(f) *Contact Information.* The COTP Charleston may be reached via phone at (843) 724–7616. Any on scene Coast Guard or designated representative assets may be reached via VHF–FM channel 16.

Dated: May 15, 2008.

M. F. McAllister,

Captain, U.S. Coast Guard, Captain of the Port, Charleston, South Carolina.

[FR Doc. E8–11863 Filed 5–27–08; 8:45 am]

BILLING CODE 4910–15–P

LEGAL SERVICES CORPORATION

45 CFR Parts 1606 and 1623

Termination, Limited Reductions in Funding, and Debarment Procedures; Recompetition; Suspension Procedures

AGENCY: Legal Services Corporation.

ACTION: Notice of Rulemaking Workshop; correction.

SUMMARY: LSC recently published a notice regarding a Rulemaking Workshop it is conducting in connection with its rulemaking to consider revisions to its regulations on termination and suspension. The date for the Workshop listed in that notice has changed.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, Vice President and General Counsel, Legal Services Corporation, 3333 K St., NW., Washington, DC 20007; (202) 295–1620 (phone); 202–337–6831 (fax) or *vfortuno@lsc.gov.*

SUPPLEMENTARY INFORMATION: On May 13, 2008, the Legal Services Corporation published a notice in the **Federal Register** that it will be convening a Rulemaking Workshop in connection with its open rulemaking to consider revisions to 45 CFR part 1606, Termination and Debarment Procedures; Recompetition, and 45 CFR part 1623, Suspension. (73 FR 27483). That notice stated that the Workshop was going to occur on Tuesday, June 17, 2008. The date for the Workshop has been rescheduled to Thursday, June 26, 2008.

Victor M. Fortuno,

Vice President and General Counsel.

[FR Doc. E8–11873 Filed 5–27–08; 8:45 am]

BILLING CODE 7050–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 08–65; FCC 08–126]

Assessment and Collection of Regulatory Fees For Fiscal Year 2008

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 2008. 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 May 30, 2008, and reply comments are due June 6, 2008.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs.* Follow the instructions for submitting comments.
- *E-mail: ecfs@fcc.gov.* Include MD Docket No. 08–65 in the subject line of the message.
- *Mail:* Commercial overnight mail (other than U.S. Postal Service Express Mail, and Priority Mail, must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: Mika Savir, Office of Managing Director at (202) 418–0384.

SUPPLEMENTARY INFORMATION:

Adopted: May 7, 2008.

Released: May 8, 2008.

By the Commission:

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I. Introduction

1. Section 9 of the Communications Act of 1934, as amended (''the Act''), requires the Commission to assess fees to recover the regulatory costs associated with the Commission's enforcement, policy and rulemaking, user information, and international activities.[1] In this Notice of Proposed Rulemaking (''Notice''), we propose to collect $312,000,000 in regulatory fees for Fiscal Year (''FY'') 2008. In this proceeding we seek comment on several regulatory fee issues for FY 2008 and also announce the new lock box address for payments to the Commission.

II. Discussion

2. In this Notice, we seek comment on the development of FY 2008 regulatory fees collected pursuant to section 9 of the Act. For FY 2008, we propose to retain the established methods and policies that the Commission has used to collect regulatory fees in the past except as discussed below. For the FY 2008 regulatory fee cycle, we propose to retain most of the administrative measures used for notification, assessment, and pre-billing of regulatory fees of previous years. As we have in previous years, we seek comment on ways to improve the Commission's administrative processes for notifying entities of their regulatory fee obligations and collecting their payments.

3. The Commission is obligated to collect $312,000,000 in regulatory fees during FY 2008 to fund the Commission's operations. Consistent with our established practice, we intend to collect these fees in the August-September 2008 time frame in order to collect the required amount by the end of the fiscal year.

A. FY 2008 Regulatory Fee Assessment Methodology—Development of FY 2008 Regulatory Fees

1. Calculation of Revenue and Fee Requirements

4. For our FY 2008 regulatory fee assessment, we propose to use essentially the same section 9 regulatory fee assessment methodology adopted for FY 2007, except as discussed below. Each fiscal year, the Commission proportionally allocates to fee categories the total amount that must be collected through our section 9 regulatory fees.[2] Consistent with past practice, we propose to divide the FY 2008 payment amount by the number of payment units in each fee category to calculate the unit fee. For cases involving small fees, we propose to divide the resulting unit fee by the term of the license. We propose to round these fees consistent with the requirements of section 9(b)(2) of the Act. We seek comment on these proposals.

2. Additional Adjustments to Payment Units

a. Commercial Mobile Radio Service (''CMRS'') Messaging Service

5. CMRS Messaging Services, which replaced the CMRS One-Way Paging fee category in FY 1997, includes all narrowband services.[3] Since FY 2002, we have proposed to continue our policy of maintaining the CMRS Messaging Service regulatory fee at the rate that was first established in FY 2002[4] (*i.e.*, $0.08 per subscriber), noting that the subscriber base in this industry has declined significantly.[5] We found that maintaining the CMRS Messaging regulatory fee rate at $0.08 per subscriber, rather than allowing it to increase, was the appropriate level of relief to be afforded to the messaging industry.[6] In this NPRM we propose to maintain the messaging service regulatory fee at $0.08 per subscriber. We seek comment on this proposal. Commenters suggesting a different approach, *i.e.*, a proposal other than keeping the fee at $0.08 per subscriber, should provide industry data to support their position.

b. Regulatory Fee Obligations for AM Expanded Band Broadcasters

6. The Commission initiated the migration of existing standard band AM stations to the expanded band to reduce interference and congestion in the existing standard band.[7] AM expanded band radio stations, in the 1610–1700 kHz range, are currently exempt from payment of regulatory fees as a matter of policy. Standard band AM stations, in the 540–1600 kHz range, are subject to regulatory fees. Our decision several years ago not to require section 9 regulatory fee payments for AM expanded band stations was not a permanent exemption from regulatory

[1] 47 U.S.C. 159.

[2] *See* Appendix C for the proposed FY 2008 regulatory fee assessment methodology, including a comparison to the FY 2007 results.

[3] *See Assessment and Collection of Regulatory Fees for Fiscal Year 1997,* MD Docket No. 96–186, Report and Order, 12 FCC Rcd 17161, 17184–85, para. 60 (1997) (''*FY 1997 Report and Order*'').

[4] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2003,* MD Docket No. 03–83, Report and Order, 18 FCC Rcd 15985, 15992, para. 21 (2003) (''*FY 2003 Report and Order*'').

[5] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2007,* MD Docket No. 07–81, Notice of Proposed Rulemaking, 22 FCC Rcd 7975, 7978, para. 7 (2007) (''*FY 2007 NPRM*''). The subscriber base in the paging industry declined 83 percent from 40.8 million to 7.1 million, from FY 1997 to FY 2007, according to FY 2007 collection data, as of September 30, 2007.

[6] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2007,* MD Docket No. 07–81, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15712, 15715, para. 9 (2007) (''*FY 2007 Report and Order*'').

[7] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2005 and Assessment and Collection of Regulatory Fees for Fiscal Year 2004, MD* Docket Nos. 05–59 and 04–73, Report and Order and Order on Reconsideration, 20 FCC Rcd 12259, 12267, para. 25 (2005) (''*FY 2005 Report and Order*'').

fees for AM expanded band radio service.[8]

7. We now seek comment on the most efficient methods of assessing a regulatory fee on expanded band AM licenses. We seek comment particularly regarding those instances where the licensee chooses to retain the expanded band service while giving up the standard band station.[9] We also seek comment on whether we should impose a separate regulatory fee on an expanded band licensee that holds a standard band license and continues to operate both stations (*i.e.*, the licensee is not migrating to the expanded band but is keeping two licenses).

B. International Bearer Circuits

8. In our *FY 2006 NPRM*,[10] we noted that VSNL Telecommunications (US) Inc. (''VSNL'') had filed a Petition for Rulemaking urging the Commission to revise its regulatory fee methodology for bearer circuits;[11] and that we issued a public notice designating the proceeding as RM–11312 and requesting comment on the petition.[12] We stated in our *FY 2006 Report and Order* that the issues presented in the Petition warrant consideration separately from the Commission's annual regulatory fee proceeding.[13] In our *FY 2007 NPRM,* we received a set of joint comments filed by seven submarine cable landing licensees urging the Commission to take similar action.[14] We grant VSNL's petition and seek comment herein on the methodology used to calculate regulatory fees for providers of international bearer circuits. We seek comment on whether the Commission should retain the current methodology used to these regulatory fees, or change or modify the methodology (and if so, how?).

C. Administrative and Operational Issues

9. We seek comment on the administrative and operational processes used to collect the annual section 9 regulatory fees. These issues do not affect the amount of regulatory fees parties are obligated to submit; however, the administrative and operational issues affect the process of submitting payment. We invite comment on ways to improve these processes.

1. Use of Fee Filer

10. We continue to encourage regulatees to use the Commission's online electronic Fee Filer application. Using the Commission's Fee Filer application reduces paperwork burdens on payors because it eliminates the need to file a paper FCC Form 159. It also allows payors to make a single payment for pre-billed and non-billed regulatory fees. Regulatees submitting more than ten (10) Form 159–Cs are strongly encouraged to use Fee Filer when sending their regulatory fee payment.

11. Regulatees who file their FCC Form 159 information online via Fee Filer may choose to pay by online ACH debit from a bank account, by online credit card, by check or money order, by wire, or by credit card on paper. Payors wishing to remit payment via check, money order, wire, or credit card on paper must print a Fee Filer-generated Form 159–E Remittance Voucher to accompany payment, in lieu of Form 159. We note that Fee Filer will accept credit card payments of up to $99,999.99; the FCC accepts ACH debits (via Fee Filer) from a bank account in any denomination. All online payments are considered received by the FCC at the time that the FCC accepts the payor's bank account information or authorizes the payor's credit card.

2. New Lock Box Bank

12. We advise all regulatees that the Commission has a new lock box bank. All lock box payments to the Commission for FY 2008 will be processed by U.S. Bank, St. Louis, Missouri, and payable to the FCC. For all regulatory fees, the address is: Federal Communications Commission, Regulatory Fees, P.O. Box 979084, St. Louis, MO 63197–9000.

3. New Receiving Bank for Wire Payments

13. We also advise all regulatees that the Commission has a new receiving bank for wire payments. The new receiving bank is the Federal Reserve Bank, New York, New York (TREAS NYC). When making a wire transfer, regulatees must fax a copy of their completed remittance instrument to U.S. Bank, St. Louis, Missouri at (314) 418–4232 at least one hour before initiating the wire transfer (but on the same business day), so as to not delay crediting their account. Wire transfers initiated after 6:00 p.m. (EDT) will be credited the next business day. Complete instructions for making wire payments are posted at *http://www.fcc.gov/fees/wiretrans.html.*

4. Proposals for Notification and Collection of Regulatory Fees

14. *Public Notices and fact sheets.* In this section, we seek comment on the administrative processes that the Commission uses to notify regulatees and collect regulatory fees. Each year we post public notices and fact sheets pertaining to regulatory fees on our Web site. These documents contain information about the payment due date and the regulatory fee payment procedures. We will continue to post this information on *http://www.fcc.gov/fees/regfees.html.* We seek comment on ways to improve our regulatory fee public notices and fact sheets.

15. Regulatees are expected to pay their yearly regulatory fees by filing FCC Form 159 or by accessing the Commission's online Fee Filer application.[15] As a general practice, we will not send regulatory fee material to regulatees via surface mail. However, in the event that regulatees do not have access to the Internet, we will mail public notices and other relevant material upon request. Regulatees and the general public may request such information by contacting the FCC Financial Operations Help Desk at (877) 480–3201, Option 4. We seek comment on ways to improve our administrative processes.

16. *Pre-bills.* We will not send public notices and fact sheets to regulatees en masse; however, we propose to continue to send specific regulatory fee pre-bills or assessment notifications via surface mail to the select fee categories discussed below.[16] Pre-bills are hardcopy billing statements that the Commission mails to certain regulatees. The Commission currently sends pre-bills to interstate telecommunications service providers (''ITSPs''), satellite space station licensees (both geostationary and non-geostationary), to

[8] F*Y 2005 Report and Order,* 20 FCC Rcd at 12267, para. 25.

[9] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2005,* MD Docket No. 05–59, Notice of Proposed Rulemaking, 20 FCC Rcd 3885, 3896, para. 36 (2005).

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

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

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

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

[14] *See* Joint Comments at 1.

[15] *http://www.fcc.gov/fees/feefiler.html.*

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

holders of Cable Television Relay Service (''CARS'') licenses, and earth station licensees. The remaining regulatees do not receive pre-bills. We seek comment on ways to improve this practice. Commenters should discuss whether we should add other regulatory fee categories to our pre-bill procedures.

a. Interstate Telecommunications Service Providers (''ITSPs'')

17. In FY 2001, we began mailing pre-completed FCC Form 159–W assessments to carriers in an effort to assist them in paying their ITSP regulatory fee. The fee amount on FCC Form 159–W was calculated from the FCC Form 499–A worksheet. Beginning in FY 2004, we mailed the completed FCC Form 159–W as a pre-bill, rather than as an assessment of amount due. Other than the manner in which Form 159– payments were entered into our financial system, carriers experienced no procedural changes regarding the use of the FCC Form 159–W when submitting payment of their ITSP regulatory fees. We seek comment on whether we should continue this pre-billing process for ITSPs in FY 2008.

18. In FY 2007, we adopted a proposal to round lines 14 (total subject revenues) and 16 (total regulatory fee owed) on FCC Form 159–W to the nearest dollar. This revision enabled the Commission to process the ITSP regulatory fee payments more quickly because rounding was no longer a hindrance that slowed the processing of payments. In FY 2008, we will continue to round lines 14 and 16 on FCC Form 159–W to the nearest dollar. We seek comment on other ways that we can improve our pre-billing initiative for ITSPs.

b. Satellite Space Station Licensees

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

20. For FY 2008, we propose to continue mailing pre-bills for our GSO and NGSO satellite space station categories. We seek comment on this proposal. We emphasize that the pre-bills that we propose to generate for our GSO and NGSO licensees will only be for the satellite or system aspects of their respective operations. GSO and NGSO licensees typically have regulatory fee obligations in other service categories (*e.g.*, earth stations, broadcast facilities), and we expect satellite operators to meet their full fee payment obligation for all of their FCC holdings. We seek comment on our proposal to generate regulatory fee pre-bills for our two satellite space station service categories.

c. Media Services Licensees

21. Beginning in FY 2003, we sent fee assessment notifications via surface mail to media services entities on a per-facility basis. The notifications provided the assessed fee amount for the facility in question, as well as the data attributes that determined the fee amount. We have since refined this initiative with improved results.[17] We propose to continue our assessment initiative for media services licensees in FY 2008.[18] We seek comment on this proposal.

22. Consistent with procedures used last year, we propose to mail assessment notifications to licensees to their primary record of contact populated in our Consolidated Database System (''CDBS'') and to their secondary record of contact, if available. We seek comment on this proposal. We will continue to make the Commission-authorized Web site available to licensees to update or correct any information concerning their facilities and to amend their fee-exempt status, if need be.[19] If there is a change of address for the facility, it is the licensee's responsibility to make the address change in the Media Bureau's CDBS system, as well as in the Commission's Registration System (''CORES'').

23. Under our proposal, licensees must still submit a completed FCC Form 159 Remittance Advice with their fee payments. The assessment notifications, whether in the form of a letter or postcard, cannot be used as a substitute for a completed Form 159.

d. CMRS Cellular and Mobile Services Assessments

24. As we have done in prior years, we propose to mail an assessment letter to Commercial Mobile Radio Service (''CMRS'') providers using data from the Numbering Resource Utilization Forecast (''NRUF'') report that is based on ''assigned'' number counts that have been adjusted for porting to net Type 0 ports (''in'' and ''out'').[20] This letter will include a listing of the carrier's Operating Company Numbers (''OCNs'') upon which the assessment is based.[21] Consistent with existing practice, the letters will not include OCNs with their respective assigned number counts, but rather, an aggregate total of assigned numbers for each carrier. We also propose to continue our procedure of giving entities an opportunity to revise their subscriber counts by sending two rounds of assessment letters—an initial assessment and a final assessment letter. We seek comment on this proposal.

25. If the number of subscribers on the initial assessment letter differs from the subscriber count the service provider provided on its NRUF form, the carrier can correct its subscriber count by returning the assessment letter or by contacting the Commission and stating a reason for the change, such as the purchase or the sale of a subsidiary, including the date of the transaction, and any other information that will help to justify a reason for the change. If we receive no response or correction to our initial assessment letter, we will expect the fee payment to be based on the number of subscribers listed on the initial assessment. We will review all responses to initial assessment letters and determine whether a change in the number of subscribers is warranted. We

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

[18] We again propose to issue fee assessments for AM and FM Radio Stations, AM and FM Construction Permits, FM Translators/Boosters, VHF and UHF Television Stations, VHF and UHF Television Construction Permits, Satellite Television Stations, Low Power Television (''LPTV'') Stations and LPTV Translators/Boosters, to the extent that applicants, permittees and licensees of such facilities do not qualify as government entities or non-profit entities. Fee assessments have not been issued for broadcast auxiliary stations in prior years, nor will they be issued in FY 2008.

[19] The Commission-authorized Web site for media services licensees is *http://www.fccfees.com.*

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

[21] Id.

will then generate and mail a final assessment letter. The final assessment letter will inform carriers as to whether or not we accept the changed number of subscribers. As in previous years, operators will certify their subscriber counts in Block 30 of the FCC Form 159 Remittance Advice when making their regulatory fee payments. We seek comment on our current procedures of assessing CMRS subscriber counts (for NRUF filers) and other ways to improve the process.

26. Some carriers may not be sent a letter of assessment because they had not filed the NRUF form. We propose that these carriers compute their fee payment using the standard methodology [22] that is currently in place for CMRS Wireless services (*e.g.*, compute their subscriber counts as of December 31, 2007), and submit their payment accordingly on FCC Form 159. The Commission may audit the number of subscribers for which regulatory fees are paid, whether a carrier receives an assessment letter or computes the subscriber count itself. In the event that the Commission determines that the number of subscribers is inaccurate or that an insufficient reason is given for making a correction on the initial assessment letter, the Commission will assess the carrier for the difference between what was paid and what should have been paid.

27. We, therefore, propose to (1) derive the subscriber count from NRUF data based on ''assigned'' number counts that have been adjusted for porting to net Type 0 ports (''in'' and ''out''); (2) provide carriers with an opportunity to revise their subscriber counts at the time when the initial assessment letter is mailed; and (3) require carriers to confirm their subscriber counts at the aggregate level using data in the NRUF report. We seek comment on these proposals.

e. Cable Television Subscribers

28. We propose to continue to permit cable television operators to base their regulatory fee payment on their company's aggregate year-end subscriber count, rather than requiring them to sub-report subscriber counts on a per community unit identifier (''CUID'') basis on the FCC Form 159 Remittance Advice. We seek comment on this proposal. Operators, after providing their company's aggregate subscriber count in Block 25A of the FCC Form 159, will still be required to certify the accuracy of the subscriber count in Block 30. This practice has worked well for the Commission the past three fiscal years and has eased administrative burdens for the cable television industry.

29. Beginning in FY 2006, we sent an electronic message to e-mail addresses populated in the Media Bureau's Cable Operations and Licensing System (''COALS'') to notify them of the amount and due date of regulatory fees for basic cable television subscribers. We propose to continue this effort for FY 2008, but we are not sure if this notification practice is effective. We seek comment on whether this practice of sending electronic e-mail notification to cable operators should be continued.

5. Streamlined Regulatory Fee Payment Process for CMRS Cellular and Mobile Providers

30. In FY 2006, we streamlined the CMRS payment process by eliminating the requirement for CMRS providers to identify their individual calls signs when making their regulatory fee payment, requiring instead for CMRS providers to pay their regulatory fees only at the aggregate subscriber level without having to identify their various call signs.[23] We propose to continue this practice in FY 2008. We seek comment on this proposal. In addition, to lessen the administrative burden on licensees, we proposed in FY 2007 to consolidate the CMRS cellular and CMRS mobile fee categories into one fee category and as one fee code, thereby eliminating the requirement for CMRS providers to separate their subscriber counts into CMRS cellular and CMRS mobile fee categories during the regulatory fee payment process. This consolidation of fee categories enabled the Commission to process payments more quickly and accurately. For FY 2008, we propose to continue this practice of combining the CMRS cellular and CMRS mobile fee categories into one regulatory fee category. We seek comment on this proposal.

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

31. We continue to welcome comments concerning our commitment to reviewing, streamlining, and modernizing our statutorily required fee assessment and collection procedures. Our areas of particular interest include: (1) The process for notifying licensees about changes in the annual Schedule of Regulatory Fees and how it can be improved; (2) the most effective way to disseminate regulatory fee assessments and bills, *e.g.*, through surface mail, e-mail, list server using Listserv, online Web site, or some other mechanism; (3) the fee payment process, including how the agency's online regulatory fee filing system (Fee Filer) can be enhanced; (4) the timing of fee payments, including whether we should alter the existing section 9 regulatory fee payment window in any way; and (5) the timing of fee assessments and pre-bills.

III. Procedural Matters

A. Payment of Regulatory Fees

1. De Minimis Fee Payment Liability

32. Consistent with past practice, regulatees whose total FY 2008 regulatory fee liability, including all categories of fees for which payment is due, amounts to less than $10 will be exempted from payment of FY 2008 regulatory fees.

2. Standard Fee Calculations and Payment Dates

33. The Commission will, for the convenience of payers, accept fee payments made in advance of the window for the payment of regulatory fees. Licensees are reminded that, under our current rules, the responsibility for payment of fees by service category is as follows: [24]

- *Media Services:* Regulatory fees must be paid for initial construction permits that were granted on or before October 1, 2007 for AM/FM radio stations, VHF/UHF television stations and satellite television stations. Regulatory fees must be paid for all broadcast facility licenses granted on or before October 1, 2007. In instances where a permit or license is transferred or assigned after October 1, 2007, responsibility for payment rests with the holder of the permit or license as of the fee due date.
- *Wireline (Common Carrier) Services:* Regulatory fees must be paid for authorizations that were granted on or before October 1, 2007. In instances where a permit or license is transferred or assigned after October 1, 2007, responsibility for payment rests with the holder of the permit or license as of the fee due date.
- *Wireless Services:* CMRS cellular, mobile, and messaging services (fees based upon a subscriber, unit or circuit

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

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

[24] As we noted earlier in our request for comments in possible adjustments to payment units, *e.g.*, para. 6–12, we seek comment addressing several areas in our regulatory fees. Such comments may result in modification of the fee calculations discussed above and the methodology stated below. *See, e.g.*, note 24.

count): Regulatory fees must be paid for authorizations that were granted on or before October 1, 2007. The number of subscribers, units or circuits on December 31, 2007 will be used as the basis from which to calculate the fee payment.

• The first eleven regulatory fee categories in our Schedule of Regulatory Fees (*see* Attachment D) pay what we refer to as ''small multi-year wireless regulatory fees.'' Entities pay these regulatory fees in advance for the entire amount of their five-year or ten-year term of initial license, and only pay regulatory fees again when the license is renewed or a new license is obtained. We include these eleven categories in our Schedule of Regulatory Fees to publicize our estimates of the number of ''small multi-year wireless'' licenses that will be renewed or newly obtained in FY 2008.

• *Multichannel Video Programming Distributor Services (cable television operators and CARS licensees):* Regulatory fees must be paid for the number of basic cable television subscribers as of December 31, 2007.[25] Regulatory fees also must be paid for CARS licenses that were granted on or before October 1, 2007. In instances where a CARS license is transferred or assigned after October 1, 2007, responsibility for payment rests with the holder of the license as of the fee due date.

• *International Services:* Regulatory fees must be paid for earth stations, geostationary orbit space stations and non-geostationary orbit satellite systems that were licensed and operational on or before October 1, 2007. In instances where a license is transferred or assigned after October 1, 2007, responsibility for payment rests with the holder of the license as of the fee due date. Regulatory fees must be paid for international bearer circuits based on the number of active circuits as of December 31, 2007.[26]

B. Enforcement

34. Regulatory fee payment must be received and stamped at the lockbox bank by the last day of the regulatory fee filing window, and not merely postmarked by the last day of the window. As a reminder to all licensees, section 9(c) of the Act requires us to impose an additional charge as a penalty for late payment of any regulatory fee.[27] 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 Commission's Red Light Rule[28] and the provisions set forth in the Debt Collection Improvement Act of 1996 (''DCIA'').[29] 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.[30] These administrative processing charges will be assessed on any delinquent regulatory fee, in addition to the 25 percent late charge penalty. In case of partial payments (underpayments) of regulatory fees, the licensee will be given credit for the amount paid, but if it is later determined that the fee paid is incorrect or not timely paid, then the 25 percent late charge penalty (and other charges and/or sanctions, as appropriate) will be assessed on the portion that is not paid in a timely manner.

35. We will withhold action on any applications or other requests for benefits filed by anyone who is delinquent in any non-tax debts owed to the Commission (including regulatory fees) and will ultimately dismiss those applications or other requests if payment of the delinquent debt or other satisfactory arrangement for payment is not made.[31] Failure to pay regulatory fees can also result in the initiation of a proceeding to revoke any and all authorizations held by the entity responsible for paying the delinquent fee(s).[32]

C. Initial Regulatory Flexibility Analysis

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

D. Initial Paperwork Reduction Act Analysis

37. This Notice does not contain proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (''PRA''), Public Law 104–13. This Notice does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198.[33] The forms already required by the Commission's regulatory fee process have been approved by the Office of Management and Budget under information collection 3060–0589.

E. Ex Parte Rules

38. This is as a ''permit-but-disclose'' proceeding subject to the requirements under section 1.1206(b) of the Commission's rules.[34] *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded

[25] Cable television system operators should compute their basic subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, *etc.*) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Operators may base their count on ''a typical day in the last full week'' of December 2007, rather than on a count as of December 31, 2007. *But see* para. 8–12 above.

[26] Regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers that have active international bearer circuits in any transmission facility for the provision of service to an end user or resale carrier, which includes active circuits to themselves or to their affiliates. In addition, non-common carrier satellite operators must pay a fee for each circuit sold or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. Non-common carrier submarine cable operators are also to pay fees for any and all international bearer circuits sold on an indefeasible right of use (''IRU'') basis or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. Non-common carrier submarine cable operators are also to pay fees for any and all international bearer circuits provided as a private line service to an international common carrier authorized by the Commission to provide U.S. international common carrier services. *See Assessment and Collection of Regulatory Fees for Fiscal Year 2001,* MD Docket No. 01–76, Report and Order, 16 FCC Rcd 13525, 13593 (2001); *Regulatory Fees Fact Sheet: What You Owe—International and Satellite Services Licensees for FY 2004* at 3 (rel. July 2004) (the fact sheet is available on the FCC Web site at: (*http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC–249904A4.pdf*).

[27] 47 U.S.C. 159(c).

[28] *See* 47 CFR 1.1910.

[29] Delinquent debt owed to the Commission triggers application of the ''red light rule'' which requires offsets or holds on pending disbursements. 47 CFR 1.1910. In 2004, the Commission adopted rules implementing the requirements of the DCIA. *See Amendment of Parts 0 and 1 of the Commission's Rules,* MD Docket No. 02–339, Report and Order, 19 FCC Rcd 6540 (2004); 47 CFR part 1, subpart O, Collection of Claims Owed the United States.

[30] 47 CFR 1.1940(d).

[31] *See* 47 CFR 1.1161(c), 1.1164(f)(5), and 1.1910.

[32] *See also* para. 122, below.

[33] *See* 44 U.S.C. 3506(c)(4).

[34] *See* 47 CFR 1.1206(b); see also 47 CFR 1.1202, 1.1203.

that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required.[35] Additional rules pertaining to oral and written presentations are set forth in section 1.1206(b).

F. Filing Requirements

39. *Comments and Replies.* Pursuant to sections 1.415 and 1.419 of the Commission's rules,[36] interested parties may file comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (''ECFS''), (2) the Federal Government's eRulemaking Portal, or (3) procedures for filing paper copies.[37]

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

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

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

42. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available free online, via ECFS. Documents will be available electronically in ASCII, Word, and/or Adobe Acrobat.

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

IV. Order

44. In WT Docket No. 03–66 (the *''BRS/EBS Proceeding''*), the Commission sought comment on proposed changes to the regulatory fee structure for BRS.[38] In 2006, the Commission adopted a new regulatory fee structure for BRS (the *''2006 Decision''*).[39] Specifically, as noted in the *FY 2007 NPRM*, the Commission adopted a megahertz-based approach for BRS regulatory fees and, using a concept similar to the Commission's annual scale of regulatory fees for broadcast television stations, established in the *2006 Decision* three rate tiers based on the BTA ranking of each license.[40] Under the *2006 Decision*, BRS regulatory fees will use a MHz-based formula with three tiers of fees by markets. Instead of a flat fee amount per BRS license, BRS licensees will pay a fee in one of three fee categories based on Basic Trading Areas (''BTA'') ranked by population size.[41] The highest fee will be assessed to licenses in BTAs ranked 1–60, licenses in BTAs ranked 61–200 will have a lesser fee, and licenses for BTAs ranked 201–493 will pay the lowest fee.[42]

45. In the *FY 2007 NPRM*, we sought comment on the implementation of the new BRS fee structure. Specifically, we invited commenters to suggest a simple method of calculating BRS regulatory fees that incorporates the complexity of using both elements of the *2006 Decision*, namely, the three rate tiers, to be based on the BTA ranking of each license, and the per megahertz fee.[43] In particular, we invited comment on a formula or method for calculating regulatory fees that incorporates the *2006 Decision* in a manner ''sensitive to rural operators in less densely populated areas.[44]

46. In a *Further Notice of Proposed Rulemaking*, we proposed to use a weighted average approach based on the *2006 Decision* to establish three tiers of regulatory fees using a 3:2:1 ratio, *i.e.*, 3x for Tier 1, 2x for Tier 2, and 1x for Tier 3, where x equals the base fee amount (Pro-rated FY Revenue Requirement for BRS divided by the weighted total number of BRS payment units).[45] In adopting three fee tiers for

[35] *See* 47 CFR 1.1206(b)(2).

[36] *See id.* section 1.415, 1.419.

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

[38] *See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands,* WT Docket No. 03–66, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165, 14296, para. 357 (2004) (*''BRS/EBS Report and Order and FNPRM''*).

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

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

[41] *See 2006 Decision,* 21 FCC Rcd at 5759, para. 376.

[42] *Id.*

[43] *FY 2007 NPRM,* 22 FCC Rcd at 7978, para. 8.

[44] *Id.*

[45] *Assessment and Collection of Regulatory Fees for Fiscal Year 2007,* MD Docket No. 07–81, Report and Order and Further Notice of Proposed

Continued

BRS, the Commission considered that BTAs ranked 1–60 generally have a population of greater than one million, BTAs ranked 61–200 generally have population of 250,000 to one million, and BTAs ranked 201–493 have a population of less than 250,000.[46]

47. The second element of the *2006 Decision* involved setting a fee per megahertz of licensed BRS spectrum. However, throughout the nation, BTA-by-BTA, the BRS radio service and its licensees are in the midst of a multi-year transition to a new band plan that, among other things, is modifying the amount of spectrum designated and licensed for BRS.[47] Given the complexities associated with this ''moving target,'' we tentatively concluded that the public interest would be best served by implementing the fee per megahertz approach after the BRS transition concludes nationwide.[48]

48. Comments on the *2007 FNPRM* were filed by WCA[49] and by the law firm of Blooston, Mordkofsky, Dickens, Duffy, & Prendergast, LLP (''BloostonLaw'').[50] WCA continues to advocate basing regulatory fees on a licensee's MHz/population, which the Commission has previously rejected.[51] WCA also advocates making no changes until the transition is complete.[52] BloostonLaw argues that there is insufficient information in the record to conclude that this proposal would benefit rural operators.[53] BloostonLaw also contends that the fee should be based on the population within the licensee's geographic service area.[54]

49. After reviewing the record, we now conclude that we will continue the current practice of charging a flat fee per license until the BRS/EBS transition to the new band plan. Neither of the commenters supported the proposal contained in the *2007 FNPRM*. Furthermore, WCA urges that no changes be made until the transition is complete. We also note that the transition is proceeding quickly. Transition initiation plans have been filed in 355 out of 493 BTAs, and the transition has been completed in 207 BTAs.[55] Any changes we adopt could not take effect until we adopt the changes, the Commission sends a report to Congress, and 90 days passes. If the transition is complete in 2009 or 2010, which seems possible, the interim system proposed in the *2007 FNPRM* could only be in place for one year. This effort would risk confusing licensees, and we believe that devoting Commission resources to implementing this interim system would be difficult to justify. Accordingly, we conclude that we will maintain the current system of charging a flat, per-license fee until the transition to the new band plan is complete.

V. Ordering Clauses

50. Accordingly, *It is Ordered* that, pursuant to sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 159, and 303(r), this Notice of Proposed Rulemaking and Order is hereby adopted.

51. *It is Further Ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, Shall Send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison.

Attachment A—Initial Regulatory Flexibility Analysis

52. As required by the Regulatory Flexibility Act (''RFA''),[56] the Commission has prepared this Initial Regulatory Flexibility Analysis (''IRFA'') of the possible significant economic impact on small entities by the policies and rules in the present NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed on or before the dates indicated on the first page of this NPRM. The Commission will send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[57] In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.[58]

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

53. This rulemaking proceeding is initiated to obtain comments concerning the Commission's proposed amendment of its Schedule of Regulatory Fees in the amount of $312,000,000, 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

54. 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.[59]

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

55. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.[60] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''[61] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[62] A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[63]

Rulemaking, 22 FCC Rcd 15712, 15726–15727, para. 46–50 (2007) (*''2007 FNPRM''*).

[46] *Id.,* 22 FCC Rcd at 15724–15725, para. 49.

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

[48] *FY 2007 FNPRM,* 22 FCC Rcd at 15727, para. 50.

[49] Comments of the Wireless Communications Association International, Inc., MD Docket No. 07–81 (filed Sep. 17, 2007) (''WCA Comments'').

[50] Comments, Blooston, Mordkofsky, Dickens, Duffy, & Prendergast, LLP, MD Docket No. 07–81 (filed Sep. 17, 2007) (''BloostonLaw Comments'').

[51] WCA Comments at 3–5.

[52] WCA Comments at 1.

[53] BloostonLaw Comments at 1–3.

[54] *Id.* at 3–4.

[55] As of 2/1/08.

[56] 5 U.S.C. 603. The RFA, 5 U.S.C. 601–612 has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (''CWAAA''). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA'').

[57] 5 U.S.C. 603(a).

[58] *Id.*

[59] 47 U.S.C. 154(i) and (j), 159, and 303(r).

[60] 5 U.S.C. 603(b)(3).

[61] 5 U.S.C. 601(6).

[62] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small-business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[63] 15 U.S.C. 632.

56. *Small Businesses.* Nationwide, there are a total of 22.4 million small businesses, according to SBA data.[64]

57. *Small Organizations.* Nationwide, there are approximately 1.6 million small organizations.[65]

58. *Small Governmental Jurisdictions.* The term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' [66] Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.[67] We estimate that, of this total, 84,377 entities were ''small governmental jurisdictions.'' [68] Thus, we estimate that most governmental jurisdictions are small.

59. We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' [69] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope.[70] We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

60. *Incumbent Local Exchange Carriers (''ILECs'').* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[71] According to Commission data,[72] 1,303 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,303 carriers, an estimated 1,020 have 1,500 or fewer employees and 283 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our proposed action.

61. *Competitive Local Exchange Carriers (''CLECs''), Competitive Access Providers (''CAPs''), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.''* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[73] According to Commission data,[74] 769 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 769 carriers, an estimated 676 have 1,500 or fewer employees and 94 have more than 1,500 employees. In addition, 12 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 12 are estimated to have 1,500 or fewer employees. In addition, 39 carriers have reported that they are ''Other Local Service Providers.'' Of the 39, an estimated 38 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities that may be affected by our proposed action.

62. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[75] According to Commission data,[76] 143 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 141 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by our proposed action.

63. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[77] According to Commission data,[78] 770 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 747 have 1,500 or fewer employees and 23 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our proposed action.

64. *Payphone Service Providers (''PSPs'').* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[79] According to Commission data,[80] 654 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 652 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our proposed action.

65. *Interexchange Carriers (''IXCs'').* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[81] According to Commission data,[82] 316 carriers have

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

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

[66] 5 U.S.C. 601(5).

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

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

[69] 15 U.S.C. 632.

[70] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of ''small-business concern,'' which the RFA incorporates into its own definition of ''small business.'' *See* 15 U.S.C. 632(a) (''Small Business Act''); 5 U.S.C. 601(3) (''RFA''). SBA regulations interpret ''small business concern'' to include the concept of dominance on a national basis. *See* 13 CFR 121.102(b).

[71] 13 CFR 121.201, North American Industry Classification System (NAICS) code 517110.

[72] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *''Trends in Telephone Service''* at Table 5.3, Page 5–5 (June 2005) (*''Trends in Telephone Service''*). This source uses data that are current as of October 1, 2004.

[73] 13 CFR 121.201, NAICS code 517110.

[74] ''Trends in Telephone Service'' at Table 5.3.

[75] 13 CFR 121.201, NAICS code 517310.

[76] ''Trends in Telephone Service'' at Table 5.3.

[77] 13 CFR 121.201, NAICS code 517310.

[78] ''Trends in Telephone Service'' at Table 5.3.

[79] 3 CFR 121.201, NAICS code 517110.

[80] ''Trends in Telephone Service'' at Table 5.3.

[81] 13 CFR 121.201, NAICS code 517110.

[82] ''Trends in Telephone Service'' at Table 5.3.

reported that they are engaged in the provision of interexchange service. Of these, an estimated 292 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our proposed action.

66. *Operator Service Providers (''OSPs'').* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[83] According to Commission data,[84] 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 20 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed action.

67. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[85] According to Commission data,[86] 89 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated 88 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by our proposed action.

68. *800 and 800-Like Service Subscribers.*[87] Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (''toll free'') subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[88] The most reliable source of information regarding the number of these service subscribers appears to be data the Commission receives from Database Service Management on the 800, 866, 877, and 888 numbers in use.[89] According to our data, at the end of December 2004, the number of 800 numbers assigned was 7,540,453; the number of 888 numbers assigned was 5,947,789; the number of 877 numbers assigned was 4,805,568; and the number of 866 numbers assigned was 5,011,291. We do not have data specifying the number of these subscribers that are independently owned and operated or have 1,500 or fewer employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,540,453 or fewer small entity 800 subscribers; 5,947,789 or fewer small entity 888 subscribers; 4,805,568 or fewer small entity 877 subscribers, and 5,011,291 or fewer entity 866 subscribers.

69. *International Service Providers.* There is no small business size standard developed specifically for providers of international service. The appropriate size standards under SBA rules are for the two broad census categories of ''Satellite Telecommunications'' and ''Other Telecommunications.'' Under both categories, such a business is small if it has $13.5 million or less in average annual receipts.[90]

70. The first category of Satellite Telecommunications ''comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' [91] For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year.[92] Of this total, 307 firms had annual receipts of under $10 million, and 26 firms had receipts of $10 million to $24,999,999.[93] Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

71. The second category of Other Telecommunications ''comprises establishments primarily engaged in (1) providing specialized telecommunications applications, such as satellite tracking, communications telemetry, and radar station operations; or (2) providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.'' [94] For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year.[95] Of this total, 259 firms had annual receipts of under $10 million and 15 firms had annual receipts of $10 million to $24,999,999.[96] Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

72. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of ''Paging'' [97] and ''Cellular and Other Wireless Telecommunications.'' [98] Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year.[99] Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.[100] Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that

[83] 13 CFR 121.201, NAICS code 517110.

[84] ''Trends in Telephone Service'' at Table 5.3.

[85] 13 CFR 121.201, NAICS code 517310.

[86] ''Trends in Telephone Service'' at Table 5.3.

[87] We include all toll-free number subscribers in this category.

[88] 13 CFR 121.201, NAICS code 517310.

[89] ''Trends in Telephone Service'' at Tables 18.4, 18.5, 18.6, and 18.7.

[90] 13 CFR 121.201, NAICS codes 517410 and 517910.

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

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

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

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

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

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

[97] 13 CFR 121.201, NAICS code 517211.

[98] 13 CFR 121.201, NAICS code 517212.

[99] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization,'' Table 5, NAICS code 517211.

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

operated for the entire year.[101] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[102] Thus, under this second category and size standard, the majority of firms can, again, be considered small.

73. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers. This category comprises establishments ''primarily engaged in providing direct access through telecommunications networks to computer-held information compiled or published by others.'' [103] Under the SBA size standard, such a business is small if it has average annual receipts of $21 million or less.[104] According to Census Bureau data for 1997, there were 2,751 firms in this category that operated for the entire year.[105] Of these, 2,659 firms had annual receipts of under $10 million, and an additional 67 firms had receipts of between $10 million and $24,999,999.[106] Thus, under this size standard, the great majority of firms can be considered small entities.

74. *Cellular Licensees.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of ''Paging'' [107] and ''Cellular and Other Wireless Telecommunications.'' [108] Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year.[109] Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.[110] Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.[111] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[112] Thus, under this second category and size standard, the majority of firms can, again, be considered small.

75. *Common Carrier Paging.* As noted, the SBA has developed a small business size standard for wireless firms within the broad economic census categories of ''Cellular and Other Wireless Telecommunications.'' [113] Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, U.S. Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year.[114] 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.[115] Thus, under this category and associated small business size standard, the great majority of firms can be considered small.

76. In addition, in the *Paging Second Report and Order*, the Commission adopted a size standard for ''small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[116] 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.[117] The SBA has approved this definition.[118] An auction of Metropolitan Economic Area (''MEA'') licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold.[119] Fifty-seven companies claiming small business status won 440 licenses.[120] An auction of MEA and Economic Area (''EA'') licenses commenced on October 30, 2001, and closed on December 5, 2001. Of the 15,514 licenses auctioned, 5,323 were sold.[121] One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs commenced on May 13, 2003, and closed on May 28, 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.[122] Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service,* 408 private and common carriers reported that they were engaged in the provision of either paging or ''other mobile'' services.[123] Of these, we estimate that 589 are small, under the SBA-approved small business size standard.[124] We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

77. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (''WCS'') auction as an entity

[101] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 5, NAICS code 517212.

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

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

[104] 13 CFR 121.201, NAICS code 518111.

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

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

[107] 13 CFR 121.201, NAICS code 517211.

[108] 13 CFR 121.201, NAICS code 517212.

[109] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization,'' Table 5, NAICS code 517211.

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

[111] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization,'' Table 5, NAICS code 517212.

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

[113] 13 CFR 121.201, NAICS code 517212.

[114] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321.

[115] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321. The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1000 employees or more.''

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

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

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

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

[120] *See id.*

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

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

[123] ''Trends in Telephone Service'' at Table 5.3.

[124] 13 CFR 121.201, NAICS code 517211.

with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years.[125] The SBA has approved these definitions.[126] The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

78. *1670–1675 MHz Services.* An auction for one license in the 1670–1675 MHz band commenced on April 30, 2003 and closed the same day. One license was awarded. The winning bidder was not a small entity.

79. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The SBA has developed a small business size standard for ''Cellular and Other Wireless Telecommunications'' services.[127] Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.[128] According to *Trends in Telephone Service* data, 437 carriers reported that they were engaged in wireless telephony.[129] We have estimated that 260 of these are small under the SBA small business size standard.

80. *Broadband Personal Communications Service.* The broadband personal communications services (''PCS'') spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[130] For Block F, an additional small business size standard for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[131] These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.[132] No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 ''small'' and ''very small'' business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.[133] On March 23, 1999, the Commission reauctioned 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.[134]

81. 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.[135] Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. On February 15, 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction No. 58. There were 24 winning bidders for 217 licenses.[136] Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. On May 21, 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction No. 71.[137] Of the 14 winning bidders, six were designated entities.[138]

82. *Narrowband Personal Communications Services.* The Commission held an auction for Narrowband PCS licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second auction commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less.[139] Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses.[140] To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order.[141] A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million.[142] A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million.[143] The SBA has approved these small business size standards.[144] A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses.[145] Three of these claimed status as a small or very small entity and won 311 licenses.

83. *Lower 700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.[146] The Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[147] A ''very small business'' is defined as an entity that,

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

[126] *See Alvarez Letter 1998.*

[127] 13 CFR 121.201, NAICS code 517212.

[128] 13 CFR 121.201, NAICS code 517212.

[129] ''Trends in Telephone Service'' at Table 5.3.

[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,* Report and Order, 11 FCC Rcd 7824, 7850–7852, paras. 57–60 (1996) (*''PCS Report and Order''*); *see also* 47 CFR 24.720(b).

[131] *See PCS Report and Order,* 11 FCC Rcd at 7852, para. 60.

[132] *See Alvarez Letter 1998.*

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

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

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

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

[137] *See* ''Auction of Broadband PCS Spectrum Licenses Closes; Winning Bidders Announced for Auction No. 71,'' *Public Notice*, 22 FCC Rcd 9247 (2007).

[138] *Id.*

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

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

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

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

[143] *Id.*

[144] *See Alvarez Letter 1998.*

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

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

[147] *See Channels 52–59 Report and Order*, 17 FCC Rcd at 1087–88, para. 172.

together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[148] Additionally, the lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area (''MSA/RSA'') licenses. The third category is ''entrepreneur,'' which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.[149] The SBA approved these small size standards.[150] An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.[151] A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses.[152] Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.[153] On July 26, 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz band (Auction No. 60). There were three winning bidders for five licenses. All three winning bidders claimed small business status.

84. The Commission recently reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order.*[154] An auction of 700 MHz licenses commenced January 24, 2008. For the Lower 700 MHz band, 176 licenses over Economic Areas in the A Block, 734 licenses over Cellular Market Areas in the B Block, and 176 licenses over EAs in the E Block are available for licensing.[155] Winning bidders may be eligible for small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years), or very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years).

85. *Upper 700 MHz Band Licenses.* In the *700 MHz Second Report and Order,* the Commission revised its rules regarding Upper 700 MHz licenses. On January 24, 2008, the Commission commenced Auction 73 in which several licenses in the Upper 700 MHz band are available for licensing: 12 licenses over Regional Economic Area Groupings (''REAGs'') in the C Block, and one nationwide license in the D Block.[156] Winning bidders may be eligible for small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years), or very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years).

86. *700 MHz Guard Band Licenses.* In the 700 MHz Guard Band Order, the Commission adopted size standards for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[157] A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[158] Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[159] SBA approval of these definitions is not required.[160] An auction of 52 Major Economic Area (''MEA'') licenses commenced on September 6, 2000, and closed on September 21, 2000.[161] 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.[162]

87. *Specialized Mobile Radio.* The Commission awards ''small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years.[163] The Commission awards ''very small entity'' bidding credits to firms that had revenues of no more than $3 million in each of the three previous calendar years.[164] The SBA has approved these small business size standards for the 900 MHz Service.[165] The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.[166] A second auction for the 800

[148] *See id.*

[149] *See id,* 17 FCC Rcd at 1088, para. 173.

[150] *See* Letter from Aida Alvarez, Administrator, SBA, to Thomas Sugrue, Chief, WTB, FCC (Aug. 10, 1999) (''*Alvarez Letter 1999*'').

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

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

[153] *See id.*

[154] *Service Rules for the 698–746, 747–762 and 777–792 MHz Bands*, WT Docket No. 06–150, *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94–102, *Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones*, WT Docket No. 01–309, *Biennial Regulatory Review—Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services*, WT Docket 03–264, *Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules*, WT Docket No. 06–169, *Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band*, PS Docket No. 06–229, *Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010*, WT Docket No. 96–86, Second Report and Order, FCC 07–132 (2007) (''*700 MHz Second Report and Order*'').

[155] *See* ''Auction of 700 MHz Band Licenses Scheduled for January 16, 2008; Comment Sought on Competitive Bidding Procedures For Auction 73,'' *Public Notice*, FCC Rcd 15004 (WTB 2007).

[156] *See id.*

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

[158] *See 746–764 MHz Band Second Report and Order*, 15 FCC Rcd at 5343, para. 108.

[159] *See id.*

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

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

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

[163] 47 CFR 90.814(b)(1).

[164] 47 CFR 90.814(b)(1).

[165] *See Alvarez Letter 1999.*

[166] *See* ''Correction to Public Notice DA 96–586 'FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major

Continued

MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.[167]

88. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard.[168] In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded.[169] Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

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

90. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to ''Cellular and Other Wireless Telecommunications'' companies. This category provides that a small business is a wireless company employing no more than 1,500 persons.[170] The Commission estimates that most such licensees are small businesses under the SBA's small business standard.

91. *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, the Commission adopted a small business size standard for defining ''small'' and ''very small'' businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[171] This small business standard indicates that a ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[172] A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years.[173] The SBA has approved these small size standards.[174] Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.[175] 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.[176] Thirty-nine small businesses won 373 licenses in the first 220 MHz auction. A second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.[177] A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses.[178] The Commission conducted a fourth auction in 2007 with three of the five winning bidders claiming small or very small business status.[179]

92. *Private Land Mobile Radio (''PLMR'').* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we use the broad census category, ''Cellular and Other Wireless Telecommunications.'' This definition provides that a small entity is any such entity employing no more than 1,500 persons.[180] The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. We note that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.[181]

93. The Commission's 1994 Annual Report on PLMRs [182] indicates that at the end of fiscal year 1994, there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. We note that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that the revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

94. *Fixed Microwave Services.* Fixed microwave services include common carrier,[183] private operational-fixed,[184]

Trading Areas,' '' *Public Notice*, 18 FCC Rcd 18367 (WTB 1996).

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

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

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

[170] 13 CFR 121.201, NAICS code 517212.

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

[172] *Id.* at 11068, para. 291.

[173] *Id.*

[174] *See* Letter from Aida Alvarez, Administrator, SBA, to Daniel Phythyon, Chief, WTB, FCC (Jan. 6, 1998) (''*Alvarez to Phythyon Letter 1998*'').

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

[176] *See* ''FCC Announces It Is Prepared To Grant 654 Phase II 220 MHz Licenses After Final Payment Is Made,'' *Public Notice*, 14 FCC Rcd 1085 (1999).

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

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

[179] *See* ''Auction of Phase II 220 MHz Service Spectrum Licenses Closes,'' *Public Notice*, 22 FCC Rcd 11573 (WTB 2007).

[180] *See* 13 CFR 121.201, NAICS code 517212.

[181] *See generally* 13 CFR 121.201.

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

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

[184] Persons eligible under parts 80 and 90 of the Commission's Rules can use Private Operational-

and broadcast auxiliary radio services.[185] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees.[186] The Commission does not have data specifying the number of these licensees that have no more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are 22,015 or fewer common carrier fixed licensees and 61,670 or fewer private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies proposed herein. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

95. *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.[187] 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.[188] The SBA has approved these small business size standards.[189] 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.

96. *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.[190] The auction of the 986 LMDS licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[191] 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.[192] The SBA has approved these small business size standards in the context of LMDS auctions.[193] There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small businesses winning that won 119 licenses.

97. *218–219 MHz Service.* The first auction of 218–219 MHz (previously referred to as the Interactive and Video Data Service or IVDS) spectrum resulted in 178 entities winning licenses for 594 Metropolitan Statistical Areas (''MSAs'').[194] Of the 594 licenses, 567 were won by 167 entities qualifying as a small business. For that auction, the Commission defined a small business as an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years.[195] In the *218–219 MHz Report and Order and Memorandum Opinion and Order,* we defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not exceeding $15 million for the preceding three years.[196] A very small business is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not exceeding $3 million for the preceding three years.[197] The SBA has approved of these definitions.[198] A subsequent auction is not yet scheduled. Given the success of small businesses in the previous auction, and the prevalence of small businesses in the subscription television services and message communications industries, we assume for purposes of this analysis that in future auctions, many, and perhaps most, of the licenses may be awarded to small businesses.

98. *Location and Monitoring Service (''LMS'').* Multilateration LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For purposes of auctioning LMS licenses, the Commission has defined ''small business'' as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $15 million.[199] A ''very small business'' is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $3 million.[200] These definitions have been approved by the SBA.[201] An auction for LMS licenses commenced on February 23, 1999, and closed on March 5, 1999. Of the 528 licenses auctioned,

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.

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

[186] 13 CFR 121.201, NAICS code 517212.

[187] *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).

[188] *Id.*

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

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

[191] *See LMDS Second Report and Order*, 12 FCC Rcd at 12689–90, para. 348.

[192] *See id.*

[193] *See Alvarez to Phythyon Letter 1998.*

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

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

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

[197] *Id.*

[198] *See Alvarez to Phythyon Letter 1998.*

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

[200] *Automatic Vehicle Monitoring Systems Second Report and Order*, 13 FCC Rcd at 15192, para. 20; *see also* 47 CFR 90.1103.

[201] *See Alvarez Letter 1998.*

289 licenses were sold to four small businesses.

99. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.[202] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (''BETRS'').[203] In the present context, we will use the SBA's small business size standard applicable to ''Cellular and Other Wireless Telecommunications,'' *i.e.*, an entity employing no more than 1,500 persons.[204] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

100. *Air-Ground Radiotelephone Service.*[205] The Commission has previously used the SBA's small business definition applicable to ''Cellular and Other Wireless Telecommunications,'' *i.e.*, an entity employing no more than 1,500 persons.[206] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and under that definition, we estimate that almost all of them qualify as small entities under the SBA definition. For purposes of assigning Air-Ground Radiotelephone Service licenses through competitive bidding, the Commission has defined ''small business'' as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $40 million.[207] A ''very small business'' is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $15 million.[208] These definitions were approved by the SBA.[209] In May 2006, the Commission completed an auction of nationwide commercial Air-Ground Radiotelephone Service licenses in the 800 MHz band (Auction No. 65). On June 2, 2006, the auction closed with two winning bidders winning two Air-Ground Radiotelephone Services licenses. Neither of the winning bidders claimed small business status.

101. *Aviation and Marine Radio Services.* There are approximately 26,162 aviation, 34,555 marine (ship), and 3,296 marine (coast) licensees.[210] The Commission has not developed a small business size standard specifically applicable to all licensees. For purposes of this analysis, we will use the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees.[211] We are unable to determine how many of those licensed fall under this standard. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 62,969 licensees that are small businesses under the SBA standard.[212] In December 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 this 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. 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.[213] Further, the Commission made available Automated Maritime Telecommunications System (''AMTS'') licenses in Auctions 57 and 61.[214] Winning bidders could claim status as a very small business or a very small business. A very small business for this service is defined as an entity with attributed average annual gross revenues that do not exceed $3 million for the preceding three years, and a small business is defined as an entity with attributed average annual gross revenues of more than $3 million but less than $15 million for the preceding three years.[215] Three of the winning bidders in Auction 57 qualified as small or very small businesses, while three winning entities in Auction 61 qualified as very small businesses.

102. *Offshore Radiotelephone Service.* This service operates on several ultra high frequencies (''UHF'') television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.[216] There is presently 1 licensee in this service. We do not have information whether that licensee would qualify as small under the SBA's small business size standard for ''Cellular and Other Wireless Telecommunications'' services.[217] Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.[218]

103. *Multiple Address Systems (''MAS'').* Entities using MAS spectrum, in general, fall into two categories: (1) Those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses. With respect to the first category, the Commission defines ''small entity'' for MAS licenses as an entity that has average gross revenues of less than $15 million in the three previous calendar years.[219] ''Very small business'' is defined as an entity that, together with its affiliates, has average gross revenues of not more than $3 million for the preceding three calendar years.[220] The SBA has approved of these definitions.[221] The majority of these entities will most likely be licensed in bands where the Commission has

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

[203] BETRS is defined in section 22.757 and 22.759 of the Commission's Rules, 47 CFR 22.757 and 22.759.

[204] 13 CFR 121.201, NAICS code 517212.

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

[206] 13 CFR 121.201, NAICS codes 517212.

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

[208] *Id.*

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

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

[211] 13 CFR 121.201, NAICS code 517212.

[212] A licensee may have a license in more than one category.

[213] *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).

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

[215] 47 CFR 80.1252.

[216] This service is governed by Subpart I of Part 22 of the Commission's Rules. *See* 47 CFR 22.1001–22.1037.

[217] 13 CFR 121.201, NAICS code 517212.

[218] *Id.*

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

[220] *Id.*

[221] *See Alvarez Letter 1999.*

implemented a geographic area licensing approach that would require the use of competitive bidding procedures to resolve mutually exclusive applications. The Commission's licensing database indicates that, as of January 20, 1999, there were a total of 8,670 MAS station authorizations. Of these, 260 authorizations were associated with common carrier service. In addition, an auction for 5,104 MAS licenses in 176 EAs began November 14, 2001, and closed on November 27, 2001.[222] Seven winning bidders claimed status as small or very small businesses and won 611 licenses. On May 18, 2005, the Commission completed an auction (Auction No. 59) of 4,226 MAS licenses in the Fixed Microwave Services from the 928/959 and 932/941 MHz bands. Twenty-six winning bidders won a total of 2,323 licenses. Of the 26 winning bidders in this auction, five claimed small business status and won 1,891 licenses.

104. With respect to the second category, which consists of entities that use, or seek to use, MAS spectrum to accommodate internal communications needs, we note that MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. For the majority of private internal users, the small business size standard developed by the SBA would be more appropriate. The applicable size standard in this instance appears to be that of ''Cellular and Other Wireless Telecommunications''. This definition provides that a small entity is any such entity employing no more than 1,500 persons.[223] The Commission's licensing database indicates that, as of January 20, 1999, of the 8,670 total MAS station authorizations, 8,410 authorizations were for private radio service, and of these, 1,433 were for private land mobile radio service.

105. *1.4 GHz Band Licensees.* The Commission conducted an auction of 64 1.4 GHz band licenses, beginning on February 7, 2007,[224] and closing on March 8, 2007.[225] In that auction, the Commission defined ''small business'' as an entity that, together with its affiliates and controlling interests, had average gross revenues that exceed $15 million but do not exceed $40 million for the preceding three years, and a ''very small business'' as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding $15 million for the preceding three years.[226] Neither of the two winning bidders sought designated entity status.[227]

106. *Incumbent 24 GHz Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of ''Cellular and Other Wireless Telecommunications'' companies. This category provides that such a company is small if it employs no more than 1,500 persons.[228] For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year.[229] Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.[230] Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.[231] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[232] Thus, under this second category and size standard, the majority of firms can, again, be considered small. These broader census data notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent[233] and TRW, Inc. It is our understanding that Teligent and its related companies have fewer than 1,500 employees, though this may change in the future. TRW is not a small entity. There are approximately 122 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 122 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

107. *Future 24 GHz Licensees.* With respect to new applicants in the 24 GHz band, we have defined ''small business'' as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding $15 million.[234] ''Very small business'' in the 24 GHz band is defined as an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years.[235] The SBA has approved these definitions.[236] The Commission will not know how many licensees will be small or very small businesses until the auction, if required, is held.

108. *Broadband Radio Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (''MDS'') and Multichannel Multipoint Distribution Service (''MMDS'') systems, and ''wireless cable,'' transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (''BRS'') and Educational Broadband Service (''EBS'') (previously referred to as the Instructional Television Fixed Service (''ITFS'')).[237] In connection with the 1996 BRS auction, the Commission established a small business size

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

[223] *See* 13 CFR 121.201, NAICS code 517212.

[224] *See* ''Auction of 1.4 GHz Bands Licenses Scheduled for February 7, 2007,'' *Public Notice,* 21 FCC Rcd 12393 (WTB 2006).

[225] *See* ''Auction of 1.4 GHz Band Licenses Closes; Winning Bidders Announced for Auction No. 69,'' *Public Notice,* 22 FCC Rcd 4714 (2007) (''Auction No. 69 Closing PN'').

[226] *Id.,* Attachment C.

[227] *See* Auction No. 69 Closing PN.

[228] 13 CFR 121.201, NAICS code 517212.

[229] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization,'' Table 5, NAICS code 517211.

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

[231] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization,'' Table 5, NAICS code 517212.

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

[233] 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.

[234] *Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules To License Fixed Services at 24 GHz,* Report and Order, 15 FCC Rcd 16934, 16967, para. 77 (2000) (''*24 GHz Report and Order*''); *see also* 47 CFR 101.538(a)(2).

[235] *24 GHz Report and Order,* 15 FCC Rcd at 16967, para. 77; *see also* 47 CFR 101.538(a)(1).

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

[237] *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, para. 7 (1995) (''*MDS Auction R&O*'').

standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years.[238] The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (''BTAs''). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities.[239] After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules.

109. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating $13.5 million or less in annual receipts.[240] According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.[241] Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million.[242] Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. This SBA small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities.[243] Thus, we estimate that at least 1,932 licensees are small businesses.

110. *Television Broadcasting.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.'' [244] The SBA has created a small business size standard for Television Broadcasting entities, which is: such firms having $13 million or less in annual receipts.[245] According to Commission staff review of the BIA Financial Network, Inc., Media Access Pro Television Database as of December 7, 2007, about 825 (66 percent) of the 1,250 commercial television stations in the United States have revenues of $13 million or less. However, in assessing whether a business entity qualifies as small under the above definition, business controlaffiliations [246] 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.

111. 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.

112. There are also 2,117 low power television stations (''LPTV'').[247] Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

113. *Radio Broadcasting.* The SBA defines a radio broadcast entity that has $6 million or less in annual receipts as a small business.[248] Business concerns included in this industry are those ''primarily engaged in broadcasting aural programs by radio to the public.[249] 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 [250] are included.[251] Our estimate, therefore likely overstates the number of small businesses that might be affected by our action.

114. *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.[252]

115. The Commission estimates that there are approximately 5,618 FM translators and boosters.[253] 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

[238] 47 CFR 21.961(b)(1).

[239] 47 U.S.C. 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard.

[240] 13 CFR 121.201, NAICS code 517510.

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

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

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

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

[245] 13 CFR 121.201, NAICS code 515120.

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

[247] *FCC News Release,* ''Broadcast Station Totals as of September 30, 2007.''

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

[249] *Id.*

[250] ''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).

[251] ''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).

[252] 13 CFR 121.201, NAICS codes 513111 and 513112.

[253] *See* supra note 242.

translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business ($6.5 million for a radio station or $13.0 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a ''small business concern'' because they are not independently owned and operated.[254]

116. *Cable and Other Program Distribution.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged as third-party distribution systems for broadcast programming. The establishments of this industry deliver visual, aural, or textual programming received from cable networks, local television stations, or radio networks to consumers via cable or direct-to-home satellite systems on a subscription or fee basis. These establishments do not generally originate programming material.'' [255] The SBA has developed a small business size standard for Cable and Other Program Distribution, which is: All such firms having $13.5 million or less in annual receipts.[256] According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.[257] Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million.[258] Thus, under this size standard, the majority of firms can be considered small.

117. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide.[259] Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.[260] In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers.[261] Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers.[262] Thus, under this second size standard, most cable systems are small.

118. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' [263] The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[264] Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.[265] We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million,[266] and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

119. *Open Video Services.* Open Video Service (''OVS'') systems provide subscription services.[267] The SBA has created a small business size standard for Cable and Other Program Distribution.[268] This standard provides that a small entity is one with $13.5 million or less in annual receipts. The Commission has certified approximately 25 OVS operators to serve 75 areas, and some of these are currently providing service.[269] Affiliates of Residential Communications Network, Inc. (''RCN'') received approval to operate OVS systems in New York City, Boston, Washington, DC, and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 24 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies proposed herein.

120. *Cable Television Relay Service.* This service includes transmitters generally used to relay cable programming within cable television system distribution systems. The SBA has developed a small business size standard for Cable and Other Program Distribution, which is: All such firms having $13.5 million or less in annual receipts.[270] According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.[271] Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million.[272] Thus, under this size standard, the majority of firms can be considered small.

121. *Multichannel Video Distribution and Data Service.* MVDDS is a terrestrial fixed microwave service operating in the 12.2–12.7 GHz band. The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. It defined a very

[254] 15 U.S.C. 632.

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

[256] 256 13 CFR 121.201, NAICS code 517510.

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

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

[259] 47 CFR 76.901(e). The Commission determined that this size standard equates approximately to a size standard of $100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation,* Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

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

[261] 47 CFR 76.901(c).

[262] Warren Communications News, *Television & Cable Factbook 2006,* ''U.S. Cable Systems by Subscriber Size,'' page F–2. The data do not include 718 systems for which classifying data were not available.

[263] 47 U.S.C. 543(m)(2); *see* 47 CFR 76.901(f) & nn. 1–3.

[264] 47 CFR 76.901(f); *see* Public Notice, *FCC Announces New Subscriber Count for the Definition of Small Cable Operator,* 16 FCC Rcd 2225 (Cable Services Bureau, 2001).

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

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

[267] *See* 47 U.S.C. 573.

[268] 13 CFR 121.201, NAICS code 517510.

[269] *See http://www.fcc.gov/csb/ovs/csovscer.html.*

[270] 13 CFR 121.201, NAICS code 517510.

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

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

small business as an entity with average annual gross revenues not exceeding $3 million for the preceding three years; a small business as an entity with average annual gross revenues not exceeding $15 million for the preceding three years; and an entrepreneur as an entity with average annual gross revenues not exceeding $40 million for the preceding three years.[273] These definitions were approved by the SBA.[274] On January 27, 2004, the Commission completed an auction of 214 MVDDS licenses (Auction No. 53). In this auction, ten winning bidders won a total of 192 MVDDS licenses.[275] Eight of the ten winning bidders claimed small business status and won 144 of the licenses. The Commission also held an auction of MVDDS licenses on December 7, 2005 (Auction 63). Of the three winning bidders who won 22 licenses, two winning bidders, winning 21 of the licenses, claimed small business status.[276]

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

123. *Aviation and Marine Services.* Small businesses in the aviation and marine radio services use a very high frequency (''VHF'') marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees.[277] 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.[278] 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.

124. *Personal Radio Services.* Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The Personal Radio Services include spectrum licensed under Part 95 of our rules.[279] These services include Citizen Band Radio Service (''CB''), General Mobile Radio Service (''GMRS''), Radio Control Radio Service (''R/C''), Family Radio Service (''FRS''), Wireless Medical Telemetry Service (''WMTS''), Medical Implant Communications Service (''MICS''), Low Power Radio Service (''LPRS''), and Multi-Use Radio Service (''MURS'').[280] There are a variety of methods used to license the spectrum in these rule parts, from licensing by rule, to conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. Under the RFA, the Commission is required to make a determination of which small entities are directly affected by the rules being proposed. Since all such entities are wireless, we apply the definition of cellular and other wireless telecommunications, pursuant to which a small entity is defined as employing 1,500 or fewer persons.[281] Many of the licensees in these services are individuals, and thus are not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base an estimation of the number of small entities under an SBA definition that might be directly affected by the proposed rules.

125. *Public Safety Radio Services.* Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.[282] There are a total of approximately 127,540 licensees in these services. Governmental entities[283] as well as private businesses comprise the licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small entity.[284]

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

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

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

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

[277] 13 CFR 121.201, NAICS code 517212.

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

[279] 47 CFR Part 90.

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

[281] 13 CFR 121.201, NAICS Code 517212.

[282] With the exception of the special emergency service, these services are governed by Subpart B of part 90 of the Commission's Rules, 47 CFR 90.15–90.27. The police service includes approximately 27,000 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes approximately 23,000 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of approximately 41,000 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are approximately 7,000 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The approximately 9,000 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The approximately 1,000 licensees in the Emergency Medical Radio Service (''EMRS'') use the 39 channels allocated to this service for emergency medical service communications related to the delivery of emergency medical treatment. 47 CFR 90.15–90.27. The approximately 20,000 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 CFR 90.33–90.55.

[283] 47 CFR 1.1162.

[284] 5 U.S.C. 601(5).

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

126. With certain exceptions, the Commission's Schedule of Regulatory Fees applies to all Commission licensees and regulatees. Most licensees will be required to count the number of licenses or call signs authorized, complete and submit an FCC Form 159 Remittance Advice, and pay a regulatory fee based on the number of licenses or call signs.[285] 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.

127. 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.

128. Licensees and regulatees are advised that failure to submit the required regulatory fee in a timely manner will subject the licensee or regulatee to a late payment penalty of 25 percent in addition to the required fee.[286] If payment is not received, new or pending applications may be dismissed, and existing authorizations may be subject to rescission.[287] Further, in accordance with the DCIA, federal agencies may bar a person or entity from obtaining a federal loan or loan insurance guarantee if that person or entity fails to pay a delinquent debt owed to any federal agency.[288] Nonpayment of regulatory fees is a debt owed the United States pursuant to 31 U.S.C. 3711 *et seq.* and the DCIA. Appropriate enforcement measures as well as administrative and judicial remedies, may be exercised by the Commission. Debts owed to the Commission may result in a person or entity being denied a federal loan or loan guarantee pending before another federal agency until such obligations are paid.[289]

129. 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.[290] 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

130. 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.[291] In the *NPRM,* we have sought comment on alternatives that might simplify our fee procedures or otherwise benefit filers, including small entities, while remaining consistent with our statutory responsibilities in this proceeding.

131. Several categories of licensees and regulatees are exempt from payment of regulatory fees. Also, waiver procedures provide regulatees, including small entity regulatees, relief in exceptional circumstances.

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

132. None.

Attachment B—Sources of Payment Unit Estimates for FY 2008

In order to calculate individual service fees for FY 2008, we adjusted FY 2007 payment units for each service to more accurately reflect expected FY 2008 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections when available. The databases we consulted include our Universal Licensing System (''ULS''), International Bureau Filing System (''IBFS''), Consolidated Database System (''CDBS'') and Cable Operations and Licensing System (''COALS''), as well as reports generated within the Commission such as the Wireline Competition Bureau's *Trends in Telephone Service* and the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast.*

We tried to obtain verification for these estimates from multiple sources and, in all cases; we compared FY 2008 estimates with actual FY 2007 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

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

[286] 47 CFR 1.1164.

[287] 47 CFR 1.1164(c).

[288] Public Law 104–134, 110 Stat. 1321 (1996).

[289] 31 U.S.C. 7701(c)(2)(B).

[290] 47 CFR 1.1166.

[291] 5 U.S.C. 603.

number of waivers and/or exemptions that may occur in FY 2008 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical, or other reasons. When we note, for example, that our estimated FY 2008 payment units are based on FY 2007 actual payment units, it does not necessarily mean that our FY 2008 projection is exactly the same number as FY 2007. We have either rounded the FY 2008 number or adjusted it slightly to account for these variables.

Fee category	Sources of payment unit estimates
Land Mobile (All), Microwave, 218–219 MHz, Marine (Ship & Coast), Aviation (Aircraft & Ground), GMRS, Amateur Vanity Call Signs, Domestic Public Fixed.	Based on Wireless Telecommunications Bureau (“WTB”) projections of new applications and renewals taking into consideration existing Commission licensee data bases. Aviation (Aircraft) and Marine (Ship) estimates have been adjusted to take into consideration the licensing of portions of these services on a voluntary basis.
CMRS Cellular/Mobile Services	Based on WTB projection reports, and FY 07 payment data.
CMRS Messaging Services	Based on WTB reports, and FY 07 payment data.
AM/FM Radio Stations	Based on CDBS data, adjusted for exemptions, and actual FY 2007 payment units.
UHF/VHF Television Stations	Based on CDBS data, adjusted for exemptions, and actual FY 2007 payment units.
AM/FM/TV Construction Permits	Based on CDBS data, adjusted for exemptions, and actual FY 2007 payment units.
LPTV, Translators and Boosters, Class A Television	Based on CDBS data, adjusted for exemptions, and actual FY 2007 payment units.
Broadcast Auxiliaries	Based on actual FY 2007 payment units.
BRS (formerly MDS/MMDS)	Based on WTB reports and actual FY 2007 payment units.
Cable Television Relay Service (“CARS”) Stations	Based on data from Media Bureau’s COALS database and actual FY 2007 payment units.
Cable Television System Subscribers	Based on publicly available data sources for estimated subscriber counts and actual FY 2007 payment units.
Interstate Telecommunication Service Providers	Based on FCC Form 499–Q data for the four quarters of calendar year 2007, the Wireline Competition Bureau projected the amount of calendar year 2007 revenue that will be reported on 2008 FCC Form 499–A worksheets in April, 2008.
Earth Stations	Based on International Bureau (“IB”) licensing data and actual FY 2007 payment units.
Space Stations (GSOs & NGSOs)	Based on IB data reports and actual FY 2007 payment units.
International Bearer Circuits	Based on IB reports and actual FY 2007 payment units.
International HF Broadcast Stations, International Public Fixed Radio Service.	Based on IB reports and actual FY 2007 payment units.

Attachment C—Calculation of FY2008 Revenue Requirements and Pro-Rata Fees

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

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

Fee Category	FY 2008 Payment Units	Years	FY 2007 Revenue Estimate	Pro-Rated FY 2008 Revenue Require-ment*	Computed New FY 2008 Regulatory Fee	Rounded New FY 2008 Regula-tory Fee	Expected FY 2008 Revenue
PLMRS (Exclusive Use)	1,150	10	437,500	469,918	41	40	460,000
PLMRS (Shared use)	11,500	10	2,325,000	2,497,278	22	20	2,300,000
Microwave	4,900	10	1,740,000	1,868,931	38	40	1,960,000
218-219 MHz (Formerly IVDS)	3	10	1,650	1,772	59	60	1,800
Marine (Ship)	8,400	10	800,000	859,278	10	10	840,000
GMRS	14,000	5	400,000	429,639	6	5	350,000
Aviation (Aircraft)	7,500	10	440,000	472,603	6	5	375,000
Marine (Coast)	310	10	108,000	116,003	37	35	108,500
Aviation (Ground)	1,700	10	165,000	177,226	10	10	170,000
Amateur Vanity Call Signs	15,000	10	171,990	184,734	1.23	1.23	184,500
AM Class A	65	1	210,800	227,451	3,499	3,500	227,500
AM Class B	1,564	1	2,546,375	2,742,431	1,753	1,750	2,737,000
AM Class C	935	1	890,150	965,321	1,032	1,025	958,375
AM Class D	1,706	1	2,983,750	3,240,539	1,899	1,900	3,241,400
FM Classes A, B1 & C3	3,040	1	6,281,025	6,800,861	2,237	2,225	6,764,000
FM Classes B, C, C0, C1 & C2	3,043	1	7,655,100	8,273,911	2,719	2,725	8,292,175
AM Construction Permits	73	1	26,000	32,850	450	450	32,850
FM Construction Permits[1]	257	1	117,875	154,200	600	600	154,200
Satellite TV	127	1	137,500	147,961	1,165	1,175	149,225
Satellite TV Construction Permit	3	1	1,650	1,789	596	595	1,785
VHF Markets 1-10	43	1	2,764,900	2,983,938	69,394	69,400	2,984,200

Fee Category	FY 2008 Payment Units	Years	FY 2007 Revenue Estimate	Pro-Rated FY 2008 Revenue Require-ment*	Computed New FY 2008 Regulatory Fee	Rounded New FY 2008 Regula-tory Fee	Expected FY 2008 Revenue
VHF Markets 11-25	60	1	2,827,350	3,051,067	50,851	50,850	3,051,000
VHF Markets 26-50	74	1	2,392,775	2,581,765	34,889	34,900	2,582,600
VHF Markets 51-100	118	1	2,300,000	2,480,776	21,024	21,025	2,480,950
VHF Remaining Markets	195	1	1,014,750	1,093,312	5,607	5,600	1,092,000
VHF Construction Permits	4	1	15,375	22,400	5,600	5,600	22,400
UHF Markets 1-10	90	1	1,788,150	1,931,149	21,457	21,450	1,930,500
UHF Markets 11-25	78	1	1,478,200	1,596,290	20,465	20,475	1,597,050
UHF Markets 26-50	116	1	1,242,000	1,342,573	11,574	11,575	1,342,700
UHF Markets 51-100	167	1	1,058,400	1,141,878	6,838	6,850	1,143,950
UHF Remaining Markets	186	1	320,250	347,204	1,867	1,875	348,750
UHF Construction Permits[1]	20	1	38,500	37,500	1,875	1,875	37,500
Broadcast Auxiliaries	27,600	1	270,000	251,048	9	10	276,000
LPTV/Trans-lators/Boosters/ Class A TV	3,500	1	1,173,000	1,274,067	364	365	1,277,500
CARS Stations	750	1	144,300	155,598	207	205	153,750
Cable TV Systems	64,800,000	1	48,375,000	52,061,017	0.80341	0.80	51,840,000
Interstate Tele-communication Service Providers	$46,300,000,000	1	135,660,000	146,636,961	0.00316710	0.00317	146,771,000
CMRS Mobile Services (Cellular/Public Mobile)	255,000,000	1	41,220,000	43,917,284	0.1722	0.170	43,350,000
CMRS Messag. Services	7,000,000	1	600,000	560,000	0.080	0.080	560,000
BRS[2]	1,700	1	422,500	501,500	295	295	501,500
LMDS	335	1	133,250	98,825	295	295	98,825

Fee Category	FY 2008 Payment Units	Years	FY 2007 Revenue Estimate	Pro-Rated FY 2008 Revenue Require-ment*	Computed New FY 2008 Regulatory Fee	Rounded New FY 2008 Regula-tory Fee	Expected FY 2008 Revenue
International Bearer Circuits	7,500,000	1	7,560,000	8,149,636	1.087	1.09	8,175,000
International Public Fixed	1	1	1,875	2,014	2,014	2,025	2,025
Earth Stations	4,000	1	721,500	786,409	197	195	780,000
International HF Broadcast	5	1	3,975	4,288	858	860	4,300
Space Stations (Geostationary)	85	1	9,391,200	10,140,209	119,297	119,300	10,140,500
Space Stations (Non-Geostationary	6	1	698,850	754,556	125,759	125,750	754,500
****** Total Estimated Revenue to be Collected			291,055,465	313,567,960			312,606,810
****** Total Revenue Requirement			290,295,160	312,000,000			312,000,000
Difference			760,305	1,567,960			606,810

[1] The AM and FM Construction Permit revenues and the VHF and UHF Construction Permit revenues were adjusted to set the regulatory fee to an amount no higher than the lowest licensed fee for that class of service. The reductions in the AM and FM Construction Permit revenues are offset by increases in the revenue totals for AM and FM radio stations. Similarly, reductions in the VHF and UHF Construction Permit revenues are offset by increases in the revenue totals for VHF and UHF television stations, respectively.

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

[3] Beginning in FY 2008, regulatory fees for IVoIP will be included as part of the Interstate Telecommunications Service Provider (ITSP) fee, and these fees will be collected at the same time as ITSP fees are collected.

Attachment D—Proposed FY 2008 Schedule of Regulatory Fees

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

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

Fee Category	Annual Regulatory Fee (U.S. $'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	40
Microwave (per license) (47 CFR part 101)	40
218-219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	60
Marine (Ship) (per station) (47 CFR part 80)	10
Marine (Coast) (per license) (47 CFR part 80)	35
General Mobile Radio Service (per license) (47 CFR part 95)	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	20
PLMRS (Shared Use) (per license) (47 CFR part 90)	20
Aviation (Aircraft) (per station) (47 CFR part 87)	5
Aviation (Ground) (per license) (47 CFR part 87)	10
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.23
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.17
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08
Broadband Radio Service (formerly MMDS/ MDS) (per license) (47 CFR part 21)	295
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	295
AM Radio Construction Permits	450
FM Radio Construction Permits	600
TV (47 CFR part 73) VHF Commercial	
Markets 1-10	69,400
Markets 11-25	50,850
Markets 26-50	34,900
Markets 51-100	21,025
Remaining Markets	5,600
Construction Permits	5,600

Fee Category	Annual Regulatory Fee (U.S. $'s)
TV (47 CFR part 73) UHF Commercial	
Markets 1-10	21,450
Markets 11-25	20,475
Markets 26-50	11,575
Markets 51-100	6,850
Remaining Markets	1,875
Construction Permits	1,875
Satellite Television Stations (All Markets)	1,175
Construction Permits – Satellite Television Stations	595
Low Power TV, Class A TV, TV/FM Translators & Boosters (47 CFR part 74)	365
Broadcast Auxiliaries (47 CFR part 74)	10
CARS (47 CFR part 78)	205
Cable Television Systems (per subscriber) (47 CFR part 76)	.80
Interstate Telecommunication Service Providers (per revenue dollar)	.00317
Earth Stations (47 CFR part 25)	195
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100)	119,300
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	125,750
International Bearer Circuits (per active 64KB circuit)	1.09
International Public Fixed (per call sign) (47 CFR part 23)	2,025
International (HF) Broadcast (47 CFR part 73)	860

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FY 2008 Schedule of Regulatory Fees (continued)

FY 2008 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	$650	$500	$450	$525	$600	$775
25,001–75,000	1,325	1,025	650	775	1,225	1,375
75,001–150,000	1,975	1,275	875	1,300	1,675	2,550
150,001–500,000	2,975	2,175	1,325	1,550	2,600	3,325
500,001–1,200,000	4,300	3,325	2,200	2,575	4,125	4,900
1,200,001–3,000,00	6,600	5,100	3,300	4,125	6,700	7,850
>3,000,000	7,925	6,125	4,175	5,150	8,550	10,200

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 section73.150 and 73.152 of the Commission's rules.[292] 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 [293]. Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the principal community (5 mV/m) contour was predicted for each of the 360 radials. The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 block centroids were contained in the polygon. (A block centroid is the center point of a small area containing population as computed by the U.S. Census Bureau.) The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

FM Stations

The greater of the horizontal or vertical effective radiated power (''ERP'') (kW) and respective height above average terrain (''HAAT'') (m) combination was used. Where the antenna height above mean sea level (''HAMSL'') was available, it was used in lieu of the average HAAT figure to calculate specific HAAT figures for each of 360 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the Field Strength (50–50) propagation curves specified in 47 CFR 73.313 of the Commission's rules to predict the distance to the principal community (70 dBu (decibel above 1 microVolt per meter) or 3.17 mV/m) contour for each of the 360 radials.[294] The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

Attachment F—FY 2007 Schedule of Regulatory Fees

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

[292] 47 CFR 73.150 and 73.152.

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

[294] 294 47 CFR 73.313.

Fee category	Annual regulatory fee (U.S. $'s)
Markets 1–10	64,300
Markets 11–25	46,350
Markets 26–50	31,075
Markets 51–100	20,000
Remaining Markets	5,125
Construction Permits	5,125
TV (47 CFR part 73) UHF Commercial.	
Markets 1–10	19,650
Markets 11–25	19,450
Markets 26–50	10,800
Markets 51–100	6,300
Remaining Markets	1,750
Construction Permits	1,750
Satellite Television Stations (All Markets)	1,100
Construction Permits—Satellite Television Stations	550
Low Power TV, TV/FM Translators & Boosters (47 CFR part 74)	345
Broadcast Auxiliary (47 CFR part 74)	10
CARS (47 CFR part 78)	185
Cable Television Systems (per subscriber) (47 CFR part 76)	.75
Interstate Telecommunication Service Providers (per revenue dollar)	.00266
Earth Stations (47 CFR part 25)	185
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes Direct Broadcast Satellite Service (per operational station) (47 CFR part 100)	109,200
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	116,475
International Bearer Circuits (per active 64KB circuit)	1.05
International Public Fixed (per call sign) (47 CFR part 23)	1,875
International (HF) Broadcast (47 CFR part 73)	795

FY 2007 Schedule of Regulatory Fees (continued)

FY 2007 RADIO STATION REGULATORY FEES

Population served	AM class A	AM class B	AM class C	AM class D	FM classes A, B1 & C3	FM classes B, C, C0, C1 & C2
<=25,000	$625	$475	$400	$475	$575	$725
25,001–75,000	1,225	925	600	725	1,150	1,250
75,001–150,000	1,825	1,150	800	1,200	1,600	2,300
150,001–500,000	2,750	1,950	1,200	1,425	2,475	3,000
500,001–1,200,000	3,950	2,975	2,000	2,375	3,900	4,400
1,200,001–3,000,00	6,075	4,575	3,000	3,800	6,350	7,025
>3,000,000	7,275	5,475	3,800	4,750	8,075	9,125

[FR Doc. E8–11891 Filed 5–27–08; 8:45 am]
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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 15 and 54

[MB Docket No. 07–148; FCC 08–119]

DTV Consumer Education Initiative

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission asks whether the eligible telecommunications carrier (ETC) obligation to provide monthly digital television (DTV) transition notices to low-income subscribers should be expanded to require the provision of such notices to all subscribers, and whether multichannel video programming distributors (MVPDs) should be required to provide on-air DTV transition education on their systems.

DATES: Comments for this proceeding are due on or before June 27, 2008; reply comments are due on or before July 14, 2008.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. You may submit comments, identified by MB Docket No. 07–148, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Federal Communications Commission's Web Site: *http://www.fcc.gov/cgb/ecfs/*. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For more information on this proceeding, please contact Lyle Elder, *Lyle.Elder@fcc.gov,* or Eloise Gore, *Eloise.Gore@fcc.gov,* of the Media