rcd at 10281-82, paras. 31-34. ITTA had proposed this previously. See, e.g., *Assessment and Collection of Regulatory Fees for Fiscal Year 2014*, Notice of Proposed Rulemaking, 29 FCC Rcd 6417, 6430-31, paras. 36-39 (2014) (*FY 2014 NPRM*); *Assessment and Collection of Regulatory Fees for Fiscal Year 2013*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 28 FCC Rcd 7790, 7796, para. 12 (2013) (*FY 2013 NPRM*); *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6388, 6404-05, paras. 40-41 (2008) (*FY 2008 FNPRM*).

<sup>65</sup> *FY 2015 Report and Order and FNPRM*, 30 FCC Rcd at 10282, para. 34. ITTA and ACA argue that such change is supported by the fact that many Wireline Competition Bureau proceedings, such as those involving universal service, intercarrier compensation, pole attachments, rural call completion, number portability, 911 access, and special access, affect wireless service providers. ITTA Comments at 9-10; ACA Comments at 4-7. CTIA opposes this proposal as arbitrary and capricious as well as in violation of section 9 of the Act. CTIA Comments at 2.

analysis and finding the clearest case for reassignment.”<sup>66</sup> In this instance, ITTA contends that the Wireline Competition Bureau FTEs working on universal service issues and other proceedings benefit categories of service providers other than ITSPs, particularly CMRS providers, and therefore should be considered in calculating the CMRS regulatory fee.<sup>67</sup> Based on our own detailed analysis, as well as the fact that the Wireless Telecommunications Bureau assigns its own FTEs to coordinate with the Wireline Competition Bureau on relevant wireless issues, we tentatively conclude that a clear case for reassignment of Wireline Competition Bureau FTEs to the Wireless Telecommunications Bureau is not demonstrated in this instance. Our analysis of the Wireline Competition Bureau FTE work on wireline issues that also affect the CMRS industry does not support adopting a new subcategory for CMRS in the ITSP regulatory fee category—and thus assessing regulatory fees on CMRS based on both Wireless Telecommunications Bureau FTEs and Wireline Competition Bureau FTEs, as ITTA proposes.<sup>68</sup> Further, ITTA’s proposal to combine these regulatory fee categories does not appear to address the substantial differences between the services in terms of regulatory oversight by the two bureaus. Thus, at this juncture, we do not find that the “clearest case of reassignment” exists based on the considerable analysis we have conducted.

19. We nevertheless seek comment on whether it would be appropriate to allocate some proportion of the direct FTEs that devote time to universal service and/or numbering issues as additional indirect FTEs.<sup>69</sup> Based on staff estimates looking back over a six to 12 month period, of the 165 FTEs in the Wireline Competition Bureau, approximately seven FTEs work on numbering issues and 52 FTEs work on universal service issues (approximately 16 on the high-cost program, 13 on the schools and libraries program, nine on the Lifeline program for low income consumers (lifeline), seven on the rural healthcare program, and seven on universal service contributions).<sup>70</sup> Of the 92 FTEs in the Wireless Telecommunications Bureau, staff estimate that the equivalent of approximately five FTEs work roughly full time on universal service issues (primarily the high-cost program). If we were to reallocate, for regulatory fee purposes, some proportion of the direct FTEs, what should that proportion be? Any proposals should demonstrate policy or legal arguments supporting reallocating some proportion of numbering and/or USF FTEs as indirect. In doing so, we invite comment on whether some or all of the FTEs that work on universal service contributions, the schools and libraries program, or the rural healthcare program, should be reallocated as indirect FTEs. Should we reallocate some proportion of the FTEs from each bureau that work on the high-cost program, given the participation of non-wireline and wireless regulatees in the Connect America Fund proceedings? What proportion, if any, of the FTEs that work on numbering issues and the lifeline program should we reallocate given that a significant number of regulatees benefiting from those programs are not wireline regulatees? Is there some proportion of these FTEs whose “activities benefit the Commission as a whole and are not specifically focused on [core bureau] regulatees”?<sup>71</sup> Commenters’ proposals for FTE reallocation should be consistent with the section 9 requirement that regulatory fees are to “be derived by determining the full-time equivalent number of employees performing” Commission activities, “adjusted to take into account factors that are reasonably related to the *benefits provided to the payer of the fee* by the Commission’s activities . . . .”<sup>72</sup>

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<sup>66</sup> *FY 2013 Report and Order*, 28 FCC Rcd at 12357, para. 19. The Commission observed that the International Bureau was a “singular case” because the work of those FTEs “primarily benefits licensees regulated by other bureaus.” *Id.*, 28 FCC Rcd at 12355, para. 14.

<sup>67</sup> ITTA Comments at 10.

<sup>68</sup> See Letter from Micah M. Caldwell, ITTA, to Marlene H. Dortch, Secretary, FCC (Jan. 22, 2016).

<sup>69</sup> Currently, indirect FTEs in various bureaus and offices work on universal service issues.

<sup>70</sup> These estimates can vary as discussed above and do not represent an entire fiscal year.

<sup>71</sup> *FY 2013 NPRM*, 28 FCC Rcd at 7803, para. 28.

<sup>72</sup> 47 U.S.C. § 159(b)(1)(A). (Emphasis added).

20. We note that incorrect allocation of FTEs to a particular core bureau may disproportionately impact regulatees given that indirect FTEs are allocated proportionally based on the direct FTE percentage attributable to a particular core bureau. We also note that any change in the allocation of FTEs necessarily affects the fees paid by payors in all other fee categories. We seek comment on whether this proposal is consistent with section 9 of the Act<sup>73</sup> and with the Commission's allocation policies with respect to direct and indirect FTEs.<sup>74</sup> Commenters should also address the Commission's goal of ensuring that regulatory fees are administrable and sustainable.<sup>75</sup>

**b. Earth Stations**

21. In the *FY 2014 NPRM*, the Commission sought comment on increasing the earth station regulatory fee allocation in order to reflect more appropriately the number of FTEs devoted to the regulation and oversight of the earth station portion of the satellite industry.<sup>76</sup> In the FY 2014 regulatory fee proceeding, we increased the regulatory fees paid by earth station licensees by approximately 7.5 percent based on our analysis and review of the record.<sup>77</sup> In the *FY 2015 NPRM and Report and Order*, we sought comment on whether to raise the earth station regulatory fees again.<sup>78</sup> We concluded, however, that the issue required further analysis, in part because the then-pending Part 25 proceeding streamlining the satellite licensing rules might affect the distribution of FTE work.<sup>79</sup> An order was adopted in that proceeding in December 2015, and accordingly it is timely to again seek comment on whether to increase the regulatory fees paid by earth station licensees.<sup>80</sup> In this context, we seek comment on EchoStar's proposal to adopt different regulatory fees for different types of earth station licenses.<sup>81</sup>

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<sup>73</sup> Section 9 of the Communications Act requires regulatory fees collected "to recover the costs of ... enforcement activities, policy and rulemaking activities, user information services, and international activities." 47 U.S.C. § 159(a). The regulatory fees are to "be derived by determining the full-time equivalent number of employees performing" these activities, "adjusted to take into account factors that are reasonably related to the benefits provided to the payer of the fee by the Commission's activities ...." 47 U.S.C. § 159(b)(1)(A).

<sup>74</sup> *FY 2013 Report and Order*, 28 FCC Rcd at 12354-55, paras. 10-12 (adopting use of current FTE data for purposes of regulatory fee calculations as opposed to 1998 FTE data previously used); *id.* at 12357-58, paras. 19-20 ("It would be inconsistent with section 9 to delay reallocating the International Bureau FTEs, where the reallocation is clearly warranted, while we engage in painstaking examinations of less clear and more factually complex situations in other bureaus. . . . At the same time, however, we recognize that a reexamination of how FTEs are allocated throughout the Commission is an indispensable part of comprehensively revising the Commission's regulatory fee program."); *FY 2013 NPRM*, 28 FCC Rcd at 7793-95, 7796-99, 7803, paras. 7-10, 15-19, 29 (generally explaining prior FTE allocation methodology and proposing methodology changes).

<sup>75</sup> *FY 2013 Report and Order*, 28 FCC Rcd at 12354, para. 9.

<sup>76</sup> *FY 2014 NPRM*, 29 FCC Rcd at 6428, para. 29.

<sup>77</sup> *See FY 2014 Report and Order*, 29 FCC Rcd at 10772-73, para. 12.

<sup>78</sup> *FY 2015 NPRM and Report and Order*, 30 FCC Rcd at 5360, para. 14.

<sup>79</sup> *FY 2015 NPRM and Report and Order*, 30 FCC Rcd at 5360, para. 14.

<sup>80</sup> *See Comprehensive Review of Licensing and Operating Rules for Satellite Services*, Second Report and Order, 30 FCC Rcd 14713 (2015).

<sup>81</sup> *See EchoStar July 20, 2015 ex parte*, filed in MD Docket No. 15-121.

#### IV. PROCEDURAL MATTERS

##### A. Payment of Regulatory Fees

##### 1. Payments by Check Will Not Be Accepted for Payment of Annual Regulatory Fees

22. Pursuant to an Office of Management and Budget (OMB) directive,<sup>82</sup> the Commission is moving towards a paperless environment, extending to disbursement and collection of select federal government payments and receipts.<sup>83</sup> Last year the Commission stopped accepting checks (including cashier's checks and money orders) and the accompanying hardcopy forms (e.g., Forms 159, 159-B, 159-E, 159-W) for the payment of regulatory fees.<sup>84</sup> This new paperless procedure requires that all payments be made by online Automated Clearing House (ACH) payment, online credit card, or wire transfer. Any other form of payment (e.g., checks, cashier's checks, or money orders) will be rejected. For payments by wire, a Form 159-E should still be transmitted via fax so that the Commission can associate the wire payment with the correct regulatory fee information. This change affects all payments of regulatory fees.<sup>85</sup>

##### 2. Revised Credit Card Transaction Levels

23. Since June 1, 2015, in accordance with U.S. Treasury Announcement No. A-2014-04 (July 2014), the amount that can be charged on a credit card for transactions with federal agencies has been reduced to \$24,999.99.<sup>86</sup> Transactions greater than \$24,999.99 will be rejected. This limit applies to single payments or bundled payments of more than one bill. Multiple transactions to a single agency in one day may be aggregated and treated as a single transaction subject to the \$24,999.99 limit. Customers who wish to pay an amount greater than \$24,999.99 should consider available electronic alternatives such as Visa or MasterCard debit cards, ACH debits from a bank account, and wire transfers. Each of these payment options is available after filing regulatory fee information in Fee Filer. Further details will be provided regarding payment methods and procedures at the time of FY 2016 regulatory fee collection in Fact Sheets, available at <https://www.fcc.gov/regfees>.

##### 3. De Minimis Regulatory Fees

24. Regulatees whose total FY 2016 annual regulatory fee liability, including all categories of fees for which payment is due, is \$500 or less are exempt from payment of FY 2016 regulatory fees. The *de minimis* threshold applies only to filers of annual regulatory fees (not regulatory fees paid through multi-year filings), and it is not a permanent exemption. Each regulatee will need to reevaluate their total fee liability each fiscal year to determine whether they meet the *de minimis* exemption.

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<sup>82</sup> Office of Management and Budget (OMB) Memorandum M-10-06, Open Government Directive, Dec. 8, 2009; see also <http://www.whitehouse.gov/the-press-office/2011/06/13/executive-order-13576-delivering-efficient-effective-and-accountable-gov>.

<sup>83</sup> See U.S. Department of the Treasury, Open Government Plan 2.1, Sept. 2012.

<sup>84</sup> *FY 2015 Report and Order and FNPRM*, 30 FCC Rcd at 10282-83, para. 35. See 47 CFR § 1.1158.

<sup>85</sup> Payers should note that this change will mean that to the extent certain entities have to date paid both regulatory fees and application fees at the same time via paper check, they will no longer be able to do so as the regulatory fees payment via paper check will no longer be accepted.

<sup>86</sup> Customers who owe an amount on a bill, debt, or other obligation due to the federal government are prohibited from splitting the total amount due into multiple payments. Splitting an amount owed into several payment transactions violates the credit card network and Fiscal Service rules. An amount owed that exceeds the Fiscal Service maximum dollar amount, \$24,999.99, may not be split into two or more payment transactions in the same day by using one or multiple cards. Also, an amount owed that exceeds the Fiscal Service maximum dollar amount may not be split into two or more transactions over multiple days by using one or more cards.

#### 4. Standard Fee Calculations and Payment Dates

25. 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, 2015 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, 2015. For providers of Direct Broadcast Satellite (DBS) service, regulatory fees should be paid based on a subscriber count on or about December 31, 2015. In instances where a permit or license is transferred or assigned after October 1, 2015, 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, 2015. In instances where a permit or license is transferred or assigned after October 1, 2015, responsibility for payment rests with the holder of the permit or license as of the fee due date. Audio bridging service providers are included in this category.<sup>87</sup> For Responsible Organizations (RespOrgs) that manage Toll Free Numbers (TFN), regulatory fees should be paid on all working, assigned, and reserved toll free numbers as well as toll free numbers in any other status as defined in section 52.103 of the Commission's rules.<sup>88</sup> The unit count should be based on toll free numbers managed by RespOrgs on or about December 31, 2015.
- *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, 2015. The number of subscribers, units, or telephone numbers on December 31, 2015 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, 2015, responsibility for payment rests with the holder of the permit or license as of the fee due date.
- *Wireless Services, Multi-year fees*: The first eight regulatory fee categories in our Schedule of Regulatory Fees pay "small multi-year wireless regulatory fees." Entities pay these regulatory fees in advance for the entire amount period covered by the five-year or ten-year terms of their initial licenses, and pay regulatory fees again only when the license is renewed or a new license is obtained. We include these fee categories in our rulemaking (*see Appendix B*) to publicize our estimates of the number of "small multi-year wireless" licenses that will be renewed or newly obtained in FY 2016.
- *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, 2015.<sup>89</sup> Regulatory fees also must be paid for CARS licenses that were granted on or before October 1, 2015. In instances where a permit or license is transferred or assigned after October 1, 2015, responsibility for payment rests with the holder of the permit or license as of the fee due date.

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<sup>87</sup> Audio bridging services are toll teleconferencing services.

<sup>88</sup> 47 CFR § 52.103.

<sup>89</sup> Cable television system operators should compute their number of 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 2015, rather than on a count as of December 31, 2015.

- *International Services*: Regulatory fees must be paid for (1) earth stations and (2) geostationary orbit space stations and non-geostationary orbit satellite systems that were licensed and operational on or before October 1, 2015. In instances where a permit or license is transferred or assigned after October 1, 2015, 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, 2015. In instances where a license is transferred or assigned after October 1, 2015, responsibility for payment rests with the holder of the license as of the fee due date. For regulatory fee purposes, the allocation in FY 2016 will remain at 87.6 percent for submarine cable and 12.4 percent for satellite/terrestrial facilities.
- *International Services: (Terrestrial and Satellite Services)*: Regulatory fees for Terrestrial and Satellite International Bearer Circuits (IBCs) are to be paid by facilities-based common carriers that have active (used or leased) international bearer circuits as of December 31, 2015 in any terrestrial or satellite transmission facility for the provision of service to an end user or resale carrier. When calculating the number of such active circuits, the facilities-based common carriers must include circuits used by themselves or their affiliates. In addition, non-common carrier satellite operators must pay a fee for each circuit they and their affiliates hold and each circuit sold or leased to any customer, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. For these purposes, “active circuits” include backup and redundant circuits as of December 31, 2015. Whether circuits are used specifically for voice or data is not relevant for purposes of determining that they are active circuits.<sup>90</sup> In instances where a permit or license is transferred or assigned after October 1, 2015, 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 2016 will remain at 87.6 percent for submarine cable and 12.4 percent for satellite/terrestrial facilities.<sup>91</sup>

#### **B. Commercial Mobile Radio Service (CMRS) Cellular and Mobile Services Assessments**

26. The Commission will compile data from the Numbering Resource Utilization Forecast (NRUF) report that is based on “assigned” telephone number (subscriber) counts that have been adjusted for porting to net Type 0 ports (“in” and “out”).<sup>92</sup> This information of telephone numbers (subscriber count) will be posted on the Commission’s electronic filing and payment system (Fee Filer) along with the carrier’s Operating Company Numbers (OCNs).

27. A carrier wishing to revise its telephone number (subscriber) count can do so by accessing Fee Filer and follow the prompts to revise their telephone number counts. Any revisions to the telephone number counts should be accompanied by an explanation or supporting documentation.<sup>93</sup> The Commission will then review the revised count and supporting documentation and either approve or

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<sup>90</sup> We encourage terrestrial and satellite service providers to seek guidance from the International Bureau’s Telecommunications and Analysis Division to verify their particular IBC reporting processes to ensure that their calculation methods comply with our rules.

<sup>91</sup> We remind facilities-based common carriers to review their reporting processes to ensure that they accurately calculate and report IBCs.

<sup>92</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 2005*, Report and Order and Order on Reconsideration, 20 FCC Rcd 12259, 12264, paras. 38-44 (2005).

<sup>93</sup> 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.

disapprove the submission in Fee Filer. If the submission is disapproved, the Commission will contact the provider to afford the provider an opportunity to discuss its revised subscriber count and/or provide additional supporting documentation. If we receive no response from the provider, or we do not reverse our initial disapproval of the provider's revised count submission, the fee payment must be based on the number of subscribers listed initially in Fee Filer. Once the timeframe for revision has passed, the telephone number counts are final and are the basis upon which CMRS regulatory fees are to be paid. Providers can view their final telephone counts online in Fee Filer. A final CMRS assessment letter will not be mailed out.

28. Because some carriers do not file the NRUF report, they may not see their telephone number counts in Fee Filer. In these instances, the carriers should compute their fee payment using the standard methodology that is currently in place for CMRS Wireless services (i.e., compute their telephone number counts as of December 31, 2015), and submit their fee payment accordingly. Whether a carrier reviews its telephone number counts in Fee Filer or not, the Commission reserves the right to audit the number of telephone numbers for which regulatory fees are paid. In the event that the Commission determines that the number of telephone numbers that are paid is inaccurate, the Commission will bill the carrier for the difference between what was paid and what should have been paid.

#### **C. Initial Regulatory Flexibility Analysis**

29. An initial regulatory flexibility analysis (IRFA) is contained in Appendix E. Comments to the IRFA must be identified as responses to the IRFA and filed by the deadlines for comments on the Notice. The Commission will send a copy of the Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

#### **D. Initial Paperwork Reduction Act of 1995 Analysis**

30. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it 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).

#### **E. Filing Instructions**

31. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
  - Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
  - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

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

32. People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

#### F. Ex Parte Information

33. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with section 1.1206(b) of the Commission’s rules. In proceedings governed by section 1.49(f) of the Commission’s rules or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s ex parte rules.

#### V. ORDERING CLAUSE

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX A

## Calculation of FY 2016 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 at the time the application is filed.

Fee Category	FY 2016 Payment Units	Years	FY 2015 Revenue Estimate	Pro-Rated FY 2016 Revenue Require- ment	Computed FY 2016 Reg. Fee	Rounded FY 2016 Reg. Fee	Expected FY 2016 Revenue
PLMRS (Exclusive Use)	2,500	10	546,000	625,938	25	25	625,000
PLMRS (Shared use) (includes Rural Radio Service (47 CFR part 22))	31,100	10	3,100,000	3,114,665	10	10	3,110,000
Microwave	12,500	10	2,520,000	3,129,688	25	25	3,125,000
Marine (Ship)	6,900	10	945,000	1,036,553	15	15	1,035,000
Aviation (Aircraft)	4,700	10	420,000	470,705	10	10	470,000
Marine (Coast)	480	10	171,500	192,288	40	40	192,000
Aviation (Ground)	1,100	10	180,000	220,330	20	20	220,000
AM Class A <sup>4</sup>	66	1	281,125	314,451	4,764	4,775	315,150
AM Class B <sup>4</sup>	1,535	1	3,499,125	3,893,459	2,536	2,525	3,875,875
AM Class C <sup>4</sup>	889	1	1,244,600	1,409,299	1,585	1,575	1,400,175
AM Class D <sup>4</sup>	1,492	1	4,103,000	4,607,579	3,088	3,100	4,625,200
FM Classes A, B1 & C3 <sup>4</sup>	3,122	1	8,613,000	9,652,908	3,092	3,100	9,678,200
FM Classes B, C, C0, C1 & C2 <sup>4</sup>	3,139	1	10,607,625	11,826,839	3,768	3,775	11,849,725
AM Construction Permits <sup>1</sup>	15	1	17,110	10,366	691	690	10,350
FM Construction Permits <sup>1</sup>	179	1	136,500	215,122	1,202	1,200	214,800
Satellite TV	128	1	200,025	224,336	1,753	1,750	224,000
Digital TV Markets 1-10	139	1	6,274,550	8,446,540	60,766	60,775	8,447,725
Digital TV Markets 11-25	139	1	5,918,400	6,358,412	45,744	45,750	6,359,250
Digital TV Markets 26-50	181	1	5,000,125	5,532,175	30,565	30,575	5,534,075
Digital TV Markets 51-100	283	1	4,605,825	4,311,203	15,234	15,225	4,308,675
Digital TV Remaining Markets	365	1	1,838,150	1,827,738	5,008	5,000	1,825,000
Digital TV Construction Permits <sup>1</sup>	3	1	9,700	15,023	5,000	5,000	15,000

Fee Category	FY 2016 Payment Units	Years	FY 2015 Revenue Estimate	Pro-Rated FY 2016 Revenue Require- ment	Computed FY 2016 Reg. Fee	Rounded FY 2016 Reg. Fee	Expected FY 2016 Revenue
LPTV/Translators/ Boosters/Class A TV	3,924	1	1,601,600	1,788,098	456	455	1,785,420
CARS Stations	285	1	198,000	221,206	776	775	220,875
Cable TV Systems, including IPTV	64,100,000	1	61,920,000	64,196,150	1.0015	1.00	64,100,000
Direct Broadcast Satellite (DBS)	34,000,000	1	4,080,000	9,193,770	.2704	.27	9,180,000
Interstate Telecommunication Service Providers	\$38,400,000,000	1	128,428,000	141,908,544	0.0036955	0.00370	142,080,000
Toll Free Numbers	36,500,000	1	4,380,000	4,752,018	0.1302	0.13	4,745,000
CMRS Mobile Services (Cellular/Public Mobile)	360,000,000	1	60,180,000	72,108,276	0.2003	0.20	72,000,000
CMRS Messag. Services	2,300,000	1	208,000	184,000	0.0800	0.080	184,000
BRS <sup>2</sup>	890	1	565,150	645,250	725	725	645,250
LMDS	395	1	238,125	286,375	725	725	286,375
Per 64 kbps Int'l Bearer Circuits Terrestrial (Common) & Satellite (Common & Non-Common)	22,500,000	1	657,000	770,617	.0342	.03	675,000
Submarine Cable Providers (see chart in Appendix B) <sup>3</sup>	39.19	1	4,652,576	5,444,038	138,914	138,925	5,444,471
Earth Stations	3,400	1	1,023,000	1,174,760	346	345	1,173,000
Space Stations (Geostationary)	95	1	11,438,400	13,174,858	138,683	138,675	13,174,125
Space Stations (Non- Geostationary)	6	1	792,750	913,068	152,178	152,175	913,050
***** Total Estimated Revenue to be Collected			340,593,961	384,196,740			384,066,766
***** Total Revenue Requirement			339,844,000	384,012,497			384,012,497
Difference			749,961	184,243			54,269

Notes on Appendix A

<sup>1</sup> The AM and FM Construction Permit revenues and the Digital (VHF/UHF) Construction Permit revenues were adjusted, respectively, to set the regulatory fee to an amount no higher than the lowest licensed fee for that class of service. Reductions in the Digital (VHF/UHF) Construction Permit revenues were also offset by increases in the revenue totals for various Digital television stations by market size, respectively.

<sup>2</sup> 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, para. 6 (2004).

<sup>3</sup> 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 *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6388 (2008) and *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Second Report and Order, 24 FCC Rcd 4208 (2009).

<sup>4</sup> The fee amounts listed in the column entitled "Rounded New FY 2016 Regulatory Fee" constitute a weighted average media regulatory fee by class of service. The actual FY 2016 regulatory fees for AM/FM radio stations are listed on a grid located at the end of Appendix B.

## APPENDIX B

## Proposed Regulatory Fees

## FY 2016 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 at the time the application is filed.

Fee Category	Annual Regulatory Fee (U.S. \$s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	25
Microwave (per license) (47 CFR part 101)	25
Marine (Ship) (per station) (47 CFR part 80)	15
Marine (Coast) (per license) (47 CFR part 80)	40
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	10
PLMRS (Shared Use) (per license) (47 CFR part 90)	10
Aviation (Aircraft) (per station) (47 CFR part 87)	10
Aviation (Ground) (per license) (47 CFR part 87)	20
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.20
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08
Broadband Radio Service (formerly MMDS/ MDS) (per license) (47 CFR part 27)	725
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	725
AM Radio Construction Permits	690
FM Radio Construction Permits	1,200
Digital TV (47 CFR part 73) VHF and UHF Commercial	
Markets 1-10	60,775
Markets 11-25	45,750
Markets 26-50	30,575
Markets 51-100	15,225
Remaining Markets	5,000
Construction Permits	5,000
Satellite Television Stations (All Markets)	1,750
Low Power TV, Class A TV, TV/FM Translators & Boosters (47 CFR part 74)	455

Fee Category	Annual Regulatory Fee (U.S. \$s)
CARS (47 CFR part 78)	775
Cable Television Systems (per subscriber) (47 CFR part 76), Including IPTV	1.00
Direct Broadcast Service (DBS) (per subscriber) (as defined by section 602(13) of the Act)	.27
Interstate Telecommunication Service Providers (per revenue dollar)	.00370
Toll Free (per toll free subscriber) (47 CFR section 52.101 (f) of the rules)	.13
Earth Stations (47 CFR part 25)	345
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100)	138,675
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	152,175
International Bearer Circuits -- Terrestrial/Satellites (per 64KB circuit)	.03
Submarine Cable Landing Licenses Fee (per cable system)	See Table Below

## FY 2016 SCHEDULE OF REGULATORY FEES: (continued)

FY 2016 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	\$1,100	\$795	\$690	\$760	\$1,200	\$1,375
25,001 – 75,000	\$1,650	\$1,200	\$1,025	\$1,150	\$1,800	\$2,050
75,001 – 150,000	\$2,200	\$1,600	\$1,375	\$1,525	\$2,400	\$2,750
150,001 – 500,000	\$3,300	\$2,375	\$2,075	\$2,275	\$3,600	\$4,125
500,001 – 1,200,000	\$5,500	\$3,975	\$3,450	\$3,800	\$6,000	\$6,875
1,200,001 – 3,000,00	\$8,250	\$5,950	\$5,175	\$5,700	\$9,000	\$10,300
3,000,001 – 6,000,00	\$11,000	\$7,950	\$6,900	\$7,600	\$12,000	\$13,750
>6,000,000	\$13,750	\$9,950	\$8,625	\$9,500	\$15,000	\$17,175

**FY 2016 SCHEDULE OF REGULATORY FEES**  
**International Bearer Circuits - Submarine Cable**

Submarine Cable Systems (capacity as of December 31, 2015)	Fee amount
< 2.5 Gbps	\$8,675
2.5 Gbps or greater, but less than 5 Gbps	\$17,375
5 Gbps or greater, but less than 10 Gbps	\$34,725
10 Gbps or greater, but less than 20 Gbps	\$69,475
20 Gbps or greater	\$138,925

## APPENDIX C

## Sources of Payment Unit Estimates for FY 2016

In order to calculate individual service fees for FY 2016, we adjusted FY 2015 payment units for each service to more accurately reflect expected FY 2016 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 Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast*.

We sought verification for these estimates from multiple sources and, in all cases, we compared FY 2016 estimates with actual FY 2015 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 2016 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 2016 payment units are based on FY 2015 actual payment units, it does not necessarily mean that our FY 2016 projection is exactly the same number as in FY 2015. We have either rounded the FY 2016 number or adjusted it slightly to account for these variables.

FEE CATEGORY	SOURCES OF PAYMENT UNIT ESTIMATES
Land Mobile (All), Microwave, Marine (Ship & Coast), Aviation (Aircraft & Ground), 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 2015 payment data.
CMRS Messaging Services	Based on WTB reports, and FY 2015 payment data.
AM/FM Radio Stations	Based on CDBS data, adjusted for exemptions, and actual FY 2015 payment units.
Digital TV Stations (Combined VHF/UHF units)	Based on CDBS data, adjusted for exemptions, and actual FY 2015 payment units.
AM/FM/TV Construction Permits	Based on CDBS data, adjusted for exemptions, and actual FY 2015 payment units.
LPTV, Translators and Boosters, Class A Television	Based on CDBS data, adjusted for exemptions, and actual FY 2015 payment units.
BRS (formerly MDS/MMDS)	Based on WTB reports and actual FY 2015 payment units.
LMDS	Based on WTB reports and actual FY 2015 payment units.
Cable Television Relay Service	Based on data from Media Bureau's COALS database and actual

(CARS) Stations	FY 2015 payment units.
Cable Television System Subscribers, Including IPTV Subscribers	Based on publicly available data sources for estimated subscriber counts and actual FY 2015 payment units.
Interstate Telecommunication Service Providers	Based on FCC Form 499-Q data for the four quarters of calendar year 2015, the Wireline Competition Bureau projected the amount of calendar year 2015 revenue that will be reported on 2016 FCC Form 499-A worksheets in April 2016.
Earth Stations	Based on International Bureau (IB) licensing data and actual FY 2015 payment units.
Space Stations (GSOs & NGSOs)	Based on IB data reports and actual FY 2015 payment units.
International Bearer Circuits	Based on IB reports and submissions by licensees, adjusted as necessary.
Submarine Cable Licenses	Based on IB license information.

**APPENDIX D****Factors, Measurements, and Calculations That Determines 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, phase, 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 augmented standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in sections 73.150 and 73.152 of the Commission's rules. 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. 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 2010 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 CFR § 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. The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2010 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.

## APPENDIX E

## Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> the Commission prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the Notice of Proposed Rulemaking (*Notice*). Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadline for comments on this *Notice*. The Commission will send a copy of the *Notice*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>2</sup> In addition, the *Notice* and IRFA (or summaries thereof) will be published in the Federal Register.<sup>3</sup>

**A. Need for, and Objectives of, the Notice**

2. The *Notice* seeks comment regarding adopting proposed regulatory fees for Fiscal Year 2016. The proposed regulatory fees are attached to the *Notice* in Appendix B. The Commission is required by Congress to adopt regulatory fees each year “to recover the costs of . . . enforcement activities, policy and rulemaking activities, user information services, and international activities.”<sup>4</sup> The *Notice* proposes no new changes in the Commission’s methodology, but does seek comment on the following. (i) As Direct Broadcast Satellites (DBS), along with other Multichannel Video Programming Distributors (MVPDs), receive oversight and regulation by Media Bureau FTEs in, e.g., the implementation of the Commercial Advertisement Loudness Mitigation Act (CALM Act),<sup>5</sup> the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA),<sup>6</sup> and the Satellite Television Extension and Localism Act (STELA) Reauthorization Act of 2014 (STELAR), the *Notice* proposes an increase in the DBS fee rate to 27 cents per DBS subscriber. (ii) As radio stations expand in ever increasing large markets, the population threshold of “greater than 3,000,000” is no longer an adequate threshold. As a result, the *Notice* proposes to raise the population threshold of broadcasters to “greater than 6,000,000” to reflect increases in the population in major broadcast markets. In addition, the Commission also proposes to adjust the fee rates of television stations to reflect a higher proportional fee for large markets compared to medium and smaller markets. (iii) The Commission seeks comment on how providers of international bearer circuits should count their circuits to maintain consistency across all carriers to ensure that all providers are calculating and reporting IBCs in the same manner. (iv) The Commission received a proposal from ITTA to combine CMRS and ITSP revenues together for the purpose of determining a single regulatory fee rate for the CMRS and ITSP regulatory fee categories. After reviewing ITTA’s proposal, the Commission tentatively concludes not to combine wireless and interstate revenues, add a subcategory for CMRS in the ITSP fee category, or reallocate Wireline Competition Bureau FTEs to the Wireless Telecommunications Bureau for the purpose of calculating regulatory fees. The Commission does, however, seek comment on regulatory fee reform, including the

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<sup>1</sup> 5 U.S.C. § 603. The RFA, 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).

<sup>2</sup> 5 U.S.C. § 603(a).

<sup>3</sup> *Id.*

<sup>4</sup> 47 U.S.C. § 159(a).

<sup>5</sup> See *Implementation of the Commercial Advertisement, Loudness Mitigation (CALM) Act*, Report and Order, 26 FCC Rcd 17222 (2011) (*CALM Act Report and Order*).

<sup>6</sup> Pub. L. No. 111-260, 124 Stat. 2751 (2010). See also *Amendment of Twenty-First Century Communications and Video Accessibility Act of 2010*, Pub. L. No. 111-265, 124 Stat. 2795 (2010) (making corrections to the CVAA); 47 CFR Part 79.

reallocation of direct FTEs, including those FTEs working on universal service and numbering issues. (v) Finally, the Commission seeks comment on increasing earth station fees relative to space station fees or adopting different earth station fees for different types of earth stations.

**B. Legal Basis:**

3. This action, including publication of proposed rules, is authorized under sections (4)(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended.<sup>7</sup>

**C. 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.<sup>8</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>9</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>10</sup> 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.<sup>11</sup>

5. **Small Entities.** Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive small entity size standards that could be directly affected by the proposals under consideration.<sup>12</sup> As of 2009, small businesses represented 99.9 percent of the 27.5 million businesses in the United States, according to the SBA.<sup>13</sup> In addition, a “small organization is generally any not-for-profit enterprise which is independently owned and operated and not dominant in its field.”<sup>14</sup> Nationwide, as of 2007, there were approximately 1,621,215 small organizations.<sup>15</sup> In addition, 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.”<sup>16</sup> Census Bureau data for 2011 indicate that there were 90,056 local governmental jurisdictions in the United States.<sup>17</sup> We estimate that, of this total, as many as 89,327 entities may qualify as “small governmental jurisdictions.”<sup>18</sup> Thus, we estimate that most

<sup>7</sup> 47 U.S.C. §§ 154(i) and (j), 159, and 303(r).

<sup>8</sup> 5 U.S.C. § 603(b)(3).

<sup>9</sup> 5 U.S.C. § 601(6).

<sup>10</sup> 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.”

<sup>11</sup> 15 U.S.C. § 632.

<sup>12</sup> See 5 U.S.C. § 601(3)-(6).

<sup>13</sup> See SBA, Office of Advocacy, “Frequently Asked Questions,” available at <http://www.sba.gov/faqs/faqindex.cfm?arealD=24>.

<sup>14</sup> 5 U.S.C. § 601(4).

<sup>15</sup> See Independent Sector, *The New Nonprofit Almanac and Desk Reference* (2010).

<sup>16</sup> 5 U.S.C. § 601(5).

<sup>17</sup> See SBA, Office of Advocacy, “Frequently Asked Questions,” available at [http://www.sba.gov/sites/default/files/FAQ\\_March\\_201\\_O.pdf](http://www.sba.gov/sites/default/files/FAQ_March_201_O.pdf).

local government jurisdictions are small. Finally, small entities may include Responsible Organizations (RespOrgs), which are entities chosen by toll free subscribers to manage and administer the appropriate records in the toll free Service Management System for the toll free subscriber.<sup>19</sup> Although RespOrgs are often wireline carriers, they can also include other non-carrier entities. Please refer to each group that is acting as a RespOrg identified in this section of the IRFA. From the data on the SMS/800 website,<sup>20</sup> we estimate that there are approximately 459 RespOrgs, and applying the size standard of 1500 employees is appropriate because most RespOrgs at this time, are wireline-based or wireless-based. We believe that the majority of RespOrgs are small entities under that size standard.<sup>21</sup>

6. **Wired Telecommunications Carriers.** The U.S. Census Bureau defines this industry as “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 communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”<sup>22</sup> The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.<sup>23</sup> Census data for 2007 shows that there were 3,188 firms that operated that year. Of this total, 3,144 operated with fewer than 1,000 employees.<sup>24</sup> Thus, under this size standard, the majority of firms in this industry can be considered small.

7. **Local Exchange Carriers (LECs).** Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is for Wired Telecommunications Carriers as defined in paragraph 6 of this IRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>25</sup> According to census data from 2007, there were 3,188 establishments that operated that year. Of this total, 3,144 operated with fewer than 1,000 employees.<sup>26</sup> The Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the *Notice*.

(Continued from previous page) \_\_\_\_\_

<sup>18</sup> The 2011 Census Data for small governmental organizations are not presented based on the size of the population in each organization. As stated above, there were 90,056 local governmental organizations in 2011. As a basis for estimating how many of these 90,056 local organizations were small, we note that there were a total of 729 cities and towns (incorporated places and civil divisions) with populations over 50,000. See <http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>. If we subtract the 729 cities and towns that exceed the 50,000 population threshold, we conclude that approximately 789,237 are small.

<sup>19</sup> 47 CFR § 52.101(b).

<sup>20</sup> <https://www.somos.com/>. SMS/800, Inc. is now Somos, Inc.

<sup>21</sup> See, e.g., 13 CFR § 121.101; NAICS Code 517110; NAICS Code 517210. For purposes of this IRFA, because a substantial percentage of RespOrgs are wireless-based or wireline-based, the standard size applicable to these carriers is referenced.

<sup>22</sup> See <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>23</sup> See 13 CFR § 120.201, NAICS Code 517110.

<sup>24</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2007\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=table).

<sup>25</sup> 13 CFR § 121.201, NAICS code 517110.

<sup>26</sup> See *id.*

8. **Incumbent LECs.** Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers, as defined in paragraph 6 of this IRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>27</sup> According to census data from 2007, 3,188 firms operated in that year. Of this total, 3,144 operated with fewer than 1,000 employees.<sup>28</sup> According to the Industry Analysis Branch of the Wireline Competition Bureau, 1,307 carriers reported that they were incumbent local exchange service providers.<sup>29</sup> Of this total of 1,307 incumbent local exchange service providers, an estimated 1,006 operated with 1,500 or fewer employees.<sup>30</sup> Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies proposed in the *Notice*.

9. **Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.** Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers, as defined in paragraph 6 of this IRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>31</sup> U.S. Census data for 2007 indicate that 3,188 firms operated during that year. Of that number, 3,144 operated with fewer than 1,000 employees.<sup>32</sup> Based on this data, the Commission concludes that the majority of Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers are small entities. According to the Commission's Industry Analysis Division of the Wireline Competition Bureau data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.<sup>33</sup> Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.<sup>34</sup> In addition, 72 carriers have reported that they are Other Local Service Providers.<sup>35</sup> Of this total, 70 have 1,500 or fewer employees.<sup>36</sup> 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 rules adopted pursuant to the proposals in this *Notice*.

10. **Interexchange Carriers (IXCs).** Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS Code category is Wired Telecommunications Carriers as defined in paragraph 6 of this IRFA. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.<sup>37</sup> According to Commission's Industry

<sup>27</sup> 13 CFR § 121.201, NAICS code 517110.

<sup>28</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2007\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=table).

<sup>29</sup> See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

<sup>30</sup> See *id.*

<sup>31</sup> 13 CFR § 121.201, NAICS code 517110.

<sup>32</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2007\\_US\\_51SSSZ5&prodType=%20table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=%20table).

<sup>33</sup> See *Trends in Telephone Service*, at tbl. 5.3.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> 13 CFR § 121.201, NAICS code 517110.

Analysis Division of the Wireline Competition Bureau data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.<sup>38</sup> Of this total, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.<sup>39</sup> Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the *Notice*.

11. **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 NAICS Code category for prepaid calling card providers is Telecommunications Resellers. This industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Mobile virtual networks operators (MVNOs) are included in this industry.<sup>40</sup> Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.<sup>41</sup> U.S. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees.<sup>42</sup> Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission's Industry Analysis Division of the Wireline Competition Bureau data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards.<sup>43</sup> All 193 carriers have 1,500 or fewer employees.<sup>44</sup> Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to the *Notice*.

12. **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.<sup>45</sup> Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees.<sup>46</sup> Under this category and the associated small business size standard, the majority of these local resellers can be considered small entities. According to Commission's Industry Analysis Division of the Wireline Competition Bureau data, 213 carriers have reported that they are engaged in the provision of local resale services.<sup>47</sup> Of this total, an estimated 211 have 1,500 or fewer employees.<sup>48</sup> Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the proposals in this *Notice*.

13. **Toll Resellers.** The Commission has not developed a definition for Toll Resellers. The closest NAICS Code Category is Telecommunications Resellers, and the SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a

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<sup>38</sup> See *Trends in Telephone Service*, at tbl. 5.3.

<sup>39</sup> *Id.*

<sup>40</sup> <http://www.census.gov/cgi-bin/ssd/naics/naicsrch>.

<sup>41</sup> 13 CFR § 121.201, NAICS code 517911.

<sup>42</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2007\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=table).

<sup>43</sup> See *Trends in Telephone Service*, at tbl. 5.3.

<sup>44</sup> *Id.*

<sup>45</sup> 13 CFR § 121.201, NAICS code 517911.

<sup>46</sup> *Id.*

<sup>47</sup> See *Trends in Telephone Service*, at tbl. 5.3.

<sup>48</sup> *Id.*

business is small if it has 1,500 or fewer employees.<sup>49</sup> Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees.<sup>50</sup> Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission's Industry Analysis Division of the Wireline Competition Bureau data, 881 carriers have reported that they are engaged in the provision of toll resale services.<sup>51</sup> Of this total, an estimated 857 have 1,500 or fewer employees.<sup>52</sup> Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our proposals in the *Notice*.

14. **Other Toll Carriers.** Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable NAICS Code category is for Wired Telecommunications Carriers, as defined in paragraph 6 of this IRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>53</sup> Census data for 2007 shows that there were 3,188 firms that operated that year. Of this total, 3,144 operated with fewer than 1,000 employees.<sup>54</sup> Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to Commission's Industry Analysis Division of the Wireline Competition Bureau data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.<sup>55</sup> Of these, an estimated 279 have 1,500 or fewer employees.<sup>56</sup> Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules adopted pursuant to the *Notice*.

15. **Wireless Telecommunications Carriers (except Satellite).** This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves, such as cellular services, paging services, wireless internet access, and wireless video services.<sup>57</sup> The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, Census Data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had fewer than 1,000 employees. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. Similarly, according to internally developed Commission's Industry Analysis Division of the Wireline Competition Bureau data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) services.<sup>58</sup> Of this total, an estimated 261 have 1,500 or fewer employees.<sup>59</sup> Consequently, the Commission estimates that approximately half of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small and may be affected by rules adopted pursuant

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<sup>49</sup> 13 CFR § 121.201, NAICS code 517911.

<sup>50</sup> *Id.*

<sup>51</sup> *Trends in Telephone Service*, at tbl. 5.3.

<sup>52</sup> *Id.*

<sup>53</sup> 13 CFR § 121.201, NAICS code 517110.

<sup>54</sup> *Id.*

<sup>55</sup> *Trends in Telephone Service*, at tbl. 5.3.

<sup>56</sup> *Id.*

<sup>57</sup> NAICS Code 517210. See <http://www.census.gov/cgi-bin/ssd/naics/naicsrch>.

<sup>58</sup> *Trends in Telephone Service*, at tbl. 5.3.

<sup>59</sup> *Id.*

to this Notice.

16. **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.”<sup>60</sup> The SBA has created the following small business size standard for Television Broadcasting firms: those having \$14 million or less in annual receipts.<sup>61</sup> The Commission has estimated the number of licensed commercial television stations to be 1,387.<sup>62</sup> In addition, according to Commission staff review of the BIA Advisory Services, LLC’s *Media Access Pro Television Database* on March 28, 2012, about 950 of an estimated 1,300 commercial television stations (or approximately 73 percent) had revenues of \$14 million or less.<sup>63</sup> We therefore estimate that the majority of commercial television broadcasters are small entities.

17. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations<sup>64</sup> 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.

18. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 396.<sup>65</sup> These stations are non-profit, and therefore considered to be small entities.<sup>66</sup> There are also 2,528 low power television stations, including Class A stations (LPTV).<sup>67</sup> Given the nature of these services, we will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

19. **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.”<sup>68</sup> The SBA has established a small business size standard for this category, which is: such firms having \$7 million or less in annual receipts.<sup>69</sup> According to Commission staff review of BIA Advisory Services, LLC’s *Media Access Pro*

<sup>60</sup> U.S. Census Bureau, 2007 NAICS Definitions, “515120 Television Broadcasting” (partial definition); <http://www.census.gov/naics/2007/def/ND515120.HTM#N515120>.

<sup>61</sup> 13 CFR § 121.201, NAICS code 515120 (updated for inflation in 2010).

<sup>62</sup> See *FCC News Release*, “Broadcast Station Totals as of December 31, 2011,” dated January 6, 2012; [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2012/db0106/DOC-311837A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0106/DOC-311837A1.pdf).

<sup>63</sup> We recognize that BIA’s estimate differs slightly from the FCC total given *supra*.

<sup>64</sup> “[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 CFR § 21.103(a)(1).

<sup>65</sup> See *FCC News Release*, “Broadcast Station Totals as of December 31, 2011,” dated January 6, 2012; [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2012/db0106/DOC-311837A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0106/DOC-311837A1.pdf).

<sup>66</sup> See generally 5 U.S.C. §§ 601(4), (6).

<sup>67</sup> See *FCC News Release*, “Broadcast Station Totals as of December 31, 2011,” dated January 6, 2012; [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2012/db0106/DOC-311837A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0106/DOC-311837A1.pdf).

<sup>68</sup> U.S. Census Bureau, 2007 NAICS Definitions, “515112 Radio Stations”; <http://www.census.gov/naics/2007/def/ND515112.HTM#N515112>.

<sup>69</sup> 13 CFR § 121.201, NAICS code 515112 (updated for inflation in 2010).

*Radio Database* on March 28, 2012, about 10,759 (97%) of 11,102 commercial radio stations had revenues of \$7 million or less. Therefore, the majority of such entities are small entities.

20. We note, however, that in assessing whether a business concern qualifies as small under the above size standard, business affiliations must be included.<sup>70</sup> In addition, to be determined to be a “small business,” the entity may not be dominant in its field of operation.<sup>71</sup> We note that it is difficult at times to assess these criteria in the context of media entities, and our estimate of small businesses may therefore be over-inclusive.

21. **Cable Television and other Subscription Programming.**<sup>72</sup> 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.”<sup>73</sup> The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees.<sup>74</sup> Census data for 2007 shows that there were 3,188 firms that operated that year. Of this total, 3,144 had fewer than 1,000 employees.<sup>75</sup> Thus under this size standard, the majority of firms offering cable and other program distribution services can be considered small and may be affected by rules adopted pursuant to the *Notice*.

22. **Cable Companies and Systems.** The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission’s rules, a “small cable

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<sup>70</sup> “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 CFR § 121.103(a)(1) (an SBA regulation).

<sup>71</sup> 13 CFR § 121.102(b) (an SBA regulation).

<sup>72</sup> In 2014, “Cable and Other Subscription Programming,” NAICS Code 515210, replaced a prior category, now obsolete, which was called “Cable and Other Program Distribution.” Cable and Other Program Distribution, prior to 2014, were placed under NAICS Code 517110, Wired Telecommunications Carriers. Wired Telecommunications Carriers is still a current and valid NAICS Code Category. Because of the similarity between “Cable and Other Subscription Programming” and “Cable and other Program Distribution,” we will, in this proceeding, continue to use Wired Telecommunications Carrier data based on the U.S. Census. The alternative of using data gathered under Cable and Other Subscription Programming (NAICS Code 515210) is unavailable to us for two reasons. First, the size standard established by the SBA for Cable and Other Subscription Programming is annual receipts of \$38.5 million or less. Thus to use the annual receipts size standard would require the Commission either to switch from existing employee based size standard of 1,500 employees or less for Wired Telecommunications Carriers, or else would require the use of two size standards. No official approval of either option has been granted by the Commission as of the time of the release of the *Notice*. Second, the data available under the size standard of \$38.5 million dollars or less is not applicable at this time, because the only currently available U.S. Census data for annual receipts of all businesses operating in the NAICS Code category of 515210 (Cable and other Subscription Programming) consists only of total receipts for all businesses operating in this category in 2007 and of total annual receipts for all businesses operating in this category in 2012. Hence the data do not provide any basis for determining, for either year, how many businesses were small because they had annual receipts of \$38.5 million or less.

[http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51I2&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51I2&prodType=table).

<sup>73</sup> U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers” (partial definition), (full definition stated in para. 6 of this IRFA) available at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>74</sup> 13 CFR § 121.201, NAICS code 517110.

<sup>75</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2007\\_US\\_51SSSZ5&prodType=Table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=Table).

company” is one serving 400,000 or fewer subscribers nationwide.<sup>76</sup> Industry data indicate that there are currently 4,600 active cable systems in the United States.<sup>77</sup> Of this total, all but ten cable operators nationwide are small under the 400,000-subscriber size standard.<sup>78</sup> In addition, under the Commission's rate regulation rules, a “small system” is a cable system serving 15,000 or fewer subscribers.<sup>79</sup> Current Commission records show 4,600 cable systems nationwide.<sup>80</sup> Of this total, 3,900 cable systems have less than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records.<sup>81</sup> Thus, under this standard as well, the Commission estimates that most cable systems are small entities.

23. **Cable System Operators (Telecom Act Standard).** 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 are approximately 52,403,705 cable video subscribers in the United States today.<sup>82</sup> Accordingly, an operator serving fewer than 524,037 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.<sup>83</sup> Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard.<sup>84</sup> 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.<sup>85</sup> Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

24. **Direct Broadcast Satellite (DBS) Service.** DBS Service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic dish antenna at the subscriber’s location. DBS is now included in SBA’s economic census category “Wired Telecommunications Carriers.” The Wired Telecommunications Carriers 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 combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VOIP services, wired (cable) audio and video programming distribution; and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities

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<sup>76</sup> 47 CFR § 76.901(e).

<sup>77</sup> August 15, 2015 Report from the Media Bureau based on data contained in the Commission’s Cable Operations And Licensing System (COALS). See [www.fcc.gov/coals](http://www.fcc.gov/coals).

<sup>78</sup> See SNL KAGAN at [www.snl.com/interactiveX/top\\_cableMSOs.aspx?period2015Q1&sortcol=subscribersbasic&sortorder=desc](http://www.snl.com/interactiveX/top_cableMSOs.aspx?period2015Q1&sortcol=subscribersbasic&sortorder=desc).

<sup>79</sup> 47 CFR § 76.901(c).

<sup>80</sup> See footnote 2, *supra*.

<sup>81</sup> August 5, 2015 report from the Media Bureau based on its research in COALS. See [www.fcc.gov/coals](http://www.fcc.gov/coals).

<sup>82</sup> See SNL KAGAN at [www.snl.com/interactivex/MultichannelIndustryBenchmarks.aspx](http://www.snl.com/interactivex/MultichannelIndustryBenchmarks.aspx).

<sup>83</sup> 47 CFR § 76.901(f) and notes ff. 1, 2, and 3.

<sup>84</sup> See SNL KAGAN at [www.snl.com/Interactivex/TopCableMSOs.aspx](http://www.snl.com/Interactivex/TopCableMSOs.aspx).

<sup>85</sup> 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 47 CFR § 76.901(f) of the Commission’s rules. See 47 CFR § 76.901(f).

and infrastructure that they operate are included in this industry.<sup>86</sup> The SBA determines that a wireline business is small if it has fewer than 1500 employees.<sup>87</sup> Census data for 2007 indicate that 3,188 wireline companies were operational during that year. Of that number, 3,144 operated with fewer than 1,000 employees.<sup>88</sup> Based on that data, we conclude that the majority of wireline firms are small under the applicable standard. However, currently only two entities provide DBS service, which requires a great deal of capital for operation: DIRECTV (now owned by AT&T) and DISH Network.<sup>89</sup> DIRECTV and DISH Network each report annual revenues that are in excess of the threshold for a small business. Accordingly, we must conclude that internally developed FCC data are persuasive that in general DBS service is provided only by large firms.

25. **All Other Telecommunications.** “All Other Telecommunications” is defined as follows: This U.S. industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.<sup>90</sup> The SBA has developed a small business size standard for “All Other Telecommunications,” which consists of all such firms with gross annual receipts of \$32.5 million or less.<sup>91</sup> For this category, census data for 2007 show that there were 2,383 firms that operated for the entire year. Of these firms, a total of 2,346 had gross annual receipts of less than \$25 million.<sup>92</sup> Thus, a majority of “All Other Telecommunications” firms potentially affected by the proposals in the *Notice* can be considered small.

**D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements**

26. This *Notice* does not propose any changes to the Commission’s current information collection, reporting, recordkeeping, or compliance requirements.

**E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

27. 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,

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<sup>86</sup> <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>87</sup> NAICS CODE 517110; 13 CFR § 121.201.

<sup>88</sup> [http://factfinder.census.gov/faces/tableservices.jasf/pages/productview.xhtml?pid+ECN\\_2007\\_US.51SSSZ4&prodType=table](http://factfinder.census.gov/faces/tableservices.jasf/pages/productview.xhtml?pid+ECN_2007_US.51SSSZ4&prodType=table).

<sup>89</sup> See *15<sup>th</sup> Annual Video Competition Report*, 28 FCC Rcd at 1057, Section 27. As of June 2012, DIRECTV is the largest DBS operator and the second largest MVPD in the United States, serving 19.9 million subscribers. DISH Network is the second largest DBS operator and the third largest MVPD operator, serving 14 million subscribers. *Id.* at 10507, 10546, Section 27, 110-11.

<sup>90</sup> <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>91</sup> 13 CFR § 121.201; NAICS Code 517919.

<sup>92</sup> [http://factfinder.census.gov/faces/tableservices.jasf/pages/productview.xhtml?pid+ECN\\_2007\\_US.51SSSZ4&prodType=table](http://factfinder.census.gov/faces/tableservices.jasf/pages/productview.xhtml?pid+ECN_2007_US.51SSSZ4&prodType=table).

standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>93</sup>

28. This *Notice* seeks comment on the Commission's regulatory fee collection for Fiscal Year 2016, as required by Congress each year. Specifically, we ask for comments each year in the Regulatory Flexibility Analysis on how to minimize adverse economic impact, imposed by our proposed rules, on small entities. The regulatory fees proposed in this *Notice* do not include any new fee categories. However, the proposal in FY 2016 to revise the broadcasters' fee grid to include a threshold "greater than 6,000,000", and a change in the television fee amounts so that large markets pay a higher proportional fee than small and medium-sized markets, will provide some relief to small broadcast and television entities. The increase in the de minimis amount to \$500 implemented in FY 2015 has already provided financial relief to smaller entities.

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

29. None.

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<sup>93</sup> 5 U.S.C. § 603(c)(1)–(c)(4).

## APPENDIX F

## FY 2015 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 at the time the application is filed.

Fee Category	Annual Regulatory Fee (U.S. \$s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	30
Microwave (per license) (47 CFR part 101)	20
Marine (Ship) (per station) (47 CFR part 80)	15
Marine (Coast) (per license) (47 CFR part 80)	35
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	10
PLMRS (Shared Use) (per license) (47 CFR part 90)	10
Aviation (Aircraft) (per station) (47 CFR part 87)	10
Aviation (Ground) (per license) (47 CFR part 87)	20
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 27)	635
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	635
AM Radio Construction Permits	590
FM Radio Construction Permits	750
Digital TV (47 CFR part 73) VHF and UHF Commercial	
Markets 1-10	46,825
Markets 11-25	43,200
Markets 26-50	27,625
Markets 51-100	16,275
Remaining Markets	4,850
Construction Permits	4,850
Satellite Television Stations (All Markets)	1,575
Low Power TV, Class A TV, TV/FM Translators & Boosters (47 CFR part 74)	440
CARS (47 CFR part 78)	660

Fee Category	Annual Regulatory Fee (U.S. \$s)
Cable Television Systems (per subscriber) (47 CFR part 76), Including IPTV	.96
Direct Broadcast Service (DBS) (per subscriber) (as defined by section 602(13) of the Act)	.12
Interstate Telecommunication Service Providers (per revenue dollar)	.00331
Toll Free (per toll free subscriber) (47 CFR section 52.101 (f) of the rules)	.12
Earth Stations (47 CFR part 25)	310
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100)	119,150
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	132,125
International Bearer Circuits - Terrestrial/Satellites (per 64KB circuit)	.03
Submarine Cable Landing Licenses Fee (per cable system)	See Table Below

**FY 2015 SCHEDULE OF REGULATORY FEES: (continued)**

FY 2015 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	\$775	\$645	\$590	\$670	\$750	\$925
25,001 – 75,000	\$1,550	\$1,300	\$900	\$1,000	\$1,500	\$1,625
75,001 – 150,000	\$2,325	\$1,625	\$1,200	\$1,675	\$2,050	\$3,000
150,001 – 500,000	\$3,475	\$2,750	\$1,800	\$2,025	\$3,175	\$3,925
500,001 – 1,200,000	\$5,025	\$4,225	\$3,000	\$3,375	\$5,050	\$5,775
1,200,001 – 3,000,00	\$7,750	\$6,500	\$4,500	\$5,400	\$8,250	\$9,250
>3,000,000	\$9,300	\$7,800	\$5,700	\$6,750	\$10,500	\$12,025

**FY 2015 SCHEDULE OF REGULATORY FEES  
International Bearer Circuits - Submarine Cable**

Submarine Cable Systems (capacity as of December 31, 2014)	Fee amount
<b>&lt; 2.5 Gbps</b>	\$7,175
<b>2.5 Gbps or greater, but less than 5 Gbps</b>	\$14,350
<b>5 Gbps or greater, but less than 10 Gbps</b>	\$28,675
<b>10 Gbps or greater, but less than 20 Gbps</b>	\$57,350
<b>20 Gbps or greater</b>	\$114,700