Actions	Compliance	Procedures
(1) Fabricate (using letters at least 1/8-inch in height) a warning placard with the following language and install this placard in the cockpit in full view of the pilot: "When water ballast is used, pilots weighing 105 kg (231.5 lbs) or more including parachute must use the rearmost back rest hinge position!".	Warning placard must be installed within 25 hours time in service (TIS) after the effective date of this AD.	Install placard following Alexander Schleicher Technical Note No. 9, dated February 27, 2002.
(2) Determine the forward empty weight CG ..... (i) If the CG is out of acceptable range, prior to further flight, contact the manufacturer at Alexander Schleicher GmbH & Co., Seglflugzeugbau, D–36163 Poppenhausen, Germany for corrective action and perform the corrective action. (ii) If CG is within acceptable range, no further action is necessary.	Within the next 50 hours TIS after the effective date of this AD.	Check forward empty weight of CG following Alexander Schleicher Technical Note No. 9, dated February 27, 2002.

Note: Alexander Schleicher Technical Note No. 9, dated February 27, 2002, changes some pages to the maintenance manual. We recommend that you review those changes.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.13. The principal inspector may add comments and will send your request to the Manager, Standards Office, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, MO 64106. For information on any already approved alternative methods of compliance, contact Gregory Davison, Aerospace Engineer, Small Airplane Directorate, ACE–112, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: 816–329–4130; facsimile: 816–329–4090.

May I Get Copies of the Documents Referenced in This AD?

(g) You may get copies of the documents referenced in this AD from Alexander Schleicher GmbH & Co., Seglflugzeugbau, D–36163 Poppenhausen, Germany. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Is There Other Information That Relates to This Subject?

(h) LBA AD 2002–086, dated March 7, 2002, and Alexander Schleicher Technical Note No. 9, dated February 27, 2002 also address the subject of this AD.

Issued in Kansas City, Missouri, on April 2, 2004.

Dorenda D. Baker,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–8453 Filed 4–13–04; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 04–73; FCC 04–66]

Assessment and Collection of Regulatory Fees for Fiscal Year 2004

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Commission will revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress has required it to collect for fiscal year 2004. Section 9 of the Communications Act of 1934, as amended, provides for the annual assessment and collection of regulatory fees under sections 9(b)(2) and 9(b)(3), respectively, for annual "Mandatory Adjustments'' and "Permitted Amendments'' to the Schedule of Regulatory Fees.

DATES: Comments are due April 21, 2004, and reply comments are due April 30, 2004.

ADDRESSES: Federal Communications Commission, 445 12th St. SW., Washington, DC 20554.

See paragraphs 30 through 33 of the **SUPPLEMENTARY INFORMATION** for specific filing instructions.

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

SUPPLEMENTARY INFORMATION:

Adopted: March 17, 2004.

Released: March 29, 2004.

By the Commission:

1. Table of Contents

I. Introduction
II. Discussion
A. Development of FY 2004 Fees
1. Calculation of Revenue and Fee Requirements
2. Additional Adjustments to Payment Units
3. Local Multipoint Distribution Service (LMDS)
B. Commercial Mobile Radio Service (CMRS)
Messaging
C. Proposed Procedural Changes for Notification, Assessment and Collection of Regulatory Fees
1. Media Services Licensees
2. Satellite Space Station Licensees
3. Interstate Telecommunications Service Providers
4. Cable Television System Operators
5. Commercial Mobile Radio Service Operators
D. Future Streamlining of the Regulatory Fee Assessment and Collection Process
E. Procedures for Payment of Regulatory Fees
1. De Minimis Fee Payment Liability
2. Standard Fee Calculations and Payment Dates
F. Enforcement
III. Procedural Matters
A. Comment Period and Procedures
B. Ex Parte Rules
C. Initial Regulatory Flexibility Analysis
D. Authority and Further Information
Attachment A—Initial Regulatory Flexibility Analysis
Attachment B—Sources of Payment Unit Estimates for FY 2004
Attachment C—Calculation of Revenue Requirements and Pro-Rata Fees
Attachment D—FY 2004 Schedule of Regulatory Fees
Attachment E—Factors, Measurements, and Calculations That Determine Station Contours and Population Coverages
Attachment F—FY 2003 Schedule of Regulatory Fees

I. Introduction

1. In this Notice of Proposed Rulemaking, we propose to collect $272,958,000 in regulatory fees for Fiscal Year (FY) 2004. These fees are mandated by Congress and are collected to recover the regulatory costs associated with the Commission's

enforcement, policy and rulemaking, user information, and international activities.[1]

II. Discussion

A. Development of FY 2004 Fees

1. Calculation of Revenue and Fee Requirements

2. Each fiscal year, the Commission proportionally allocates the total amount that must be collected via regulatory fees (Attachment C).[2] For FY 2004, this allocation was done using FY 2003 revenues as a base. From this base, a revenue amount for each fee category was calculated. Each fee category was then adjusted upward by 1.5 percent to reflect the increase in regulatory fees from FY 2003 to FY 2004. These FY 2004 amounts were then divided by the number of payment units in each fee category to determine the unit fee.[3] In instances of small fees, such as licenses that are renewed over a multiyear term, the resulting unit fee was also divided by the term of the license. These unit fees were then rounded in accordance with 47 U.S.C. 159(b)(2).

2. Additional Adjustments to Payment Units

3. In calculating the FY 2004 regulatory fees proposed in Attachment D, we further adjusted the FY 2003 list of payment units (Attachment B) based upon licensee databases and industry and trade group projections. Whenever possible, we verified these estimates from multiple sources to ensure accuracy of these estimates. In some instances, Commission licensee databases were used, while in other instances, actual prior year payment records and/or industry and trade association projections were used in determining the payment unit counts.[4] Where appropriate, we adjusted and/or rounded our final estimates to take into consideration variables that may impact the number of payment units, such as waivers and/or exemptions that may be filed in FY 2004, and fluctuations in the number of licensees or station operators due to economic, technical or other reasons. Therefore, for example, when we note that our estimated FY 2004 payment units are based on FY 2003 actual payment units, we do not necessarily imply that our FY 2004 projection is exactly the same number as in FY 2003, but that we have either rounded the FY 2004 number or adjusted it slightly to account for these variables.

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

3. Local Multipoint Distribution Service (LMDS)

5. In both 2001,[5] and in 2002,[6] the Commission denied requests to move the Local Multipoint Distribution Service (LMDS) from the Multipoint Distribution Service (MDS) fee category to the microwave fee category. In our FY 2003 *Notice of Proposed Rulemaking,*[7] we sought comment on the appropriate fee classification of LMDS. Parties commenting on this issue suggested that LMDS be classified in the microwave fee category because LMDS was more similar to services in the microwave fee category than MDS.[8] We noted certain distinctions between MDS and LMDS, and we declined to place LMDS in the microwave fee category because recent technological developments and emerging commercial applications suggested that LMDS may develop on a different track than other microwave services.[9] To better track the development of LMDS, therefore, we created a separate LMDS fee category.[10] We note that we still have under advisement a broader proceeding that addresses the policies and fee structures governing LMDS and other wireless services. Therefore, we again seek comment on the appropriate fee classification of LMDS.

B. Commercial Mobile Radio Service (CMRS) Messaging

6. In our FY 2003 Report & Order,[11] we noted that there has been a significant decline in CMRS Messaging units—from 40.8 million in FY 1997 to 19.7 million in FY 2003—a decline of 51.7 percent. In fact, in the FY 2003 regulatory fee cycle, the number of CMRS Messaging units that paid regulatory fees declined to less than 16 million. This is consistent with our Eighth Annual CMRS Competition Report, which estimates the number of paging-only subscribers at the end of 2002 to be 14.1 million units.[12] In addition, between the FY 2003 and FY 2004 regulatory fee cycle, there were no significant changes in the level of regulatory oversight for this fee category. Therefore, for the reasons outlined in our FY 2003 Report and

---

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

[2] The costs assigned to each service category are based upon the regulatory activities (enforcement, policy and rulemaking, user information, and international activities) undertaken by the Commission on behalf of units in each service category. It is important to note that the required increase in regulatory fee payments of aproximately 1.5 percent in FY 2004 is reflected in the revenue that is expected to be collected from each service category. Because this expected revenue is adjusted each year by the number of units in a service category, the actual fee itself is sometimes increased by a number other than 1.5 percent. For example, in industries where the number of units is declining and the expected revenue is increasing, the impact of the fee increase may be greater.

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

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

[5] *See* Assessment and Collection of Regulatory Fees for Fiscal Year 2001, *Report and Order,* 16 FCC Rcd 13525 (2001).

[6] *See* Assessment and Collection of Regulatory Fees for Fiscal year 2001, *Memorandum Opinion and Order,* 17 FCC Rcd 24920 (2002).

[7] *See* Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Notice of Proposed Rulemaking,* 18 FCC Rcd 6088–89 paragraphs 6–9 (2003) (*FY 2003 Notice of Proposed Rulemaking*).

[8] The Commission recently initiated a proceeding to facilitate the provision of high-speed mobile and fixed broadband and other advanced wireless services and to consider the possibility of merging MDS and the Instructional Television Fixed Service (ITFS) into a single Broadband Communications Service. *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, *Notice of Proposed Rule Making and Memorandum Opinion and Order.* 18 FCC Rcd 6722, 6797 (2003).

[9] *See* Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Report and Order,* 18 FCC Rcd 15988 paragraph 9 (2003) *(FY 2003 Report and Order).*

[10] *Id.*

[11] *See* Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Report and Order,* 18 FCC Rcd 15985 paragraph 21 (2003).

[12] Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Eighth Report.* 18 FCC Rcd 14783 paragraph 151 (2003) (*Eighth Annual CMRS Competition Report*).

Order[13], and because the level of regulatory oversight remained relatively the same between FY 2003 and FY 2004, we propose to maintain the CMRS Messaging subscriber regulatory fee rate at the FY 2003 level to avoid further contributing to the financial hardships associated with a declining subscriber base.

C. Proposed Procedural Changes for Notification, Assessment and Collection of Regulatory Fees

7. As was the case last year, we again propose that we will not disseminate public notices to regulatees through surface mail informing them of when regulatory fees are due. With the widespread use of the Internet, we believe we can better serve the public by providing the necessary information on its Web site. To that end, we propose to provide public notices, fact sheets and all necessary regulatory fee payment procedure information on our Web site at *http://www.fcc.gov/fees* as we have for the past several years. In the event that regulatees do not have access to the Internet, hardcopies of public notices and other relevant materials will be mailed upon request to anyone who contacts the FCC Consumer Center at (888) 225–5322. We also will continue to publish official notice of regulatory fee assessments in the **Federal Register**.

8. While we propose to make general regulatory fee information available at our Web site, rather than disseminating it to all licensees through surface mail, we propose to disseminate fee-assessment notifications to licensees in five categories through surface mail. We propose to notify the following five categories of licensees by surface mail because these licensees experienced confusion about fees and the fee-collection process in the past, or are likely to need to respond to changed collection practices in the future.

1. Media Services Licensees

9. In FY2003, the Commission mailed fee assessment notifications to media services licensees for the first time.[14] We propose to repeat this endeavor this year in a similar fashion. At this time, we are unsure of the exact postcard or letter format for assessment notifications. However, regardless of format, the content of each assessment notification would identify each licensed facility by its facility identification number, station call sign, station type and class, regulatory fee amount owed, licensee contact information and licensee federal registration number.

10. We emphasize that media services licensees would still be required to complete the Remittance Advice FCC Form 159 when submitting their fee payment. Last year, many media services licensees erroneously submitted their fee payments with an attached copy of the assessment notification that they received, rather than a completed FCC Form 159. Many licensees also submitted their payment to FCC Headquarters in Washington, DC rather than to the Mellon Bank in Pittsburgh, PA. These mistakes resulted in the delayed processing of payments and hence some became subject to the Commission's 25 percent late-payment penalty. Therefore, on this year's fee assessment notifications, we propose to include a specific notice that payments submitted to the wrong address or submitted without an FCC Form 159 will likely incur a 25 percent late-payment penalty.

2. Satellite Space Station Licensees

11. In FY 2003, the Commission mailed regulatory fee assessment letters for the first time to satellite space station licensees. We propose to repeat this endeavor this year in an identical or similar fashion. As with media services licensees, we reiterate that satellite space station licensees are still required to complete a Remittance Advice FCC Form 159 and submit their payment to the appropriate Mellon Bank Pittsburgh, PA mailing address.

3. Interstate Telecommunications Service Providers

12. As in previous years, we propose to continue to generate and mail customized Interstate Telecommunications Service Provider Worksheets (FCC Form 159–W) to Interstate Telecommunications Service Providers ("ITSPs"). The customized FCC Form 159–W serves as a regulatory fee assessment for ITSPs. Recipients of the customized FCC Form 159–W would need only sign the form and submit it along with payment to the appropriate Mellon Bank Pittsburgh, PA mailing address, in lieu of the FCC Form 159. Recipients who disagree with the assessed fee amount or other information relating to the calculation of the assessment on their customized FCC Form 159–W would complete a blank FCC Form 159–W and complete a FCC Form 159, and then submit both of these forms along with payment to the appropriate Mellon Bank Pittsburgh, PA mailing address.

4. Cable Television System Operators

13. Beginning this year, we propose to modify our payment unit assessment methodology and our fee collection procedures for the cable industry by assessing regulatory fees for individual cable operators based on cable subscriber counts that the operators themselves have reported in publicly available data sources. The primary data sources we propose to reference this year are the *Broadcasting and Cable Yearbook 2003–2004 ("Yearbook")*[15] and industry statistics publicized by the National Cable and Telecommunications Association ("NCTA").[16]

14. Under this methodology, cable operators and multiple system operators ("MSOs") would simply base their regulatory fee obligations upon their respective basic subscriber counts as reported in the data sources. Cable operators and MSOs would still be required to complete a Remittance Advice FCC Form 159 and submit their payment to the appropriate Mellon Bank Pittsburgh, PA mailing address; but they would only have to report their aggregate subscriber count on a single line entry on FCC Form 159, rather than report the counts for every community unit identifier ("CUID") that they serve.

15. In using the data sources, we propose that cable operators would first refer to NCTA's list of the 25 largest multiple-system operators ("MSOs"). Entities appearing on the list would base their fee obligations on their subscriber counts as reported on the list. MSOs and other cable operators not listed by NCTA next would refer to the Yearbook and base their fee obligations upon their aggregate system(s) basic subscriber counts as reported in the Yearbook. Any MSOs and operators not appearing on the NCTA list or in the Yearbook would then certify their aggregate basic subscriber counts as of December 31, 2003 on the Remittance Advice FCC Form 159 with the understanding that we would corroborate the certified counts with other publicly available data sources.[17]

[13] *See FY 2003 Report and Order,* 18 FCC Rcd 15985 paragraph 21 (2003).

[14] Fee assessments were issued for AM and FM Radio Stations, AM and FM Construction Permits, FM Translators/Booster, VHF and UHF Television Stations, VHF and UHF Television Construction Permits, Satellite Television Stations, Low Power Television (LPTV) Stations, and LPTV Translators/Boosters. We did not issue fee assessments for broadcast auxiliary stations in FY2003, nor will we do so this year.

[15] *Broadcasting and Cable Yearbook 2003–2004,* by Reed Elsevier, Inc., Newton, MA, 2003. Subscriber counts reported in Seciton C, "Multiple System Operators, Independent Owners and Cable Systems," page C–3.

[16] NCTA maintains an updated list of the 25 largest multiple-system operators at its web site located at *http://www.ncta.com.*

[17] Sources consulted by the Commission may include but not be limited to *Cable TV Investor* by

Continued

Cable operators that do not have access to the Internet to obtain the NCTA list or have access to the *Yearbook* would be able to contact the FCC Consumer Center at (888) 225–5322 to obtain their publicized subscriber count, if available in either data source.

16. Under this assessment methodology, the per-subscriber regulatory fee would be the same for all cable operators, regardless of company or system size, as is presently the case. Beginning this year, we would also set a *de minimis* payment exemption for operators serving less than 250 basic service subscribers throughout their entire system(s). Operators fitting into this category would not be required to submit payment, but would still be required to submit a Remittance Advice FCC Form 159 on which they certify their aggregate subscriber count.

17. We also note that beginning this year we propose to mail assessment letters to all of the MSOs and cable operators in the *Yearbook* or on the NCTA list of 25 largest MSOs. Operators not appearing in either data source would not receive an assessment; however, they would still expected to make a fee payment based on their certified basic cable subscriber counts.

18. Our proposed assessment methodology for the cable subscriber service category reduces administrative burdens for cable operators and the Commission. Each cable operator would only have to provide one payment line on FCC Form 159 rather than the dozens or even hundreds that currently must be provided by some of the larger MSOs when reporting subscriber counts for each CUID that they serve. This year's assessment model would also provide predictability for cable operators and the Commission. The precise fee obligations of cable operators and MSOs would be easily determined and would be known well in advance by both the regulatees and the Commission.

19. We solicit comment on the feasibility of this assessment proposal. Specifically, we seek comment regarding the accuracy of basic subscriber counts as furnished by NCTA and as reported in the *Yearbook* and other publicly available data sources. If the number of basic subscribers certified to be served by operators differs considerably with the numbers reported in publicly available data sources, we invite comment that would provide possible explanations for any such discrepancies. We also seek recommendations for alternative data sources that the Commission could consult with a high degree of reliability.

5. Commercial Mobile Radio Service Operators

20. Beginning this year, we propose to mail assessments to Commercial Mobile Radio Services (CMRS) cellular and mobile service providers using information provided in the *Numbering Resource Utilization Forecast* (NRUF) report.[18] Data from the NRUF report would be used to determine the amount of each regulatory fee obligation, and assessments would be mailed accordingly to cellular and other mobile service providers. The providers would still be required to submit their payment with Remittance Advice FCC Form 159 to the designated address in Pittsburgh, PA. We solicit comment on the feasibility of this assessment proposal. Specifically, we seek comment regarding the use of NRUF data as it relates to the subscriber basis upon which wireless cellular/mobile regulatory fees are calculated. We also seek comment on other data sources that would be pertinent for us to consult for calculating wireless cellular/mobile regulatory fees.

21. With the exception of the changes noted in the preceding sections, we propose to retain the procedures that we have established for the payment of regulatory fees.[19]

D. Future Streamlining of the Regulatory Fee Assessment and Collection Process

22. As an agency, we are committed to reviewing, streamlining and modernizing our statutorily required fee-assessment and collection procedures. We welcome comments on a broad range of options in this regard. As discussed briefly below, our areas of particular interest include: (1) The process for notifying licensees about changes in the annual regulatory fee schedule and how it can be improved; (2) the most effective way to disseminate regulatory fee assessments and bills, *i.e.* through surface mail, email, or some other mechanism; (3) the fee payment process, including how the agency's electronic payment system can be improved; and (4) the timing of fee payments, including whether we should alter the existing fee payment "window'' in any way. Commenters should bear in mind that proposed improvements must comport with the provisions of section 9 of the Communications Act of 1934, as amended.[20]

23. With respect to disseminating assessments or bills through surface mail, we note that many licensees have multiple mailing addresses on file in the Commission's licensing databases and our Commission Registration System (CORES). We seek comment regarding to which address licensees would prefer to have bills or assessments mailed.

24. With respect to the fee payment process, we seek comment on migrating licensees to the Commission's electronic payment process known as Fee Filer, particularly in instances by which slow mail delivery may result in receiving the payment beyond the fee due date, thereby resulting in a 25 percent late-payment penalty. Should the Commission make use of Fee Filer mandatory for fees over a certain monetary level, or for licensees holding a certain number of licenses? For licensees who choose to continue to submit fee payments through surface mail to Mellon Bank in Pittsburgh, PA, we seek comment on ways to streamline the Remittance Advice Form 159. We also seek comment on ways in which we could employ information technology on the fee assessments or bills that we generate so as to enable licensees to submit their fee payments with a copy of their fee assessment or bill, in lieu of a Remittance Advice Form 159.

25. With respect to the current filing-fee window, we seek comment on whether the current time period for filing regulatory fee payments provides licensees with sufficient time to submit their filings to the Commission. In particular, we seek comment on the public benefits that might accrue from lengthening the time period for filing fee payments.

E. Procedures for Payment of Regulatory Fees

1. De Minimis Fee Payment Liability

26. As in the past, we propose that regulatees whose total regulatory fee liability, including all categories of fees for which payment is due by an entity, amounts to less than $10 will be exempted from fee payment in FY 2003. Also, per the terms of the revised cable subscriber fee assessment methodology proposed above, cable television operators serving in the aggregate less than 250 basic service subscribers would be exempted from fee payment in the cable subscriber service category.

Kagan World Media and *Television and Cable Factbook* by Warren Communications.

[18] *Numbering Resource Utilization in the United States as of June 30, 2003*, prepared by the Industry Analysis and Technology Division, Federal Communications Commission (December 2003).

[19] *See* 47 U.S.C. 159(f).

[20] *See* id. 159.

2. Standard Fee Calculations and Payment Dates

27. Consistent with past practice, the specific time for payment of standard fees will be announced in the Report and Order terminating this proceeding and will be published in the **Federal Register**. Licensees are reminded that, under our current rules, the responsibility for payment of fees by service category is as follows:

(a) *Media Services:* The responsibility for the payment of regulatory fees rests with the holder of the permit or license on October 1, 2003. However, in instances where a license or permit is transferred or assigned after October 1, 2003, responsibility for payment rests with the holder of the license or permit at the time payment is due.

(b) *Wireline (Common Carrier) Services:* Fees are not based on a subscriber, unit, or circuit count. Fees must be paid for any authorization issued on or before October 1, 2003.

(c) *Wireless Services:* Commercial Mobile Radio Service (CMRS) cellular, mobile, and messaging services (fees based upon a subscriber, unit or circuit count): The number of subscribers, units or circuits on December 31, 2003 will be used as the basis from which to calculate the fee payment. For small multi-year wireless services, the regulatory fee will be due at the time of authorization or renewal of the license, which is generally for a period of five or ten-years and paid throughout the year.

(d) *Cable Services* (fees based upon a subscriber count): To coincide with this year's proposed assessment methodology, the basic subscriber counts in NCTA's list of Top 25 MSO or in the *Broadcasting and Cable Yearbook 2003–2004* will be used as the basis from which to calculate the fee payment. For operators not on the NCTA list and not appearing in the Yearbook, the number of subscribers, units or circuits on December 31, 2003 will be used as the basis from which to calculate the fee payment.[21] CARS licensees: Fees must be paid for any authorization issued on or before October 1, 2003.

(e) *International Services:* Earth stations, geostationary orbit space stations, international public fixed radio services and international broadcast stations: Payment is calculated per operational station. Non-geostationary orbit satellite systems: Payment is calculated per operational system. The responsibility for the payment of regulatory fees rests with the holder of the permit or license on October 1, 2003. However, in instances where a license or permit is transferred or assigned after October 1, 2003, responsibility for payment rests with the holder of the license or permit at the time payment is due. International bearer circuits: Payment is calculated per active circuit as of December 31, 2003.

28. We strongly recommend that entities submitting more than twenty-five (25) Form 159–Cs use the electronic-fee-filer program when submitting their regulatory fee payment. We will accept fee payments made in advance of the normal formal window for the payment of regulatory fees for the convenience of payers.

F. Enforcement

29. Finally, as a reminder to all licensees, section 159(c) of the Communications Act requires us to impose an additional charge as a penalty for late payment of any regulatory fee. As in years past, a late payment penalty of 25 percent of the amount of the required regulatory fee will be assessed on the first day following the deadline date for filing of these fees. Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including the provisions set forth in the Debt Collection Improvement Act of 1996 ("DCIA"). We also assess administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the related debt pursuant to the DCIA and section 1.1940(d) of the Commission's rules. These administrative processing charges will be assessed on any delinquent regulatory fee, in addition to the 25 percent late charge penalty. Partial underpayments of regulatory fees are treated in the following manner. The licensee will be given credit for the amount paid, but if it is later determined that the fee paid is incorrect or was submitted after the deadline date, the 25 percent late charge penalty will be assessed on the portion that is submitted after the filing window. Failure to pay regulatory fees can result in the initiation of a proceeding to revoke any and all authorizations held by the delinquent payer.[22]

III. Procedural Matters

A. Comment Period and Procedures

30. Pursuant to 47 CFR 1.415, 1.419, interested parties may file comments on or before April 21, 2004, and reply comments on or before April 30, 2004. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.[23]

31. Comments filed through the ECFS are sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must submit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address.>" A sample form and directions will be sent in reply.

32. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be hand delivered or by messenger delivery, sent by commercial overnight courier, or mailed by first-class mail through the U.S. Postal Service (please note that the Commission continues to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial

[21] Cable system operators and MSOs that are not listed in any of the data sources indicated in this item are to compute their subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying 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 2003, rather than on a count as of December 31, 2003.

[22] *See* 47 CFR 1.1164.

[23] *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998, available at *http://www.fcc.gov/Bureaus/OGC/Orders/1998/fcc98056.pdf.*

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 mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

33. Parties who choose to file by paper must also submit their comments on diskette. Two copies of the diskettes must be submitted. One copy is to be sent to Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The other copy is to be sent to Office of Managing Director, Federal Communications Commission, 445 12th Street, SW., 1–C848, Washington, DC 20554. These submissions must be in a Microsoft Windows™-compatible format on a 3.5″ floppy diskette. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number MD Docket No. 04–73), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file.

34. The public may view the documents filed in this proceeding during regular business hours in the FCC Reference Center, Federal Communications Commission, Room CY–A257, 445 12th Street, SW., Washington, DC 20554, and through the Commission's Electronic Comment Filing System (ECFS) *http://www.gullfoss2.fcc.gov/prod/ecfs/comsrch_v2.cgi*. Those seeking materials in alternative formats (computer diskette, large print, audio recording, and Braille) should contact Brian Millin at (202) 418–7426 voice, (202) 418–7365 TTY, or *bmillin@fcc.gov.*

B. Ex Parte Rules

35. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex Parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's rules.[24]

C. Initial Regulatory Flexibility Analysis

36. As required by the Regulatory Flexibility Act,[25] we have prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible impact on small entities of the proposals suggested in this document. The IRFA is set forth as Attachment A. Written public comments are requested with respect to the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the rest of the NPRM, and must have a separate and distinct heading, designating the comments as responses to the IRFA. The Consumer Information Bureau, Reference Information Center, shall send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

D. Authority and Further Information

37. Authority for this proceeding is contained in section 4(i) and (j), 8, 9, and 303(r) of the Communications Act of 1934, as amended. It is ordered that this NPRM is adopted.[26] It is further ordered that the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration. Further information about this proceeding may be obtained by contacting the FCC Consumer Center at (888) 225–5322.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Attachment A—Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA),[27] the Commission prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules in the present *Notice of Proposed Rulemaking, In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2004.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the IRFA provided in paragraph 30. The Commission will send a copy of the *NPRM,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[28] In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.[29]

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

2. This rulemaking proceeding is initiated to obtain comments concerning the Commission's proposed amendment of its Schedule of Regulatory Fees in the amount of $272,958,000, the amount that Congress has required the Commission to recover. The Commission seeks to collect the necessary amount through its proposed Schedule of Regulatory Fees in the most efficient manner possible and without undue public burden.

II. 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.[30]

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

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[31] The RFA defines the term "small entity'' as having the same meaning as the terms "small business,'' "small organization,'' and "small governmental jurisdiction.''[32] In addition, the term "small business'' has the same meaning as the term "small business concern'' under the Small Business Act.[33] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[34] Nationwide, there are approximately 22.4 million small organizations.[35] In addition, a small organization is generally "any not-for-profit enterprise which is independently owned and operated and

[24] 47 CFR 1.1203 and 1.1206(b).

[25] *See* 5 U.S.C. 603.

[26] 47 U.S.C. 154(i)–(j), 159, and 303(r).

[27] 5 U.S.C. 603. The RFA, 5 U.S.C. 601–612 has been amended by the Contract With America Advancement Act of 1996, Pub. L. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[28] 5 U.S.C. 603(a).

[29] *Id.*

[30] 47 U.S.C 154(i) and (j), 159, and 303(r).

[31] 5 U.S.C. 603(b)(3).

[32] U.S.C. 601(6).

[33] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern'' in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 5 U.S.C. 601(3).

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

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

is not dominant in its field.''[36] Nationwide, as of 1992, there were approximately 275,801 small organizations.[37] The term "small governmental jurisdiction'' is defined as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.''[38] As of 1997, there were about 87,453 governmental jurisdictions in the United States.[39] This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

Cable Services or Systems

5. Cable and Other Program Distribution. The SBA has developed a small business size standard for cable and other program distribution services, which includes all such companies generating $12.5 million or less in revenue annually.[40] This category includes, among others, cable operators, direct broadcast satellite ("DBS'') services, home satellite dish ("HSD'') services, multipoint distribution services ("MDS''), multichannel multipoint distribution service ("MMDS''), Instructional Television Fixed Service ("ITFS''), local multipoint distribution service ("LMDS''), satellite master antenna television ("SMATV'') systems, and open video systems ("OVS''). According to the Census Bureau data, there are 1,311 total cable and other pay television service firms that operate throughout the year of which 1,180 have less than $10 million in revenue.[41] We address below each service individually to provide a more precise estimate of small entities.

6. Cable Operators. The Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company'' is one serving fewer than 400,000 subscribers nationwide.[42] We last estimated that there were 1,439 cable operators that qualified as small cable companies.[43] Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by our action.

7. The Communications Act, as amended, also contains a size standard for a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.''[44] The Commission has determined that there are 65,000,000 subscribers in the United States. Therefore, an operator serving fewer than 650,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate.[45] Based on available data, we find that the number of cable operators serving 650,000 subscribers or less totals approximately 1,450.[46] Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

8. Direct Broadcast Satellite ("DBS'') Service. Because DBS provides subscription services, DBS falls within the SBA-recognized definition of cable and other program distribution services.[47] This definition provides that a small entity is one with $12.5 million or less in annual receipts.[48] There are four licensees of DBS services under part 100 of the Commission's rules. Three of those licensees are currently operational. Two of the licensees that are operational have annual revenues that may be in excess of the threshold for a small business.[49] The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. DBS service requires a great investment of capital for operation, and we acknowledge, despite the absence of specific data on this point, that there are entrants in this field that may not yet have generated $12.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

9. Home Satellite Dish ("HSD'') Service. Because HSD provides subscription services, HSD falls within the SBA-recognized definition of cable and other program distribution services.[50] This definition provides that a small entity is one with $12.5 million or less in annual receipts.[51] The market for HSD service is difficult to quantify.[52] Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled.[53] HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming package. Thus, HSD users include: (1) Viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail

[36] 5 U.S.C. 601(4).

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

[38] 5 U.S.C. 601(5).

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

[40] 13 CFR 121.201, NAICS code 517510 (formerly 513220). This NAICS code applies to all services listed in this paragraph.

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

[42] 47 CFR 76.901(e). The Commission developed this definition based on its determinations that a small cable system operator is one with annual revenues of $100 million or less. Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd. 7393 (1995).

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

[44] 47 U.S.C. 543(m)(2).

[45] 47 CFR 76.1403(b).

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

[47] 13 CFR 121.201, NAICS code 517510 (formerly 513220).

[48] Id.

[49] Id.

[50] 13 CFR 121.201, NAICS code 517510 (formerly 513220).

[51] Id.

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

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

consumers, these are the services most relevant to this discussion.[54]

10. Satellite Master Antenna Television ("SMATV") Systems. The SBA definition of small entities for cable and other program distribution services includes SMATV services and, thus, small entities are defined as all such companies generating $12.5 million or less in annual receipts.[55] Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December 1995.[56]56 Other estimates indicate that SMATV operators serve approximately 1.5 million residential subscribers as of July 2001.[57] The best available estimates indicate that the largest SMATV operators serve between 15,000 and 55,000 subscribers each. Most SMATV operators serve approximately 3,000–4,000 customers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we believe that a substantial number of SMATV operators qualify as small entities.

11. Open Video Systems ("OVS"). Because OVS operators provide subscription services,[58] OVS falls within the SBA-recognized definition of cable and other program distribution services.[59] This definition provides that a small entity is one with $12.5 million or less in annual receipts.[60] The Commission has certified 25 OVS operators with some now providing service. Affiliates of Residential Communications Network, Inc. ("RCN") received approval to operate OVS systems in New York City, Boston, Washington, DC and other areas. RCN has sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

12. Electronics Equipment Manufacturers. Rules adopted in this proceeding could apply to manufacturers of DTV receiving equipment and other types of consumer electronics equipment. The SBA has developed definitions of small entity for manufacturers of audio and video equipment[61] as well as radio and television broadcasting and wireless communications equipment.[62] These categories both include all such companies employing 750 or fewer employees. The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment used by consumers, as compared to industrial use by television licensees and related businesses. Therefore, we will utilize the SBA definitions applicable to manufacturers of audio and visual equipment and radio and television broadcasting and wireless communications equipment, since these are the two closest NAICS Codes applicable to the consumer electronics equipment manufacturing industry. However, these NAICS categories are broad and specific figures are not available as to how many of these establishments manufacture consumer equipment. According to the SBA's regulations, an audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern.[63] Census Bureau data indicates that there are 554 U.S. establishments that manufacture audio and visual equipment, and that 542 of these establishments have fewer than 500 employees and would be classified as small entities.[64] The remaining 12 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. Under the SBA's regulations, a radio and television broadcasting and wireless communications equipment manufacturer must also have 750 or fewer employees in order to qualify as a small business concern.[65] Census Bureau data indicates that there 1,215 U.S. establishments that manufacture radio and television broadcasting and wireless communications equipment, and that 1,150 of these establishments have fewer than 500 employees and would be classified as small entities.[66] The remaining 65 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. We therefore conclude that there are no more than 542 small manufacturers of audio and visual electronics equipment and no more than 1,150 small manufacturers of radio and television broadcasting and wireless communications equipment for consumer/household use.

Wireline Competition Services and Related Entities

13. In this section, we further describe and estimate the number of small entity licensees and regulatees that may be affected by rules adopted herein. The most reliable source of information regarding the total number of certain common carriers and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the Commission publishes in its Trends in Telephone Service report.[67] The SBA has developed small business size standards for wireline and wireless small businesses with three commercial census categories of Wired Telecommunications Carriers,[68] Paging,[69] and Cellular and Other Wireless Telecommunications.[70] Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimate

[54] Id. at 4385.

[55] 13 CFR 121.201, NAICS code 517510 (formerly 513220).

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

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

[58] 58 See 47 U.S.C. 573.

[59] 59 13 CFR 121.201, NAICS code 517510 (formerly 513220).

[60] Id.

[61] 13 CFR 121.201, NAICS code 334310.

[62] 13 CFR 121.201, NAICS code 334220.

[63] 13 CFR 121.201, NAICS code 334310.

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

[65] 13 CFR 121.201, NAICS code 334220.

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

[67] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service, Table 5.3 (August 2003) (hereinafter Telephone Trends Report).

[68] 13 CFR 121.201, North American Industry Classification System (NAICS) code 513310 (changed to 517110 in October of 2002).

[69] 13 CFR 121.201, NAICS code 513321 (changed to 517211 in October of 2002).

[70] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October of 2002).

numbers of small businesses that might be affected by our actions.

14. We have included small incumbent local exchange carriers (LECs) in this present RFA analysis. As noted above, a "small business'' under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation.'' [71] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national'' in scope.[72] We have therefore included small incumbent LECs in this present RFA analysis, although we emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

15. Wired Telecommunications Carriers. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.[73] According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year.[74] Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more.[75] Thus, under this size standard, the majority of firms can be considered small.

16. Incumbent Local Exchange Carriers (ILECs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[76] According to Commission data, 1,337 carriers reported that they were engaged in the provision of local exchange services.[77] Of these 1,337 carriers, an estimated 1,032 have 1,500 or fewer employees and 305 have more than 1,500 employees.[78] Consequently, the Commission estimates that most providers of local exchange service are small businesses that may be affected by the rules and policies adopted herein.

17. Competitive Local Exchange Carriers (CLECs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive local exchange services or to competitive access providers or to "Other Local Exchange Carriers,'' all of which are discrete categories under which Telecommunications Relay Service (TRS) data are collected. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[79] According to Commission data,[80] 609 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 609 companies, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees.[81] In addition, 51 carriers reported that they were "Other Local Exchange Carriers.'' Of the 51 "Other Local Exchange Carriers,'' an estimated 50 have 1,500 or fewer employees and one has more than 1.500 employees.[82] Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, and "Other Local Exchange Carriers'' are small entities that may be affected by the rules and policies adopted herein.

18. Local Resellers. The SBA has developed a size standard for small businesses within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees.[83] According to Commission data, 133 companies reported that they were engaged in the provision of local resale services.[84] Of these 133 companies, an estimated 127 have 1,500 or fewer employees and six, alone or in combination with affiliates, have more than 1,500 employees.[85] Consequently, the Commission estimates that there are 127 or fewer local resellers that are small entities that may be affected by the rules and policies proposed herein.

19. Toll Resellers. The SBA has developed a size standard for small businesses within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees.[86] According to Commission data, 625 companies reported that they were engaged in the provision of toll resale services.[87] Of these 625 companies, an estimated 590 have 1,500 or fewer employees and 35, alone or in combination with affiliates, have more than 1,500 employees.[88] Consequently, the Commission estimates that there are 590 or fewer toll resellers that are small entities that may be affected by the rules and policies proposed herein.

20. Interexchange Carriers (IXCs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[89] According to Commission data, 261 companies reported that their primary telecommunications service activity was the provision of interexchange services.[90] Of these 261 companies, an estimated 223 have 1,500 or fewer employees and 38 have more than 1,500 employees.[91] Consequently, the Commission estimates that the majority of interexchange carriers are small entities that may be affected by the rules and policies adopted herein.

21. Payphone Service Providers (PSPs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to payphone service providers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer

[71] 5 U.S.C. 601(3).

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

[73] 13 CFR 121.201, NAICS code 513310 (changed to 517110 in October 2002).

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

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

[76] 13 CFR 121.201, NAICS code 513310 (changed to 517110 in October of 2002).

[77] *Telephone Trends Report* at Table 5.3.

[78] Id.

[79] 13 CFR 121.201, NAICS code 513310 (changed to 517110 in October of 2002).

[80] *Telephone Trends Report* at Table 5.3.

[81] Id.

[82] Id.

[83] 13 CFR 121.201, NAICS code 513330 (changed to 517310 in October of 2002).

[84] *Telephone Trends Report* at Table 5.3.

[85] Id.

[86] 13 CFR 121.201, NAICS code 513330 (changed to 517310 in October of 2002).

[87] *Telephone Trends Report* at Table 5.3.

[88] Id.

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

[90] *Telephone Trends Report* at Table 5.3.

[91] Id.

employees.[92] According to Commission data, 761 companies reported that they were engaged in the provision of payphone services.[93] Of these 761 payphone service providers, an estimated 757 have 1,500 or fewer employees and four have more than 1,500 employees.[94] Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by the rules and policies adopted herein.

22. Operator Service Providers (OSPs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to operator service providers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[95] According to Commission data, 23 companies reported that they were engaged in the provision of operator services.[96] Of these 23 companies, an estimated 22 have 1,500 or fewer employees and one has more than 1,500 employees.[97] Consequently, the Commission estimates that the majority of operator service providers are small entities that may be affected by the rules and policies adopted herein.

23. Prepaid Calling Card Providers. The SBA has developed a size standard for a small business within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees.[98] According to Commission data, 37 companies reported that they were engaged in the provision of prepaid calling cards.[99] Of these 37 companies, an estimated 36 have 1,500 or fewer employees and one had more than 1,500 employees.[100] Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by the rules and policies adopted herein.

24. Satellite Service Carriers. The SBA has developed a size standard for small businesses within the category of Satellite Telecommunications. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees.[101] According to Commission data, 34 carriers reported that they were engaged in the provision of satellite services.[102] Of these 34 carriers, an estimated 29 have 1,500 or fewer employees and five, alone or in combination with affiliates, have more than 1,500 employees.[103] Consequently, the Commission estimates that there are 34 or fewer satellite service carriers which are small businesses that may be affected by the rules and policies proposed herein.

25. Other Toll Carriers. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to "Other Toll Carriers.'' This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[104] According to Commission data, 92 companies reported that their primary telecommunications service activity was the provision of "Other Toll Services.''[105] Of these 92 companies, an estimated 82 have 1,500 or fewer employees and two have more than 1,500 employees.[106] Consequently, the Commission estimates that most "Other Toll Carriers'' are small entities that may be affected by the rules and policies adopted herein.

International Services

26. The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC).[107] This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts.[108] According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than $10.0 million.[109] The Census report does not provide more precise data.

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

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

29. Fixed Satellite Transmit/Receive Earth Stations. There are approximately 3,400 earth station authorizations, a portion of which are Fixed Satellite Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and are unable to estimate the number of the earth stations that would constitute a small business under the SBA definition.

30. Fixed Satellite Small Transmit/Receive Earth Stations. There are approximately 3,400 earth station authorizations, a portion of which are Fixed Satellite Small Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and are unable to estimate the number of fixed small satellite transmit/receive earth stations that would constitute a small business under the SBA definition.

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

32. Mobile Satellite Earth Stations. There are 21 licensees. We do not

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

[93] *Telephone Trends Report* at Table 5.3.

[94] Id.

[95] 13 CFR 121.201, NAICS code 513310 (changed to 517110 in October of 2002).

[96] *Telephone Trends Report* at Table 5.3.

[97] Id.

[98] 13 CFR 121.201, NAICS code 513330 (changed to 517310 in October of 2002).

[99] *Telephone Trends Report* at Table 5.3.

[100] Id.

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

[102] *Telephone Trends Report* at Table 5.3.

[103] Id.

[104] 13 CFR 121.201, NAICS code 513310 (changed to 517110 in October of 2002).

[105] *Telephone Trends Report* at Table 5.3.

[106] *Id.*

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

[108] 13 CFR 121.201, NAICS codes 48531, 513322, 51334, and 51339.

[109] *1992 Economic Census Industry and Enterprise Receipts Size Report,* Table 2D, NAICS codes 48531, 513322, 51334, and 513391 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

request nor collect annual revenue information, and are unable to estimate the number of mobile satellite earth stations that would constitute a small business under the SBA definition.

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

34. Space Stations (Geostationary). There are presently an estimated 77 Geostationary Space Station authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of geostationary space stations that would constitute a small business under the SBA definition.

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

36. Direct Broadcast Satellites. Because DBS provides subscription services, DBS falls within the SBA-recognized definition of "Cable and Other Pay Television Services." [110] This definition provides that a small entity is one with $11.0 million or less in annual receipts.[111] Currently, there are nine DBS authorizations, though there are only two DBS companies in operation at this time. We do not request nor collect annual revenue information for DBS services, and are unable to determine the number of DBS operators that would constitute a small business under the SBA definition.

Media Services

37. Television Broadcasting. The Small Business Administration defines a television broadcasting station that has no more than $12 million in annual receipts as a small business.[112] Business concerns included in this industry are those "primarily engaged in broadcasting images together with sound." [113] According to Commission staff review of the BIA Publications, Inc. Master Access Television Analyzer Database as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States have revenues of $12 million or less. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations [114] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. There are also 2,127 low power television stations (LPTV).[115] Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA definition.

38. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of "small business" is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

39. Radio Broadcasting. The SBA defines a radio broadcast entity that has $6 million or less in annual receipts as a small business.[116] Business concerns included in this industry are those "primarily engaged in broadcasting aural programs by radio to the public.[117] According to Commission staff review of the BIA Publications, Inc., Master Access Radio Analyzer Database, as of May 16, 2003, about 10,427 of the 10,945 commercial radio stations in the United States have revenue of $6 million or less. We note, however, that many radio stations are affiliated with much larger corporations with much higher revenue, and that in assessing whether a business concern qualifies as small under the above definition, such business (control) affiliations [118] are included.[119] Our estimate, therefore likely overstates the number of small businesses that might be affected by our action.

40. Auxiliary, Special Broadcast and Other Program Distribution Services. This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. The applicable definitions of small entities are those, noted previously, under the SBA rules applicable to radio broadcasting stations and television broadcasting stations.[120]

41. The Commission estimates that there are approximately 3,790 translators and boosters. The Commission does not collect financial information on any broadcast facility, and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most commercial translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business ($5 million for a radio

[110] 13 CFR 121.201, NAICS codes 51321 and 51322.

[111] *Id.*

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

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

[114] "Concerns are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both." 13 CFR 121.103(a)(1).

[115] FCC News Release, "Broadcast Station Totals as of September 30, 2002."

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

[117] *Id.*

[118] "Concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both." 13 CFR 121.103(a)(1).

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

[120] 13 CFR 121.201, NAICS codes 513111 and 513112.

station or $10.5 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a "small business concern'' because they are not independently owned and operated.[121]

Wireless and Commercial Mobile Services

42. Wireless Service Providers. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of Paging[122] or Cellular and Other Wireless Telecommunications.[123] Under both of those SBA size standards, such a business is small if it has 1,500 or fewer employees.[124] For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year.[125] Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more.[126] Thus, under this category and associated small business size standard, the great majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications firms, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year.[127] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[128] Thus, under this second category and size standard, the great majority of firms can, again, be considered small.

43. Broadband Personal Communications Service. The Broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity'' for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years.[129] For Block F, an additional classification for "very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[130] These standards defining "small entity'' in the context of broadband PCS auctions have been approved by the SBA.[131] No small businesses within the SBA-approved small business size standard bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.[132] On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as "small'' or "very small'' businesses. Based on this information, the Commission concludes that the number of small broadband PCS licensees will include the 90 winning C Block bidders, the 93 qualifying bidders in the D, E, and F Block auctions, the 48 winning bidders in the 1999 re-auction, and the 29 winning bidders in the 2001 re-auction, for a total of 260 small entity broadband PCS providers, as defined by the SBA small business size standards and the Commission's auction rules. Consequently, the Commission estimates that 260 broadband PCS providers are small entities that may be affected by the rules and policies adopted herein.

44. Narrowband Personal Communications Services. To date, five auctions of narrowband personal communications services (PCS) licenses have been conducted. The first two auctions, Auction No. 1 ("Nationwide Narrowband PCS Auction'') and Auction No. 3 ("Regional Narrowband PCS Auction''), were held in 1994 and had only a one-tiered small business size standard. "Small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these first two auctions, the Commission awarded 40 licenses,[133] of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order.[134] A "small business'' is an entity that, together with affiliates and controlling interests, has average annual gross revenues for the three preceding years of not more than $40 million. A "very small business'' is an entity that, together with affiliates and controlling interests, has average annual gross revenues for the three preceding years of not more than $15 million. In 1998, the SBA approved these small business size standards.[135] In October of 2001, the Commission held a narrowband PCS auction, Auction No. 41, and in September of 2003, the Commission held two narrowband PCS auctions, Auction No. 50 and Auction No. 51. Through these three auctions, 370 licenses were won, of which 364 were won by very small businesses. Twelve of the 25 winning bidders in the five auctions were either small or very small businesses (four of the fifteen winning bidders in the two narrowband PCS auctions held in 1994 were small businesses, and eight of the ten winning bidders in the three narrowband PCS auctions held after 1998 were very small

[121] 15 U.S.C. 632.

[122] 13 CFR 121.201, NAICS code 513321 (changed to 517211 in October of 2002).

[122] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October of 2002).

[124] *Id.*

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

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

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

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

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

[130] *See* Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96–59, *Report and Order,* 11 FCC Rcd 7824 paragraphs 57–60 (1996).

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

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

[133] An additional nationwide narrowband PCS license was awarded pursuant to the Commission's pioneer's preference program, which has expired. *See In re Application of Nationwide Wireless Network Corporation,* 13 FCC Rcd 12914 (1998); *In re Application of Nationwide Wireless Network Corp., Memorandum Opinion and Order,* 9 FCC Rcd 3635 (1994).

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

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

businesses, as those terms were defined under the Commission's Rules).

45. 220 MHz Radio Service—Phase I Licensees. The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to "Cellular and Other Wireless Telecommunications'' companies. This standard provides that such a company is small if it employs no more than 1,500 persons.[136] According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year.[137] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[138] If this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard.

46. 220 MHz Radio Service—Phase II Licensees. The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz Third Report and Order, we adopted a small business size standard for "small'' and "very small'' businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[139] This small business size standard indicates that a "small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[140] A "very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small business size standards.[141] Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.[142] In the first auction, 908 licenses were auctioned in three different-sized geographic areas: Three nationwide licenses, 30 Regional Economic Area Group (EAG) licenses, and 875 Economic Area (EA) licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.[143]

47. 800 MHz and 900 MHz Specialized Mobile Radio Licensees. The Commission awards "small entity'' and "very small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years, or that had revenues of no more than $3 million in each of the previous calendar years, respectively.[144] These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities. Consequently, the Commission estimates that there are 301 or fewer small entity SMR licensees in the 800 MHz and 900 MHz bands that may be affected by the rules and policies adopted.

48. Common Carrier Paging. In the Paging Third Report and Order, we developed a small business size standard for "small businesses'' and "very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[145] A "small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a "very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000.[146] Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. At present, there are approximately 24,000 Private-Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to Commission data, 433 carriers reported that they were engaged in the provision of either paging and messaging services or other mobile services.[147] Of those, the Commission estimates that 423 are small, under the SBA business size standard specifying that firms are small if they have 1,500 or fewer employees.[148]

49. 700 MHz Guard Band Licensees. In the 700 MHz Guard Band Order, we adopted a small business size standard for "small businesses'' and "very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[149] A "small business'' is an

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

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

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

[139] *220 MHz Third Report and Order,* 12 FCC Rcd 10943, 11068–70, at paragraphs 291–295 (1997), 62 FR 16004 (Apr. 3, 1997).

[140] Id., 12 FCC Rcd 10943, 11068–70, at paragraphs 291.

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

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

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

[144] 47 CFR 90.814(b)(1).

[145] *220 MHz Third Report and Order*, 12 FCC Rcd 10943, 11068–70, at paragraphs 291–295 (1997).

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

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

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

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

entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a "very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.[150] Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.[151]

50. Rural Radiotelephone Service. The Commission has not adopted a size standard for small entities specific to the Rural Radiotelephone Service.[152] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).[153] The Commission uses the SBA's size standard applicable to "Cellular and Other Wireless Telecommunications,'' *i.e.*, an entity employing no more than 1,500 persons.[154] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA's size standard. Consequently, we estimate that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

51. Air-Ground Radiotelephone Service. The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service.[155] We will use SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications,'' *i.e.*, an entity employing no more than 1,500 persons.[156] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard.

52. Aviation and Marine Radio Services. Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications,'' which is 1,500 or fewer employees.[157] Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a "small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a "very small'' business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars.[158] There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as "small'' businesses under the above special small business size standards.

53. Fixed Microwave Services. Microwave services include common carrier,[159] private-operational fixed,[160] and broadcast auxiliary radio services.[161] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA size standard for the category "Cellular and Other Telecommunications,'' which is 1,500 or fewer employees.[162] The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed microwave licensees and up to 61,670 private operational-fixed microwave licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

54. Offshore Radiotelephone Service. This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.[163] There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that

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

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

[152] The service is defined in section 22.99 of the Commission's rules, 47 CFR 22.99.

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

[154] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October of 2002).

[155] The service is defined in section 22.99 of the Commission's rules, 47 CFR 22.99.

[156] 13 CFR 121.201, NAICS codes 513322 (changed to 517212 in October of 2002).

[157] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October of 2002).

[158] Amendment of the Commission's rules Concerning Maritime Communications, PR Docket No. 92–257, *Third Report and Order* and *Memorandum Opinion and Order*, 13 FCC Rcd 19853 (1998).

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

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

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

[162] 13 CFR 121.201, NAICS codes 513322 (changed to 517212 in October of 2002).

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

would qualify as small under the SBA's small business size standard for "Cellular and Other Wireless Telecommunications'' services.[164] Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.[165]

55. Wireless Communications Services. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A "small business'' is an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business'' is an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these small business size standards.[166]

The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as "very small business'' entities, and one that qualified as a "small business'' entity. We conclude that the number of geographic area WCS licensees affected by this analysis includes these eight entities.

56. 39 GHz Service. The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years.[167] An additional size standard for "very small business'' is: An entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[168] The SBA has approved these small business size standards.[169] The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and polices adopted herein.

57. Multipoint Distribution Service and Instructional Television Fixed Service. Multipoint Distribution Service (MDS) systems, often referred to as "wireless cable,'' transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS).[170] In connection with the 1996 MDS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years.[171] The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating $12.5 million or less in annual receipts.[172] According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year.[173] Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. This SBA small business size standard also appears applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities.[174] Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

58. Local Multipoint Distribution Service. Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.[175] The auction of the 1,030 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[176] An additional small business size standard for "very small business'' was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[177] The SBA has approved these small business size standards in the context of LMDS auctions.[178] There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses consists of the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers.

59. 218–219 MHz Service. The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years.[179] In the 218–219 MHz Report and Order and Memorandum Opinion and Order, we established a small business size standard for a "small business'' as an entity that, together with its affiliates

[164] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October of 2002).

[165] Id.

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

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

[168] Id.

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

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

[171] 47 CFR 21.961(b)(1).

[172] 13 CFR 121.201, NAICS code 513220 (changed to 517510 in October of 2002).

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

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

[175] See Local Multipoint Distribution Service, *Second Report and Order*, 12 FCC Rcd 12545 (1997).

[176] Id.

[177] Id.

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

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

and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years.[180] A "very small business'' is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years.[181] We cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218–219 MHz spectrum.

60. 24 GHz—Incumbent Licensees. This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of "Cellular and Other Wireless Telecommunications'' companies. This category provides that such a company is small if it employs no more than 1,500 persons.[182] According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year.[183] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[184] Thus, under this size standard, the great majority of firms can be considered small. These broader census data notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent [185] and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

61. 24 GHz—Future Licensees. With respect to new applicants in the 24 GHz band, the small business size standard for "small business'' is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million.[186] "Very small business'' in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years.[187] The SBA has approved these small business size standards.[188] These size standards will apply to the future auction, if held.

62. Internet Service Providers. While internet service providers (ISPs) are only indirectly affected by our present actions, and ISPs are therefore not formally included within this present RFA, we have addressed them informally to create a fuller record and to recognize their participation in this proceeding. The SBA has developed a small business size standard for Online Information Services, which consists of all such companies having $21 million or less in annual receipts.[189] According to Census Bureau data for 1997, there were 2,751 firms in this category, total, that operated for the entire year.[190] Of this total, 2,659 firms had annual receipts of $9,999,999 or less, and an additional 67 had receipts of $10 million to $24,999,999.[191] Thus, under this size standard, the great majority of firms can be considered small.

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

63. With certain exceptions, the Commission's Schedule of Regulatory Fees applies to all Commission licensees and regulatees. Most licensees will be required to count the number of licenses or call signs authorized, complete and submit an FCC Form 159 ("FCC Remittance Advice''), and pay a regulatory fee based on the number of licenses or call signs.[192] Interstate telephone service providers must compute their annual regulatory fee based on their interstate and international end-user revenue using information they already supply to the Commission in compliance with the Form 499–A, Telecommunications Reporting Worksheet, and they must complete and submit the FCC Form 159. Compliance with the fee schedule will require some licensees to tabulate the number of units (*e.g.,* cellular telephones, pagers, cable TV subscribers) they have in service, and complete and submit an FCC Form 159. Licensees ordinarily will keep a list of the number of units they have in service as part of their normal business practices. No additional outside professional skills are required to complete the FCC Form 159, and it can be completed by the employees responsible for an entity's business records.

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

65. Licensees and regulatees are advised that failure to submit the required regulatory fee in a timely manner will subject the licensee or regulatee to a late payment penalty of 25

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

[181] Id.

[182] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October of 2002).

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

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

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

[186] Amendments to parts 1, 2, 87 and 1001 of the Commission's rules to License Fixed Services at 24 GHz, *Report and Order,* 15 FCC Rcd 16934, 16967 (2000), 65 FR 59350 (Oct. 5, 2000); *see* also 47 CFR 101.538(a)(2).

[187] Id.

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

[189] 13 CFR 121.201, NAICS code 514191 (changed to 518111 in October of 2002).

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

[191] Id.

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

percent in addition to the required fee.[193] If payment is not received, new or pending applications may be dismissed, and existing authorizations may be subject to rescission.[194] Further, in accordance with the Debt Collection Improvement Act of 1996, federal agencies may bar a person or entity from obtaining a federal loan or loan insurance guarantee if that person or entity fails to pay a delinquent debt owed to any federal agency.[195] Nonpayment of regulatory fees is a debt owed the United States pursuant to 31 U.S.C. 3711 *et seq.,* and the *Debt Collection Improvement Act of 1996,* Public Law 194–134. Appropriate enforcement measures as well as administrative and judicial remedies, may be exercised by the Commission. Debts owed to the Commission may result in a person or entity being denied a federal loan or loan guarantee pending before another federal agency until such obligations are paid.[196]

66. The Commission's rules currently provide for relief in exceptional circumstances. Persons or entities may request a waiver, reduction or deferment of payment of the regulatory fee.[197] However, timely submission of the required regulatory fee must accompany requests for waivers or reductions. This will avoid any late payment penalty if the request is denied. The fee will be refunded if the request is granted. In exceptional and compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in reduction of service to a community or other financial hardship to the licensee), the Commission will defer payment in response to a request filed with the appropriate supporting documentation.

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

67. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. As described in Section III of this FRFA, *supra,* we have created procedures in which all fee-filing licensees and regulatees use a single form, FCC Form 159, and have described in plain language the general filing requirements. We have sought comment on other alternatives that might simplify our fee procedures or otherwise benefit small entities, while remaining consistent with our statutory responsibilities in this proceeding.

68. *The Omnibus Appropriations Act for FY 2003,* Public Law 108–7, requires the Commission to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress, pursuant to section 9(a) of the Communications Act, as amended, has required the Commission to collect for Fiscal Year (FY) 2004.[198] As noted, we seek comment on the proposed methodology for implementing these statutory requirements and any other potential impact of these proposals on small entities.

69. We have previously used cost accounting data for computation of regulatory fees, but found that some fees which were very small in previous years would have increased dramatically and would have a disproportionate impact on smaller entities. The methodology we are proposing in this *Notice of Proposed Rulemaking* minimizes this impact by limiting the amount of increase and shifting costs to other services which, for the most part, are larger entities.

70. Several categories of licensees and regulatees are exempt from payment of regulatory fees. *See, e.g.,* footnote 199, *supra.*

VI. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

71. None.

Attachment B—Sources of Payment Unit Estimates for FY 2004

In order to calculate individual service fees for FY 2004, we adjusted FY 2003 payment units for each service to more accurately reflect expected FY 2004 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 the Commission's Universal Licensing System (ULS), International Bureau Filing System (IBFS), and Consolidated Database System. The industry sources we consulted include, but are not limited to, *Television & Cable Factbook* by Warren Publishing, Inc. and the *Broadcasting and Cable Yearbook* by Reed Elsevier, Inc, as well as reports generated within the Commission such as the Wireline Competition Bureau's *Trends in Telephone Service* and the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast.*

We tried to obtain verification for these estimates from multiple sources and, in all cases; we compared FY 2004 estimates with actual FY 2003 payment units to ensure that our revised estimates were reasonable. Where appropriate, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated exactly. These include an unknown number of waivers and/or exemptions that may occur in FY 2004 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical or other reasons. Therefore, when we note, for example, that our estimated FY 2004 payment units are based on FY 2003 actual payment units, it does not necessarily mean that our FY 2004 projection is *exactly* the same number as FY 2003. It means that we have either rounded the FY 2004 number or adjusted it slightly to account for these variables.

BILLING CODE 6712–04–P

[193] 47 CFR 1.1164.
[194] 47 CFR 1.1164(c).
[195] Public Law 104–134, 110 Stat. 1321 (1996).
[196] 31 U.S.C. 7701(c)(2)(B).
[197] 47 CFR 1.1166.
[198] 47 U.S.C. 159(a).

FEE CATEGORY	SOURCES OF PAYMENT UNIT ESTIMATES
Land Mobile (All), Microwave, 218-219 MHz, Marine (Ship & Coast), Aviation (Aircraft & Ground), GMRS, Amateur Vanity Call Signs, Domestic Public Fixed	Based on Wireless Telecommunications Bureau (WTB) projections of new applications and renewals taking into consideration existing Commission licensee data bases. Aviation (Aircraft) and Marine (Ship) estimates have been adjusted to take into consideration the licensing of portions of these services on a voluntary basis.
CMRS Mobile Services	Based on Wireless Telecommunications Bureau estimates.
CMRS Messaging Services	Based on Wireless Telecommunications Bureau estimates.
AM/FM Radio Stations	Based on estimates from Media Services Bureau estimates and actual FY 2003 payment units.
UHF/VHF Television Stations	Based on Media Services Bureau estimates and actual FY 2003 payment units.
AM/FM/TV Construction Permits	Based on Media Services Bureau estimates and actual FY 2003 payment units.
LPTV, Translators and Boosters	Based on actual FY 2003 payment units.
Broadcast Auxiliaries	Based on actual FY 2003 payment units.
MDS/LMDS/MMDS	Based on Wireless Telecommunications Bureau estimates and actual FY 2003 payment units.
Cable Television Relay Service (CARS) Stations	Based on actual FY 2003 payment units.
Cable Television System Subscribers	Based on Media Services Bureau (previously Cable Services Bureau), industry estimates of subscribership, and actual FY 2003 payment units.
Interstate Telecommunication Service Providers	Based on actual FY 2003 interstate revenues reported on Telecommunications Reporting Worksheet, adjusted for FY 2004 revenue growth/decline for industry, and estimations by the Wireline Competition Bureau.
Earth Stations	Based on actual FY 2003 payment estimates and projected FY 2004 units.
Space Stations (GSOs & NGSOs)	Based on International Bureau licensee data base estimates.
International Bearer Circuits	Based on International Bureau estimates.
International HF Broadcast Stations, International Public Fixed Radio Service	Based on International Bureau estimates.

Fee Category	FY 2004 Payment Units	Years	FY 2003 Revenue Estimate	Pro-Rated FY 2004 Revenue Require-ment**	Computed New FY 2004 Regulatory Fee	Rounded New FY 2004 Regula-tory Fee	Expected FY 2004 Revenue
PLMRS (Exclusive Use)	3,400	10	330,000	334,916	10	10	340,000
PLMRS (Shared use)	46,000	10	2,665,000	2,704,697	6	5	2,300,000
Microwave	3,000	10	1,525,000	1,547,716	52	50	1,500,000
218-219 MHz (Formerly IVDS)	3	10	1,500	1,522	51	50	1,500
Marine (Ship)	3,900	10	660,000	669,831	17	15	585,000
GMRS	15,000	5	265,000	268,947	4	5	375,000
Aviation (Aircraft)	3,100	10	155,000	157,309	5	5	155,000
Marine (Coast)	962	10	100,000	101,490	11	10	96,200
Aviation (Ground)	1,600	5	127,500	129,399	16	15	120,000
Amateur Vanity Call Signs	7,800	10	159,740	162,119	2.08	2.08	162,119
AM Class A	69	1	195,008	198,474	2,876	2,875	198,375
AM Class B	1,699	1	2,384,800	2,427,290	1,429	1,425	2,421,075
AM Class C	990	1	828,300	843,058	852	850	841,500
AM Class D	1,888	1	2,728,350	2,776,961	1,471	1,475	2,784,800
FM Classes A, B1 & C3	3,220	1	5,544,000	5,698,823	1,770	1,775	5,715,500
FM Classes B, C, C0, C1 & C2	3,022	1	6,875,050	7,053,588	2,334	2,325	7,026,150
AM Construction Permits	73	1	21,840	33,845	464	465	33,945
FM Construction Permits	162	1	373,700	268,266	1,656	1,650	267,300
Satellite TV	122	1	126,000	129,314	1,060	1,050	128,100
Satellite TV Construction Permit	3	1	2,575	1,552	517	515	1,545

Fee Category	FY 2004 Payment Units	Years	FY 2003 Revenue Estimate	Pro-Rated FY 2004 Revenue Requirement**	Computed New FY 2004 Regulatory Fee	Rounded New FY 2004 Regulatory Fee	Expected FY 2004 Revenue
VHF Markets 1-10	43	1	2,536,600	2,594,832	60,345	60,350	2,595,050
VHF Markets 11-25	64	1	2,593,500	2,652,746	41,449	41,450	2,652,800
VHF Markets 26-50	77	1	2,199,125	2,245,407	29,161	29,150	2,244,550
VHF Markets 51-100	123	1	2,114,775	2,159,554	17,557	17,550	2,158,650
VHF Remaining Markets	235	1	930,050	953,721	4,058	4,050	951,750
VHF Construction Permits	6	1	74,000	27,941	4,657	4,650	27,900
UHF Markets 1-10	90	1	1,521,600	1,600,135	17,779	17,775	1,599,750
UHF Markets 11-25	81	1	1,236,000	1,309,447	16,166	16,175	1,310,175
UHF Markets 26-50	117	1	1,041,675	1,088,284	9,302	9,300	1,088,100
UHF Markets 51-100	170	1	900,475	944,569	5,556	5,550	943,500
UHF Remaining Markets	183	1	270,750	303,624	1,659	1,650	301,950
UHF Construction Permits	34	1	373,500	193,155	5,681	5,675	192,950
Broadcast Auxiliaries	25,000	1	250,000	254,454	10	10	250,000
LPTV/Translators/Boosters	2,900	1	1,092,445	1,111,909	383	385	1,116,500
CARS Stations	1,000	1	130,500	132,825	133	135	135,000
Cable Television Systems	65,000,000	1	44,550,000	45,343,744	0.70	0.70	45,500,000
Interstate Telecommunication Service Providers	58,500,000,000	1	125,370,000	127,603,708	0.00218126	0.00218	127,530,000
CMRS Mobile Services (Cellular/Public Mobile)	151,000,000	1	36,868,000	38,678,954	0.256	0.26	39,260,000

Fee Category	FY 2004 Payment Units	Years	FY 2003 Revenue Estimate	Pro-Rated FY 2004 Revenue Require-ment**	Computed New FY 2004 Regulatory Fee	Rounded New FY 2004 Regula-tory Fee	Expected FY 2004 Revenue
CMRS Messaging Services	14,500,000	1	1,576,000	1,160,000	0.08	0.08	1,160,000
MDS/MMDS	1,600	1	956,915	434,474	272	270	432,000
LMDS	340	1	258,375	92,468	272	270	91,800
International Bearer Circuits	2,800,000	1	6,942,000	7,065,685	2.52	2.52	7,056,000
International Public Fixed	1	1	1,725	1,756	1,756	1,750	1,750
Earth Stations	3,400	1	661,290	673,072	198	200	680,000
International HF Broadcast	5	1	3,650	3,715	743	745	3,725
Space Stations (Geostationary)	77	1	8,671,875	8,826,381	114,628	114,625	8,826,125
Space Stations (Non-Geostationary	5	1	758,625	772,141	154,428	154,425	772,125
****** Total Estimated Revenue to be Collected			268,951,805	273,737,820			273,935,259
****** Total Revenue Requirement				272,958,000			272,958,000
Difference				779,820			977,259

** 1.01471 factor applied based on the amount Congress designated for recovery through regulatory fees (Public Law 108-7 and 47 U.S.C. 159(a)(2)).

Fee Category	Annual Regulatory Fee (U.S. $'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	10
Microwave (per license) (47 CFR part 101)	50
218-219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	50
Marine (Ship) (per station) (47 CFR part 80)	15
Marine (Coast) (per license) (47 CFR part 80)	10
General Mobile Radio Service (per license) (47 CFR part 95)	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	5
PLMRS (Shared Use) (per license) (47 CFR part 90)	5
Aviation (Aircraft) (per station) (47 CFR part 87)	5
Aviation (Ground) (per license) (47 CFR part 87)	15
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	2.08
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.26
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08
Multipoint Distribution Services (MMDS/ MDS) (per call sign) (47 CFR part 21)	270
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	270
AM Radio Construction Permits	465
FM Radio Construction Permits	1,650
TV (47 CFR part 73) VHF Commercial	
Markets 1-10	60,350
Markets 11-25	41,450
Markets 26-50	29,150
Markets 51-100	17,550
Remaining Markets	4,050
Construction Permits	4,650
TV (47 CFR part 73) UHF Commercial	

Fee Category	Annual Regulatory Fee (U.S. $'s)
Markets 1-10	17,775
Markets 11-25	16,175
Markets 26-50	9,300
Markets 51-100	5,550
Remaining Markets	1,650
Construction Permits	5,675
Satellite Television Stations (All Markets)	1,050
Construction Permits – Satellite Television Stations	515
Low Power TV, TV/FM Translators & Boosters (47 CFR part 74)	385
Broadcast Auxiliaries (47 CFR part 74)	10
CARS (47 CFR part 78)	135
Cable Television Systems (per subscriber) (47 CFR part 76)	.70
Interstate Telecommunication Service Providers (per revenue dollar)	.00218
Earth Stations (47 CFR part 25)	200
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100)	114,625
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	154,425
International Bearer Circuits (per active 64KB circuit)	2.52
International Public Fixed (per call sign) (47 CFR part 23)	1,750
International (HF) Broadcast (47 CFR part 73)	745

FY 2004 SCHEDULE OF REGULATORY FEES (continued)

FY 2004 RADIO STATION REGULATORY FEES						
Population Served	**AM Class A**	**AM Class B**	**AM Class C**	**AM Class D**	**FM Classes A, B1 & C3**	**FM Classes B, C, C0, C1 & C2**
<=25,000	600	450	350	425	525	675
25,001 – 75,000	1,200	900	525	625	1,050	1,175
75,001 – 150,000	1,800	1,125	700	1,075	1,450	2,200
150,001 – 500,000	2,700	1,925	1,050	1,275	2,225	2,875
500,001 – 1,200,000	3,900	2,925	1,750	2,125	3,550	4,225
1,200,001 – 3,000,00	6,000	4,500	2,625	3,400	5,775	6,750
>3,000,000	7,200	5,400	3,325	4,250	7,350	8,775

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

AM Stations

For stations with nondirectional daytime antennas, the theoretical radiation was used at all azimuths. For stations with directional daytime antennas, specific information on each day tower, including field ratio, phasing, spacing and orientation was retrieved, as well as the theoretical pattern root-mean-square of the radiation in all directions in the horizontal plane (RMS) figure milliVolt per meter (mV/m) @ 1 km) for the antenna system. The standard, or modified standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in sections 73.150 and 73.152 of the Commission's rules.[199] 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.[200] Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the city grade (5 mV/m) contour was predicted for each of the 360 radials. The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 block centroids were contained in the polygon. (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 city grade 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 city grade (70 dBu (decibel above 1 microVolt per meter) or 3.17 mV/m) contour for each of the 360 radials.[201] The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

Attachment F—FY 2003 Schedule of Regulatory Fees

[199] 47 CFR 73.150 and 73.152.

[200] *See Map of Estimated Effective Ground Conductivity in the United States,* 47 CFR 73.190 Figure R3.

[201] 47 CFR 73.313.

Fee Category	Annual Regulatory Fee (U.S. $'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	10
Microwave (per license) (47 CFR part 101)	25
218-219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	30
Marine (Ship) (per station) (47 CFR part 80)	15
Marine (Coast) (per license) (47 CFR part 80)	10
General Mobile Radio Service (per license) (47 CFR part 95)	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	5
PLMRS (Shared Use) (per license) (47 CFR part 90)	5
Aviation (Aircraft) (per station) (47 CFR part 87)	5
Aviation (Ground) (per license) (47 CFR part 87)	15
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.63
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.26
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08
Multipoint Distribution Services (MMDS/ MDS) (per call sign) (47 CFR part 21)	265
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	265
AM Radio Construction Permits	455
FM Radio Construction Permits	1,850
TV (47 CFR part 73) VHF Commercial	
Markets 1-10	57,650
Markets 11-25	43,225
Markets 26-50	30,125
Markets 51-100	18,075
Remaining Markets	4,450
Construction Permits	4,625
TV (47 CFR part 73) UHF Commercial	
Markets 1-10	15,850

Fee Category	Annual Regulatory Fee (U.S. $'s)
Markets 11-25	12,875
Markets 26-50	8,075
Markets 51-100	4,975
Remaining Markets	1,425
Construction Permits	8,300
Satellite Television Stations (All Markets)	1,000
Construction Permits – Satellite Television Stations	515
Low Power TV, TV/FM Translators & Boosters (47 CFR part 74)	365
Broadcast Auxiliary (47 CFR part 74)	10
CARS (47 CFR part 78)	90
Cable Television Systems (per subscriber) (47 CFR part 76)	.66
Interstate Telecommunication Service Providers (per revenue dollar)	.00199
Earth Stations (47 CFR part 25)	210
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes Direct Broadcast Satellite Service (per operational station) (47 CFR part 100)	115,625
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	108,375
International Bearer Circuits (per active 64KB circuit)	2.67
International Public Fixed (per call sign) (47 CFR part 23)	1,725
International (HF) Broadcast (47 CFR part 73)	730

FY 2003 SCHEDULE OF REGULATORY FEES (continued)

FY 2003 RADIO STATION REGULATORY FEES						
Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C0, C1 & C2
<=25,000	600	450	325	400	475	625
25,001 – 75,000	1,200	900	475	600	950	1,100
75,001 – 150,000	1,800	1,125	650	1,000	1,300	2,025
150,001 – 500,000	2,700	1,925	975	1,200	2,025	2,650
500,001 – 1,200,000	3,900	2,925	1,625	2,000	3,200	3,900
1,200,001 – 3,000,00	6,000	4,500	2,450	3,200	5,225	6,250
>3,000,000	7,200	5,400	3,100	4,000	6,650	8,125

[FR Doc. 04–8260 Filed 4–13–04; 8:45 am]
BILLING CODE 6712–04–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.040326103–4103–01; I.D. 031504A]

RIN 0648–AQ82

Fisheries of the Northeastern United States; Recreational Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Fishing Year 2004

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes recreational measures for the 2004 summer flounder, scup, and black sea bass fisheries. The implementing regulations for these fisheries require NMFS to publish recreational measures for the upcoming fishing year and to provide an opportunity for public comment. The intent of these measures is to prevent overfishing of the summer flounder, scup, and black sea bass resources.

DATES: Comments must be received on or before April 29, 2004.

ADDRESSES: Comments on the proposed recreational measures should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Recreational Specifications.'' Comments may also be submitted via facsimile (fax) to 978–281–9135, and via e-mail to the following address: *FSBREC04@noaa.gov*. Comments may also submitted electronically through the Federal e-Rulemaking portal: *http://www.regulations.gov*.

Copies of supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees and of the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South Street, Dover, DE 19901–6790, and are accessible via the Internet at *http://www.nero.noaa.gov/ro/doc/com.htm*.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, Fishery Policy Analyst, (978) 281–9279, fax (978) 281–9135, e-mail *sarah.mclaughlin@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The summer flounder, scup, and black sea bass fisheries are managed cooperatively by the Atlantic States Marine Fisheries Commission (Commission) and the Mid-Atlantic Fishery Management Council (Council), in consultation with the New England and South Atlantic Fishery Management Councils.

The management units specified in the Fishery Management Plan (FMP) for the Summer Flounder, Scup, and Black Sea Bass Fisheries include summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina (NC) northward to the U.S./Canada border, and scup (*Stenotomus chrysops*) and black sea bass (*Centropristis striata*) in U.S. waters of the Atlantic Ocean from 35°13.3′ N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, NC) northward to the U.S./Canada border.

The FMP and its implementing regulations, which are found at 50 CFR part 648, subparts A, G (summer flounder), H (scup), and I (black sea bass), describe the process for specifying annual recreational measures that apply in the Exclusive Economic Zone (EEZ). The states manage these fisheries within 3 miles of their coasts, under the Commission's Interstate Summer Flounder, Scup, and Black Sea Bass FMP. The Federal regulations govern vessels fishing in the EEZ, as well as vessels possessing a Federal fisheries permit, regardless of where they fish.

The Council's FMP established Monitoring Committees (Committees) for the three fisheries, consisting of representatives from the Commission, the Mid-Atlantic, New England, and