concerning the establishment of three temporary restricted anchorages with associated safety/security zones within the Captain of the Port Zone Jacksonville. The proposed rule is being withdrawn because the geographic locations of the proposed anchorage areas are beyond three nautical miles from the baseline of the territorial sea.

DATES: The proposed rule published at 73 FR 12925, March 11, 2008, is withdrawn, as of June 2, 2009.

ADDRESSES: The docket for this withdrawn rulemaking is available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov*, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2008–0006 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice, contact Lieutenant Commander Mark Gibbs at U.S. Coast Guard Sector Jacksonville Prevention Department, telephone 904–564–7563, e-mail *Mark.A.Gibbs@uscg.mil.* If you have questions on viewing material in the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background

On March 11, 2008, we published a notice of proposed rulemaking entitled ''Seventh Coast Guard District, Captain of the Port Zone Jacksonville, Temporary Restricted Anchorage'' in the **Federal Register** (73 FR 12925). We received no comments on the proposed rule; no public meeting was requested and none was held.

The rulemaking concerned establishment of three, multi-purpose, temporary restricted anchorages with associated safety/security zones to service vessels intending to call on the ports of Jacksonville or Fernandina, within the Captain of the Port Zone Jacksonville as defined by 33 CFR 3.35–20. These temporary restricted anchorages and associated safety/security zones were designed for the geographic separation and/or restriction of vessels or persons on such vessels when such vessels or persons pose or are suspected of posing a safety, public health, environmental, or security threat.

Withdrawal

The proposed rule sought to establish anchorage areas beyond three nautical miles from the territorial sea baseline. Currently, the Coast Guard's authority under the Rivers and Harbors Act does not allow it to create anchorages more than three miles from the territorial sea baseline (*see* 33 CFR 2.20 and 2.22). Therefore, we are withdrawing our proposal, which was published on March 11, 2008, in the **Federal Register** (73 FR 12925).

Authority: We issue this notice of withdrawal under the authority of 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1.

Dated: May 12, 2009.

R.S. Branham,

Rear Admiral, U.S. Coast Guard, Commander, Coast Guard Seventh District.

[FR Doc. E9–12707 Filed 6–1–09; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 09–65; FCC 09–38]

Assessment and Collection of Regulatory Fees for Fiscal Year 2009

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission will revise its Schedule of Regulatory Fees in order to recover an amount of $341,875,000 that Congress has required the Commission to collect for fiscal year 2009. 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 June 4, 2009, and reply comments are due June 11, 2009.

ADDRESSES: You may submit comments, identified by MD Docket No. 09–65, 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. 09–65 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: Daniel Daly, Office of Managing Director at (202) 418–1832.

SUPPLEMENTARY INFORMATION:

Adopted: May 11, 2009; Released: May 14, 2009.

By the Commission: Acting Chairman Copps issuing a statement.

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- Initial Regulatory Flexibility Analysis.
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- Proposed FY 2009 Schedule of Regulatory Fees.
- Factors, Measurements, and Calculations That Go Into Determining Station Signal Contours and Associated Population Coverages.
- FY 2008 Schedule of Regulatory Fees.
- Proposed Rules for FY 2009 International Bearer Circuit Fees.

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] The Commission is obligated to collect $341,875,000 in regulatory fees during Fiscal Year (''FY'') 2009 to fund the Commission's operations.[2] In the accompanying Notice of Proposed Rulemaking (''NPRM''), we request comment on substantive and procedural aspects of our current regulatory fee program, including assessment of fees on digital broadcasting television licensees after the June 12, 2009 nationwide digital transition date.

II. Notice of Proposed Rulemaking

A. FY 2009 Regulatory Fee Assessment Methodology—Development of FY 2009 Regulatory Fees

2. In this NPRM, we seek comment on the development of FY 2009 regulatory fees collected pursuant to section 9 of the Act. For FY 2009, 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 2009 regulatory fee cycle, we propose to retain most of the administrative measures used for notification and assessment 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 $341,875,000 in regulatory fees during FY 2009 to fund the Commission's operations.[3] Consistent with our established practice, we intend to collect these fees in the August-September 2009 time frame in order to collect the required amount by the end of the fiscal year.

4. For our FY 2009 regulatory fee assessment, we propose to use essentially the same section 9 regulatory fee assessment methodology adopted for FY 2008, except with regard to submarine cable systems or as otherwise discussed below.[4] Each fiscal year, the Commission proportionally allocates to fee categories the total amount that must be collected through our section 9

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

[2] *See Omnibus Appropriations Act, 2009,* Public Law 111–8.

[3] *See Omnibus Appropriations Act, 2009,* Public Law 111–8.

[4] We recently revised the Commission's international bearer circuit (IBC) fee rules by adopting a new methodology for calculating regulatory fees on both common carrier and non-common carrier international submarine cable systems based on a per system fee. *See Assessment and Collection of Regulatory Fees for Fiscal Year 2008,* MD Docket No. 08–65, Second Report and Order (rel. March 24, 2009) (''*Submarine Cable Order*''). Under section 9(b)(4)(B) of the Act, we must notify Congress 90 days before a permitted amendment to the regulatory fees can take effect. The 90 day period will elapse as of July 15, 2009. For this reason, we are calculating proposed regulatory fees for FY 2009 for this service using both the new methodology and the old (pre-FY 2009) methodology. See Appendix A for the proposed regulatory fees for international submarine cable systems based on the new methodology adopted in the *Submarine Cable Order.* See Appendix I for the proposed regulatory fees for international submarine cable systems based on the current methodology which remains in effect pending the Congressional notification process. If the 90 day period elapses without Congressional objection to the permitted amendment, we will use the new methodology contained in Appendix A to calculate submarine cable fees in our FY 2009 report and order. Terrestrial and satellite facilities do not have cable landing licenses and will continue to pay regulatory fees on a per 64KB circuit basis, under our historic methodology as revised in the *Submarine Cable Order. See Submarine Cable Order* at paragraph 20.

regulatory fees.[5] Consistent with past practice, we propose to divide the FY 2009 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.

B. Regulatory Fee Obligations for Digital Broadcasters

5. The rules currently require that VHF and UHF stations pay regulatory fees; the rules do not specify ''analog'' or ''digital.'' [6] In our *FY 2005 Report and Order,* we stated that we had sought comment on whether to establish regulatory fee obligations for digital broadcasters but received no comments on the issue and did not establish regulatory fee obligations for digital broadcasters at that time.[7] We instead maintained that the regulatory fee obligation applied only for analog broadcaster facilities. Again in the Commission's *FY 2008 Report and Order,* we sought comment on how to assess regulatory fees after the conversion from analog to digital broadcasting, which will be completed on June 12, 2009 for full-power stations.[8] We again received no comments on this issue.

6. Consistent with past years, we will not assess FY 2009 regulatory fees for both digital and analog licenses from a licensee in the process of transitioning from analog to digital. Stations that were broadcasting in both analog and digital on October 1, 2008 will be assessed FY 2009 regulatory fees for their analog license only. Also consistent with our past practice, stations that were broadcasting in digital only on October 1, 2008 will not be assessed regulatory fees for their digital license for FY 2009.

7. Beginning in FY 2010, we plan to collect regulatory fees from digital broadcasters. We seek comment on our plan to collect regulatory fees on full-power digital broadcast stations beginning with FY 2010, *i.e.,* the fiscal year after the nation-wide transition date on June 12, 2009. Our goal is to ensure that digital broadcasters will pay their share of regulatory fees in the years after the nation-wide transition is complete. Therefore, in FY 2010, we plan to collect regulatory fees from digital broadcasters. During this transitional year, we seek comment on our plan to collect regulatory fees from digital broadcasters beginning in FY 2010, and whether an accompanying rule change is necessary.

C. Commercial Mobile Radio Service Messaging Service

8. Commercial Mobile Radio Service (''CMRS'') Messaging Services, which replaced the CMRS One-Way Paging fee category in FY 1997, includes all narrowband services.[9] We have maintained the CMRS Messaging Service regulatory fee at the rate that was first established in FY 2002,[10] $0.08 per subscriber, because the subscriber base in this industry has declined significantly.[11] 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. We propose to maintain the messaging service regulatory fee at $0.08 per subscriber. We seek comment on this proposal.

D. International Bearer Circuits

9. Under our current policy, International Bearer Circuits (''IBC'') fees are paid by facilities-based common carriers that have active (used or leased) international bearer circuits as of December 31 of the prior year in any terrestrial or satellite transmission facility for the provision of service to an end user or resale carrier, which includes active circuits to themselves or to their affiliates. Submarine cable operators pay IBC fees for common carrier and non-common carrier circuits based on a per system fee.[12] Initially, in 1994 when the Commission first established regulatory fees, it only required that terrestrial, satellite and submarine cable common carriers providing IBCs and non-common carrier submarine cable operators providing IBCs pay the regulatory fees.[13] Since 1997 operators of non-common carrier satellites also 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.[14]

10. We propose to collect IBC regulatory fees in FY 2009 consistent with our current policy.[15] In the *FY 2008 Report and Order,* the Commission initiated a Further NPRM to review its regulatory fee methodology and explore ways to ''comprehensively make the Commission's regulatory fee process more equitable.'' [16] We note that our review is continuing. On March 17, 2009, we adopted the *Submarine Cable Order,* which made the methodology for calculating regulatory fees more equitable among international submarine cable operators, without distinguishing between common carriers and non-common carriers.[17] That decision did not, however, substantively address the IBC fees for terrestrial operators.[18] As part of our comprehensive effort to review our regulatory fees process for possible ways to make the process more equitable, we

[5] *See* Appendix H for the proposed FY 2009 regulatory fee assessment methodology, including a comparison to the FY 2008 results.

[6] *See* 47 CFR 1.1153.

[7] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2005,* MD Docket No. 05–59, Report and Order and Order on Reconsideration, 20 FCC Rcd 12259, 12266–67, paragraph 23 (2005) (''*FY 2005 Report and Order*'').

[8] *FY 2008 Report and Order* at paragraphs 44–46.

[9] *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, paragraph 60 (1997) (''*FY 1997 Report and Order*'').

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

[11] The subscriber base in the paging industry declined 83 percent from 40.8 million to 6.95 million, from FY 1997 to FY 2008, according to FY 2008 collection data as of September 30, 2008.

[12] We recently revised our IBC fee rules to assess fees on both common carrier and non-common carrier international subcable systems based on a per system fee. *Submarine Cable Order* at paragraph 13.

[13] *See Implementation of Section 9 of the Communications Act; Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year,* Report and Order, MD Docket No. 94–19, FCC 94–140, 9 FCC Rcd 5333, 5367, paragraph 98 (1994).

[14] *See Assessment and Collection of Regulatory Fees for Fiscal Year 1997 (1997 Regulatory Fees Order),* Report and Order, MD Docket No. 96–186, FCC 97–215, 12 FCC Rcd 17161 (1997) *aff'd Panamsat Corporation* v. *FCC,* 198 F.3d 890, 898 (D.C. Cir 1998). When including non-common carrier satellite operators providing international communications among the payors of regulatory fees for international bearer circuits, the Commission stated that ''although we have not in the past required these providers to pay the international bearer circuit regulatory fees, we conclude that it is now appropriate to impose the fee, due to these satellite providers extensive participation in services once reserved to the common carriers and [non-common carrier] undersea cable operators and, in particular, to the important role they now play in the provision of international bearer circuits.'' 12 FCC Rcd at 17189, at paragraph 71 (1997).

[15] On March 17, 2009, the Commission adopted the *Submarine Cable Order,* which changed the methodology for calculating regulatory fees for international submarine cable operators. After a pending 90-day congressional notification period, this new methodology will be incorporated into the FY 2009 regulatory fee *Report and Order* and will become effective in fiscal year 2009.

[16] *See FY 2008 Report and Order* at paragraph 2. The Further NPRM, however, did not seek comment on any issues specifically related to IBC fees. *See id.* at paragraph 25–58.

[17] *See Submarine Cable Order* at paragraph 2.

[18] *Id.,* at paragraph 20 n.48 (encouraging terrestrial IBC providers, among others, to propose any changes to the regulatory fee methodology that would better serve their interests).

now seek comment on whether, beginning in FY 2010, carriers providing international service over terrestrial circuits also should pay IBC fees on non-common carrier circuits.[19] Carriers primarily provide terrestrial international services through microwave and fiber links across the U.S.-Canada and U.S.-Mexico borders.[20] Non-common carrier terrestrial circuits play an important role in the provision of international services on the U.S.-Canada and U.S.-Mexico routes. Due to their proximity to the United States, these two border countries are among the largest telecommunications routes, and the Commission regularly engages with counterparts in Canada and Mexico on a wide range of issues related to cross-border communications.[21] If carriers were to pay regulatory fees for their non-common carrier terrestrial circuits, we note that this would not increase the total amount of IBC fees that need to be collected each year.

E. Administrative and Operational Issues

11. 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. Mandatory Use of Fee Filer

12. In the past we have strongly encouraged regulatees to electronically file their regulatory fee payments via Fee Filer, instead of submitting payment with a completed hardcopy Form 159, Form 159–B, or Form 159–W.[22] Although we have strongly urged the use of Fee Filer, we have not required it. This year, we seek comment on whether the Commission should require all regulatees to enter critical information in Fee Filer, even if they do not pay through Fee Filer. By entering the Fee Filer system, even if the regulatee does not pay electronically, certain information will be entered into our system by the regulatee, such as the FRN, a correct address, and key electronic data attributes such as a call sign, payment amount, fee code, and quantity of subscribers. By instituting a mandatory filing requirement (but not a mandatory electronic payment requirement), we believe this will reduce errors resulting from illegible handwriting on hardcopy Form 159's as well as create an electronic record of licensees who have paid regulatory fees. For those licensees who use the Commission's electronic payment system (also known as ''Fee Filer''), but who choose to mail in their payments using the Form 159–E voucher generated by Fee Filer, the Commission will have an electronic record of licensee payment attributes that are more easily traced than those payments that are simply mailed in with a hardcopy Form 159. Those who file and pay through Fee Filer are also certifying to the accuracy of their payment, their subscriber count, and their revenue amount.

13. Although we do not propose at this time to require *payment* through Fee Filer, we strongly encourage regulatees to do so. There are many benefits: (1) Expeditious submission of payment; (2) no postage or courier costs; (3) fewer errors caused by illegible handwriting or payments submitted without an FRN number or the appropriate data attributes (*e.g.,* payers will avoid false delinquencies due to payment submission errors); (4) improved recordkeeping and payment reconciliation; (5) reduced administrative burden on both licensees and on Commission staff trying to process regulatory fee payments; (6) less expensive than a wire transfer; and (7) a significant reduction in the use of payment remittance forms such as Form 159–C's submitted in support of a regulatory fee payment. These benefits will not only reduce the paper burden on licensees, but the administrative burden of preparing and mailing such documents.

14. For regulatees who choose not to *pay* online, such as those licensees whose credit card transactions exceed $99,999.99, Fee Filer also provides an opportunity to make a payment using your bank account, also known as an Automated Clearing House (''ACH'') payment, or generating an electronic remittance voucher form (Form 159–E) that can be printed directly from Fee Filer and mailed in with a check. ACH payments do not have restrictions on the amount remitted.

15. For the reasons given in paragraphs 18 through 20, we tentatively conclude that we should require regulatees to file key information into Fee Filer, even if they do not use Fee Filer to make their payment. In instances where payment cannot be made using Fee Filer, which include credit card transactions exceeding $99,999.99, wire transfers, and licensees wishing to pay using a check, we propose that those licensees still enter the Fee Filer system in order to generate a Form 159–E remittance voucher to accompany their payment. We seek comment on this proposal. Commenters opposing the mandatory Fee Filer requirement should provide the reasons for their argument, and should provide supporting facts and other data, particularly with respect to any claimed burdens of this approach.

2. Notification and Collection of Regulatory Fees

a. Pre-Bills

16. In prior years, the Commission mailed pre-bills to licensees in select regulatory fee categories via surface mail—to interstate telecommunications service providers (''ITSPs''), Geostationary (''GSO'') and Non-Geostationary (''NGSO'') satellite space station licensees,[23] to holders of Cable Television Relay Service (''CARS'') licenses, and earth station licensees.[24] The remaining regulatees do not receive pre-bills. Consistent with the Commission's proposal to require mandatory use of Fee Filer above, pre-bill information would be loaded into Fee Filer for viewing, but would not be mailed directly to the licensee via surface mail. We seek comment on the impact of our proposal not to mail pre-bills to ITSP providers, GSO and NGSO

[19] A carrier may have both common carrier and non-common carrier circuits.

[20] Terrestrial facilities, particularly microwave, may also be used on other short range international routes such as the U.S. Virgin Islands-British Virgin Islands and the American Samoa-Samoa routes.

[21] *See* 2006 International Telecommunications Data, Strategic Analysis and Negotiations Division, Multilateral Negotiations and Industry Analysis Branch, International Bureau (August 2008); International Bureau Report: 2007 Section 43.61 Circuit Status Report, Policy Division (March 2009). These reports, and reports from previous years, are available on the International Bureau Web site at *http://www.fcc.gov/ib/*.

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

[23] Geostationary orbit space station (''GSO'') licensees received regulatory fee pre-bills for satellites that (1) were licensed by the Commission and operational on or before October 1 of the respective fiscal year; and (2) were not co-located with and technically identical to another operational satellite on that date (*i.e.,* were not functioning as a spare satellite). Non-geostationary orbit space station (''NGSO'') licensees received regulatory fee pre-bills for systems that were licensed by the Commission and operational on or before October 1 of the respective fiscal year.

[24] 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.

licensees, CARS licensees, and earth station licensees.

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

17. 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 notifications.

III. Procedural Matters

18. Below are our current payment and collection procedures that we have revised over the past several years to expedite the processing of regulatory fee payments. We include these procedures here as a useful way to remind regulatory fee payers and the public about these aspects of the annual regulatory fee collection process.

A. Public Notices and Fact Sheets

19. 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*, but will not send out public notices and fact sheets to regulatees *en masse*.

B. Assessment Notifications

1. Media Services Licensees

20. Beginning in FY 2003, we sent fee assessment notifications via surface mail to media services entities on a per-facility basis.[25] 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.[26] Consistent with procedures used last year, we will continue our notification assessment initiative in FY 2009 and mail media assessment notifications to licensees at their primary record of contact populated in our Consolidated Database System (''CDBS''), and to a secondary record of contact, if available.[27] We will also continue to make the Commission-authorized Web site available to licensees so that they can update or correct any information regarding their facilities and their fee-exempt status.[28]

21. Although the Commission will continue to mail media assessment notifications, there is a proposal in this Notice of Proposed Rulemaking to institute a mandatory use of the Commission's online payment system (''Fee Filer''), which if adopted, will require all media service licensees to use Fee Filer as the first step to paying their regulatory fee obligations. The notification assessments are primarily intended to provide licensees with media data attributes, and are not intended to be used as a substitute for a remittance voucher when making a payment. Licensees wishing to pay by check or money order must first log onto the Commission's Fee Filer system and generate a Form 159–E directly from Fee Filer before mailing in their payment along with their Form 159–E.

2. CMRS Cellular and Mobile Services Assessments

22. As we have done in prior years, we will continue to mail an assessment letter to 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'').[29] This letter will include a listing of the carrier's Operating Company Numbers (''OCNs'') upon which the assessment is based.[30] The letters will not include OCNs with their respective assigned number counts, but rather, an aggregate total of assigned numbers for each carrier.

23. We will also continue our procedure of giving entities an opportunity to revise their subscriber counts by sending an initial and a final assessment letter. If the carrier does not agree with the number of subscribers listed on the initial assessment letter, the carrier can correct its subscriber count by returning the initial assessment letter or by contacting the Commission and stating a reason for the change (*e.g.*, a purchase or sale of a subsidiary), the date of the transaction, and any other pertinent information that will help to justify a reason for the change. 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 the initial assessment letters and determine whether a change in the number of subscribers is warranted. The final assessment letter will inform carriers as to whether we have accepted their revision in the number of subscribers.

24. Because some carriers do not file the NRUF report, they may not receive a letter of assessment. In these instances, the carriers should compute their fee payment using the standard methodology[31] that is currently in place for CMRS Wireless services (*e.g.*, compute their subscriber counts as of December 31, 2008), and submit their fee payment accordingly. Whether a carrier receives an assessment letter or not, the Commission reserves the right to audit the number of subscribers for which regulatory fees are paid. In the event that the Commission determines that the number of subscribers is inaccurate or that an insufficient reason is given for making a correction on the

[25] 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.

[26] 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.

[27] 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 2009.

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

[29] *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, paragraphs 38–44 (2005).

[30] *Id.*

[31] *See, e.g.*, Federal Communications Commission, *Regulatory Fees Fact Sheet: What You Owe—Commercial Wireless Services for FY 2008* at 1 (rel. Aug. 2008).

initial assessment letter, the Commission will assess the carrier for the difference between what was paid and what should have been paid.

C. Streamlined Regulatory Fee Payment Process

1. Cable Television Subscribers

25. We will continue to permit cable television operators to base their regulatory fee payment on their company's aggregate year-end subscriber count, rather than requiring them to sub-report subscriber counts on a per community unit identifier (''CUID'') basis.

2. CMRS Cellular and Mobile Providers

26. 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.[32] We will continue this practice in FY 2009. In FY 2007, we consolidated 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 2009, we will continue this practice of combining the CMRS cellular and CMRS mobile fee categories into one regulatory fee category.

3. Interstate Telecommunications Service Providers (''ITSP'')

27. 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 continued to round lines 14 and 16 on FCC Form 159–W to the nearest dollar. We will continue rounding lines 14 and 16 when calculating the FY 2009 ITSP fee obligation.

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

D. Payment of Regulatory Fees

1. Lock Box Bank

28. All lock box payments to the Commission for FY 2009 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.

2. Receiving Bank for Wire Payments

29. The receiving bank for all wire payments is the Federal Reserve Bank, New York, New York (TREAS NYC). When making a wire transfer, regulatees must fax a copy of their 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/wiretran.html*.

3. De Minimis Regulatory Fees

30. Regulatees whose total FY 2009 regulatory fee liability, including all categories of fees for which payment is due, is less than $10 are exempted from payment of FY 2009 regulatory fees.

4. Standard Fee Calculations and Payment Dates

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

- *Media Services:* Regulatory fees must be paid for initial construction permits that were granted on or before October 1, 2008 for AM/FM radio stations, analog VHF/UHF full service television stations (including full service digital-only stations that were licensed as of October 1, 2008), and satellite television stations. Regulatory fees must be paid for all broadcast facility licenses granted on or before October 1, 2008. In instances where a permit or license is transferred or assigned after October 1, 2008, 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, 2008. In instances where a permit or license is transferred or assigned after October 1, 2008, responsibility for payment rests with the holder of the permit or license as of the fee due date. We note that audio bridging service providers are included in this category.[33]
- *Wireless Services:* CMRS cellular, mobile, and messaging services (fees based on number of subscribers or telephone number count): Regulatory fees must be paid for authorizations that were granted on or before October 1, 2008. The number of subscribers, units, or telephone numbers on December 31, 2008 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 pay ''small multi-year wireless regulatory fees.'' Entities pay these regulatory fees in advance for the entire amount of their five-year or ten-year term of initial license, and only pay regulatory fees again when the license is renewed or a new license is obtained. We include these fee categories in our Schedule of Regulatory Fees to publicize our estimates of the number of ''small multi-year wireless'' licenses that will be renewed or newly obtained in FY 2009.
- *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, 2008.[34] Regulatory fees also must be paid for CARS licenses that were granted on or before October 1, 2008. In instances where a CARS license is transferred or assigned after October 1, 2008, 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

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

[34] Cable television system operators should compute their basic subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling units (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 2008, rather than on a count as of December 31, 2008.

before October 1, 2008. In instances where a license is transferred or assigned after October 1, 2008, responsibility for payment rests with the holder of the license as of the fee due date. Regulatory fees will be paid for international bearer circuits under our newly adopted methodology pending a 90-day Congressional notification for this permitted amendment;[35] if for any reason the methodology change is not instituted in FY 2009, the pre-FY 2009 methodology will be used to calculate FY 2009 bearer circuit regulatory fees.

E. Enforcement

32. Regulatory fee payment must be received and stamped at the lockbox bank by the last day of the regulatory fee filing window to be considered timely. Section 9(c) of the Act requires us to impose an additional charge as a penalty for late payment of any regulatory fee.[36] 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[37] and the provisions set forth in the Debt Collection Improvement Act of 1996 (''DCIA'').[38] 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.[39] 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.

33. 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.[40] 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).

F. Final Regulatory Flexibility Certification

34. A final regulatory flexibility certification for the changes adopted in the Order herein is contained in this document. The Commission will send a copy of the Order, including the final regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration.

G. Initial Regulatory Flexibility Analysis

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

H. Congressional Review Act Analysis

36. The Commission will send a copy of this Notice of Proposed Rulemaking and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

I. Initial Paperwork Reduction Act Analysis

37. This Report and Order contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (''PRA''), Public Law 104–13. It will be submitted to the Office of Management and Budget (''OMB'') for review under section 3507(d) of the PRA.[41] Our proposed new form for submarine cable operators is contained in this document. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

J. 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.[42] *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 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.[43] Additional rules pertaining to oral and written presentations are set forth in section 1.1206(b).

K. Filing Requirements

39. *Comments and Replies*. Pursuant to sections 1.415 and 1.419 of the Commission's rules,[44] interested parties may file comments under MD Docket No. 09–65 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.[45]

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

[35] *See Submarine Cable Order*.

[36] 47 U.S.C. 159(c).

[37] *See* 47 CFR 1.1910.

[38] 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.

[39] 47 CFR 1.1940(d).

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

[41] 44 U.S.C. 3507(d).

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

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

[44] *See* 47 CFR 1.415, 1.419.

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

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

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 Commission'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. Ordering Clauses

44. 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.*

45. *It is further ordered* that Part 1 of the Commission's Rules *are amended* as set forth herein, and these rules shall become effective 90 days after Congressional notification.

46. *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 and Order, including the Final Regulatory Flexibility Certification and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

Initial Regulatory Flexibility Analysis

47. As required by the Regulatory Flexibility Act (''RFA''),[46] 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 this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[47] In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.[48]

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

48. This rulemaking proceeding is initiated to obtain comments concerning the Commission's proposed amendment of its Schedule of Regulatory Fees in the amount of $341,875,000, 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

49. 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.[49]

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

50. 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.[50] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''[51] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[52] 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.[53]

51. *Small Businesses.* Nationwide, there are a total of 22.4 million small businesses, according to SBA data.[54]

52. *Small Organizations.* Nationwide, there are approximately 1.6 million small organizations.[55]

53. *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.''[56] Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.[57] We estimate that, of this total, 84,377 entities were ''small governmental jurisdictions.''[58] Thus, we estimate that

[46] 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'').

[47] 5 U.S.C. 603(a).

[48] *Id.*

[49] 47 U.S.C. 154(i) and (j), 159, and 303(r).

[50] 5 U.S.C. 603(b)(3).

[51] 5 U.S.C. 601(6).

[52] 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**.''

[53] 15 U.S.C. 632.

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

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

[56] 5 U.S.C. 601(5).

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

[58] 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

most governmental jurisdictions are small.

54. 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.'' [59] 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.[60] 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.

55. *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.[61] According to Commission data,[62] 1,311 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,311 carriers, an estimated 1,024 have 1,500 or fewer employees and 287 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our proposed action.

56. *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.[63] According to Commission data,[64] 1,005 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 1,005 carriers, an estimated 918 have 1,500 or fewer employees and 87 have more than 1,500 employees. In addition, 16 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 16 are estimated to have 1,500 or fewer employees. In addition, 89 carriers have reported that they are ''Other Local Service Providers.'' Of the 89, all have 1,500 or fewer employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities that may be affected by our proposed action.

57. *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.[65] According to Commission data,[66] 151 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 149 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by our proposed action.

58. *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.[67] According to Commission data,[68] 815 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 787 have 1,500 or fewer employees and 28 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our proposed action.

59. *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.[69] According to Commission data,[70] 526 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 524 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our proposed action.

60. *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.[71] According to Commission data,[72] 300 carriers have reported that they are engaged in the provision of interexchange services. Of these, an estimated 268 have 1,500 or fewer employees and 32 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our proposed action.

61. *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.[73] According to Commission data,[74] 28 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 27 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed action.

62. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA

governments nationwide was 38,967, of which 35,819 were small. *Id.*

[59] 15 U.S.C. 632.

[60] 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).

[61] 13 CFR 121.201, North American Industry Classification System (NAICS) code 517110.

[62] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *''Trends in Telephone Service''* at Table 5.3, Page 5–5 (Aug. 2008) (*''Trends in Telephone Service''*).

[63] 13 CFR 121.201, NAICS code 517110.

[64] *''Trends in Telephone Service''* at Table 5.3.

[65] 13 CFR 121.201, NAICS code 517310.

[66] *''Trends in Telephone Service''* at Table 5.3.

[67] 13 CFR 121.201, NAICS code 517310.

[68] *''Trends in Telephone Service''* at Table 5.3.

[69] 3 CFR 121.201, NAICS code 517110.

[70] *''Trends in Telephone Service''* at Table 5.3.

[71] 13 CFR 121.201, NAICS code 517110.

[72] *''Trends in Telephone Service''* at Table 5.3.

[73] 13 CFR 121.201, NAICS code 517110.

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

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.[75] According to Commission data,[76] 88 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated 85 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by our proposed action.

63. *800 and 800-Like Service Subscribers.*[77] 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.[78] 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.[79] According to our data, at the end of December 2007, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,210,184; the number of 877 numbers assigned was 4,388,682; and the number of 866 numbers assigned was 7,029,116. We do not have data specifying the number of these subscribers that are independently owned and operated or have 1,500 or fewer employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,860,000 or fewer small entity 800 subscribers; 5,210,184 or fewer small entity 888 subscribers; 4,388,682 or fewer small entity 877 subscribers, and 7,029,116 or fewer entity 866 subscribers.

64. *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.[80]

65. 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.'' [81] For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year.[82] Of this total, 307 firms had annual receipts of under $10 million, and 26 firms had receipts of $10 million to $24,999,999.[83] Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

66. 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.'' [84] For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year.[85] 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.[86] Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

67. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of ''Paging'' [87] and ''Cellular and Other Wireless Telecommunications.'' [88] 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.[89] Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.[90] 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.[91] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[92] Thus, under this second category and size standard, the majority of firms can, again, be considered small.

68. *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.'' [93] Under the SBA size standard, such a business is small if it has average annual receipts of $21 million or less.[94] According to Census Bureau data for 1997, there were 2,751 firms in this category that operated for

[75] 13 CFR 121.201, NAICS code 517310.

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

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

[78] 13 CFR 121.201, NAICS code 517310.

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

[80] 13 CFR 121.201, NAICS codes 517410 and 517910.

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

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

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

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

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

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

[87] 13 CFR 121.201, NAICS code 517211.

[88] 13 CFR 121.201, NAICS code 517212.

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

[90] *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.''

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

[92] *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.''

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

[94] 13 CFR 121.201, NAICS code 518111.

the entire year.[95] 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.[96] Thus, under this size standard, the great majority of firms can be considered small entities.

69. *Cellular Licensees.* 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 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.

70. *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.'' [103] 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.[104] 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.[105] Thus, under this category and associated small business size standard, the great majority of firms can be considered small.

71. 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.[106] 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.[107] The SBA has approved this definition.[108] 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.[109] Fifty-seven companies claiming small business status won 440 licenses.[110] 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.[111] 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.[112]

72. Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service,* 281 carriers reported that they were engaged in the provision of ''paging and messaging'' services.[113] Of these, an estimated 279 have 1,500 or fewer employees and two have more than 1,500 employees.[114] We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

73. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (''WCS'') auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years.[115] The SBA has approved these definitions.[116] 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.

74. *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.

75. *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

[95] 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.

[96] 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.

[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.''

[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] 13 CFR 121.201, NAICS code 517212.

[104] 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.

[105] 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.''

[106] *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, paragraphs 98–107 (1999).

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

[108] *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*'').

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

[110] *See id.*

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

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

[113] ''*Trends in Telephone Service*'' at Table 5.3.

[114] ''*Trends in Telephone Service*'' at Table 5.3.

[115] *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).

[116] *See Alvarez Letter 1998.*

Other Wireless Telecommunications'' services.[117] Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.[118] According to *Trends in Telephone Service* data, 434 carriers reported that they were engaged in wireless telephony.[119] Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees.[120] We have estimated that 222 of these are small under the SBA small business size standard.

76. *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.[121] 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.[122] These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.[123] 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.[124] On March 23, 1999, the Commission reauctioned 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.[125]

77. 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.[126] 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.[127] 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.[128] Of the 14 winning bidders, six were designated entities.[129]

78. *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.[130] Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses.[131] 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.[132] 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.[133] 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.[134] The SBA has approved these small business size standards.[135] 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.[136] Three of these claimed status as a small or very small entity and won 311 licenses.

79. *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.[137] 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.[138] A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[139] 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.[140] The SBA approved these small size standards.[141] 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

[117] 13 CFR 121.201, NAICS code 517212.

[118] 13 CFR 121.201, NAICS code 517212.

[119] ''*Trends in Telephone Service*'' at Table 5.3.

[120] ''*Trends in Telephone Service*'' at Table 5.3.

[121] *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).

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

[123] *See Alvarez Letter 1998.*

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

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

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

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

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

[129] *Id.*

[130] *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).

[131] *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).

[132] *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*'').

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

[134] *Id.*

[135] *See Alvarez Letter 1998.*

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

[137] *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*'').

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

[139] *See id.*

[140] *See id,* 17 FCC Rcd at 1088, paragraph 173.

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

bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.[142] 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.[143] 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.[144] 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.

80. The Commission recently reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order.*[145] 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.[146] 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).

81. *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.[147] 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).

82. *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.[148] 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.[149] 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.[150] SBA approval of these definitions is not required.[151] An auction of 52 Major Economic Area (''MEA'') licenses commenced on September 6, 2000, and closed on September 21, 2000.[152] 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.[153]

83. *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.[154] 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.[155] The SBA has approved these small business size standards for the 900 MHz Service.[156] 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.[157] A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.[158]

84. 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.[159] 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.[160] Of the 22 winning

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

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

[144] *See id.*

[145] *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*'').

[146] *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).

[147] *See id.*

[148] *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*'').

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

[150] *See id.*

[151] *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).

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

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

[154] 47 CFR 90.814(b)(1).

[155] 47 CFR 90.814(b)(1).

[156] *See Alvarez Letter 1999.*

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

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

[159] *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).

[160] *See,* ''800 MHz SMR Service Lower 80 Channels Auction Closes; Winning Bidders

Continued

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.

85. 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.

86. *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.[161] The Commission estimates that most such licensees are small businesses under the SBA's small business standard.

87. *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.[162] 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.[163] 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.[164] The SBA has approved these small size standards.[165] Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.[166] 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.[167] 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.[168] 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.[169] The Commission conducted a fourth auction in 2007 with three of the five winning bidders claiming small or very small business status.[170]

88. *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.[171] 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.[172]

89. The Commission's 1994 Annual Report on PLMRs [173] 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.

90. *Fixed Microwave Services.* Fixed microwave services include common carrier,[174] private operational-fixed,[175] and broadcast auxiliary radio services.[176] 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

Announced,'' *Public Notice,* 16 FCC Rcd 1736 (2000).

[161] 13 CFR 121.201, NAICS code 517212.

[162] 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).

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

[164] *Id.*

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

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

[167] *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).

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

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

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

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

[172] *See generally* 13 CFR 121.201.

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

[174] *See* 47 CFR 101 *et seq.* for common carrier fixed microwave services (except Multipoint Distribution Service).

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

[176] 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.

category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees.[177] 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.

91. *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.[178] 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.[179] The SBA has approved these small business size standards.[180] 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.

92. *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.[181] 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.[182] 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.[183] The SBA has approved these small business size standards in the context of LMDS auctions.[184] 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.

93. *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'').[185] 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.[186] 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.[187] 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.[188] The SBA has approved of these definitions.[189] 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.

94. *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.[190] 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.[191] These definitions have been approved by the SBA.[192] An auction for LMS licenses commenced on February 23, 1999, and closed on March 5, 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses.

95. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.[193] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (''BETRS'').[194] 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.[195] 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

[177] 13 CFR 121.201, NAICS code 517212.

[178] *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).

[179] *Id.*

[180] *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).

[181] *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, paragraph 348 (1997) (''*LMDS Second Report and Order''*).

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

[183] *See id.*

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

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

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

[187] *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).

[188] *Id.*

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

[190] *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, paragraph 20 (1998) (''*Automatic Vehicle Monitoring Systems Second Report and Order*''); *see also* 47 CFR 90.1103.

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

[192] *See Alvarez Letter 1998.*

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

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

[195] 13 CFR 121.201, NAICS code 517212.

may be affected by the rules and policies proposed herein.

96. *Air-Ground Radiotelephone Service.*[196] 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.[197] 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.[198] 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.[199] These definitions were approved by the SBA.[200] 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.

97. *Aviation and Marine Radio Services.* There are approximately 26,162 aviation, 34,555 marine (ship), and 3,296 marine (coast) licensees.[201] 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.[202] 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.[203] 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 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.[204] Further, the Commission made available Automated Maritime Telecommunications System (''AMTS'') licenses in Auctions 57 and 61.[205] 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.[206] 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.

98. *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.[207] 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.[208] Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.[209]

99. *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.[210] ''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.[211] The SBA has approved of these definitions.[212] The majority of these entities will most likely be licensed in bands where the Commission has implemented a geographic area licensing approach that would require the use of competitive bidding procedures to resolve mutually exclusive applications. The Commission's licensing database indicates that, as of January 20, 1999, there were a total of 8,670 MAS station authorizations. Of these, 260 authorizations were associated with common carrier service. In addition, an auction for 5,104 MAS licenses in 176 EAs began November 14, 2001, and closed on November 27, 2001.[213] 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

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

[197] 13 CFR 121.201, NAICS codes 517212.

[198] *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, paragraphs 28–42 (2005).

[199] *Id.*

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

[201] 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).

[202] 13 CFR 121.201, NAICS code 517212.

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

[204] *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).

[205] *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).

[206] 47 CFR 80.1252.

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

[208] 13 CFR 121.201, NAICS code 517212.

[209] *Id.*

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

[211] *Id.*

[212] *See Alvarez Letter 1999.*

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

of 2,323 licenses. Of the 26 winning bidders in this auction, five claimed small business status and won 1,891 licenses.

100. 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.[214] 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.

101. *1.4 GHz Band Licensees.* The Commission conducted an auction of 64 1.4 GHz band licenses, beginning on February 7, 2007,[215] and closing on March 8, 2007.[216] 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.[217] Neither of the two winning bidders sought designated entity status.[218]

102. *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.[219] 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.[220] Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.[221] 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.[222] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[223] 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[224] 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.

103. *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.[225] ''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.[226] The SBA has approved these definitions.[227] The Commission will not know how many licensees will be small or very small businesses until the auction, if required, is held.

104. *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'')).[228] In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years.[229] 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.[230] After

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

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

[216] *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*'').

[217] *Auction No. 69 Closing PN,* Attachment C.

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

[219] 13 CFR 121.201, NAICS code 517212.

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

[221] *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.''

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

[223] *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.''

[224] 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.

[225] *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, paragraph 77 (2000) (''*24 GHz Report and Order*''); *see also* 47 CFR 101.538(a)(2).

[226] *24 GHz Report and Order,* 15 FCC Rcd at 16967, para. 77; *see also* 47 CFR 101.538(a)(1).

[227] *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).

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

[229] 47 CFR 21.961(b)(1).

[230] 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.

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.

105. 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.[231] According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.[232] 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.[233] 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.[234] Thus, we estimate that at least 1,932 licensees are small businesses.

106. *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.'' [235] 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.[236] 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 control affiliations [237] 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.

107. 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.

108. There are also 2,117 low power television stations (''LPTV'').[238] 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.

109. *Radio Broadcasting.* The SBA defines a radio broadcast entity that has $6 million or less in annual receipts as a small business.[239] Business concerns included in this industry are those ''primarily engaged in broadcasting aural programs by radio to the public.[240] 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 [241] are included.[242] Our estimate, therefore likely overstates the number of small businesses that might be affected by our action.

110. *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.[243]

111. The Commission estimates that there are approximately 5,618 FM translators and boosters.[244] The Commission does not collect financial information on any broadcast facility, and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most commercial translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business ($6.5 million for a radio station or $13.0 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a ''small business concern'' because they are not independently owned and operated.[245]

112. *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

[231] 13 CFR 121.201, NAICS code 517510.

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

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

[234] 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.

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

[236] 13 CFR 121.201, NAICS code 515120.

[237] ''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 21.103(a)(1).

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

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

[240] *Id.*

[241] ''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).

[242] ''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).

[243] 13 CFR 121.201, NAICS codes 513111 and 513112.

[244] *See supra* note 242.

[245] 15 U.S.C. 632.

consumers via cable or direct-to-home satellite systems on a subscription or fee basis. These establishments do not generally originate programming material.'' [246] 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.[247] According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.[248] 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.[249] Thus, under this size standard, the majority of firms can be considered small.

113. *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.[250] Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.[251] In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers.[252] 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.[253] Thus, under this second size standard, most cable systems are small.

114. *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.'' [254] 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.[255] Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.[256] 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,[257] and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

115. *Open Video Services.* Open Video Service (''OVS'') systems provide subscription services.[258] The SBA has created a small business size standard for Cable and Other Program Distribution.[259] 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.[260] Affiliates of Residential Communications Network, Inc. (''RCN'') received approval to operate OVS systems in New York City, Boston, Washington, D.C., and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 24 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies proposed herein.

116. *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.[261] According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.[262] 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.[263] Thus, under this size standard, the majority of firms can be considered small.

117. *Multichannel Video Distribution and Data Service.* MVDDS is a terrestrial fixed microwave service operating in the 12.2–12.7 GHz band. The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. It defined a very small business as an entity with average annual gross revenues not exceeding $3 million for the preceding three years; a small business as an entity with average annual gross revenues not exceeding $15 million for the preceding three years; and an entrepreneur as an entity with average annual gross revenues not exceeding $40 million for the preceding three years.[264] These definitions were approved by the SBA.[265] On January 27,

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

[247] 13 CFR 121.201, NAICS code 517510.

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

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

[250] 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).

[251] 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.

[252] 47 CFR 76.901(c).

[253] 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.

[254] 47 U.S.C. 543(m)(2); *see* 47 CFR 76.901(f) & nn. 1–3.

[255] 47 CFR 76.901(f); *see* ''*FCC Announces New Subscriber Count for the Definition of Small Cable Operator,*'' Public Notice, 16 FCC Rcd 2225 (Cable Services Bureau, 2001).

[256] 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.

[257] 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).

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

[259] 13 CFR 121.201, NAICS code 517510.

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

[261] 13 CFR 121.201, NAICS code 517510.

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

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

[264] *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, paragraph 252 (2002).

[265] *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).

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.[266] 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.[267]

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

119. *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.[268] 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. 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.[269] 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.

120. *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.[270] 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'').[271] 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.[272] 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.

121. *Public Safety Radio Services.* Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.[273] There are a total of approximately 127,540 licensees in these services. Governmental entities [274] 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.[275]

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

122. 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.[276] Interstate telephone

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

[267] *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).

[268] 13 CFR 121.201, NAICS code 517212.

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

[270] 47 CFR Part 90.

[271] 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.

[272] 13 CFR 121.201, NAICS Code 517212.

[273] 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.

[274] 47 CFR 1.1162.

[275] 5 U.S.C. 601(5).

[276] *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-

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.

123. 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.

124. 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.[277] If payment is not received, new or pending applications may be dismissed, and existing authorizations may be subject to rescission.[278] 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.[279] 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.[280]

125. 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.[281] 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

126. 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.[282] 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.

127. 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

None.

Proposed Letter to Submarine Cable Operators

[insert address of submarine cable operator]

Re: Regulatory Fees for Fiscal Year [insert year]

Our annual regulatory fee assessment for submarine cable operators is based on the total capacity for the submarine cable system. For this reason, we require submarine cable operators to advise us of the appropriate category for determining regulatory fees. Please indicate below the correct category and return this letter to us by February 15, 20_.

Submarine Cable Systems (capacity as of December 31)	Please check the appropriate category
< 2.5 Gbps	.....
2.5 Gbps or greater, but less than 5 Gbps	.....
5 Gbps or greater, but less than 10 Gbps	.....
10 Gbps or greater, but less than 20 Gbps	.....
20 Gbps or greater	.....

Thank you for your assistance in this matter.

CERTIFICATION STATEMENT

I _____ certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief.

SIGNATURE _____

DATE _____

Sources of Payment Unit Estimates for FY 2009

In order to calculate individual service fees for FY 2009, we adjusted FY 2008 payment units for each service to more accurately reflect expected FY 2009 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee databases, 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

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.

[277] 47 CFR 1.1164.

[278] 47 CFR 1.1164(c).

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

[280] 31 U.S.C. 7701(c)(2)(B).

[281] 47 CFR 1.1166.

[282] 5 U.S.C. 603.

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 2009 estimates with actual FY 2008 payment units to ensure that our revised estimates were reasonable. Where appropriate, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated exactly. These include an unknown number of waivers and/or exemptions that may occur in FY 2009 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 2009 payment units are based on FY 2008 actual payment units, it does not necessarily mean that our FY 2009 projection is exactly the same number as FY 2008. We have either rounded the FY 2009 number or adjusted it slightly to account for these variables.

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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 08 payment data.
CMRS Messaging Services	Based on WTB reports, and FY 08 payment data.
AM/FM Radio Stations	Based on CDBS data, adjusted for exemptions, and actual FY 2008 payment units.
UHF/VHF Television Stations	Based on CDBS data, adjusted for exemptions, and actual FY 2008 payment units.
AM/FM/TV Construction Permits	Based on CDBS data, adjusted for exemptions, and actual FY 2008 payment units.
LPTV, Translators and Boosters, Class A Television	Based on CDBS data, adjusted for exemptions, and actual FY 2008 payment units.
Broadcast Auxiliaries	Based on actual FY 2008 payment units.
BRS (formerly MDS/MMDS)	Based on WTB reports and actual FY 2008 payment units.
LMDS	Based on WTB reports and actual FY 2008 payment units.
Cable Television Relay Service ("CARS") Stations	Based on data from Media Bureau's COALS database and actual FY 2008 payment units.
Cable Television System Subscribers	Based on publicly available data sources for estimated subscriber counts and actual FY 2008 payment units.
Interstate Telecommunication Service Providers	Based on FCC Form 499-Q data for the four quarters of calendar year 2008, the Wireline Competition Bureau projected the amount of calendar year 2008 revenue that will be reported on 2008 FCC Form 499-A worksheets in April, 2009.
Earth Stations	Based on International Bureau ("IB") licensing data and actual FY 2008 payment units.
Space Stations (GSOs & NGSOs)	Based on IB data reports and actual FY 2008 payment units.
International Bearer Circuits	Based on IB reports and actual FY 2008 payment units.
International HF Broadcast Stations, International Public Fixed Radio Service	Based on IB reports and actual FY 2008 payment units.

Calculation of FY 2009 Revenue Requirements and Pro-Rata Fees

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

Fee Category	FY 2009 Payment Units	Years	FY 2008 Revenue Estimate	Pro-Rated FY 2009 Revenue Require-ment	Computed New FY 2009 Regulatory Fee	Rounded New FY 2009 Regula-tory Fee	Expected FY 2009 Revenue
PLMRS (Exclusive Use)	1,200	10	460,000	501,932	42	40	480,000
PLMRS (Shared use)	11,500	10	2,300,000	2,509,659	22	20	2,300,000
Microwave	7,500	10	1,960,000	2,138,666	29	30	2,250,000
218-219 MHz (Formerly IVDS)	3	10	1,800	1,964	65	65	1,950
Marine (Ship)	7,500	10	840,000	916,571	12	10	750,000
GMRS	11,000	5	350,000	381,905	7	5	275,000
Aviation (Aircraft)	7,000	10	375,000	409,183	6	5	350,000
Marine (Coast)	275	10	108,500	118,390	43	45	123,750
Aviation (Ground)	1,500	10	170,000	185,497	12	10	150,000
Amateur Vanity Call Signs	15,000	10	184,500	201,318	1.34	1.34	201,000
AM Class A	65	1	227,500	248,238	3,819	3,825	248,625
AM Class B	1,567	1	2,737,000	2,986,494	1,906	1,900	2,977,300
AM Class C	938	1	958,375	1,045,737	1,115	1,125	1,055,250
AM Class D	1,715	1	3,241,400	3,536,873	2,062	2,050	3,515,750
FM Classes A, B1 & C3	3,045	1	6,764,000	7,376,081	2,422	2,425	7,384,125
FM Classes B, C, C0, C1 & C2	3,051	1	8,292,175	9,043,557	2,964	2,975	9,076,725
AM Construction Permits	90	1	39,425	43,019	478	480	43,200
FM Construction Permits[1]	315	1	179,400	204,750	650	650	204,750
Satellite TV	127	1	149,225	162,828	1,282	1,275	161,925
Satellite TV	3	1	1,785	1,948	649	650	1,950

Fee Category	FY 2009 Payment Units	Years	FY 2008 Revenue Estimate	Pro-Rated FY 2009 Revenue Require-ment	Computed New FY 2009 Regulatory Fee	Rounded New FY 2009 Regula-tory Fee	Expected FY 2009 Revenue
Construction Permit							
VHF Markets 1-10	42	1	2,984,100	3,257,932	77,570	77,575	3,258,150
VHF Markets 11-25	55	1	3,050,925	3,330,848	60,561	60,550	3,330,250
VHF Markets 26-50	75	1	2,581,425	2,818,550	37,581	37,575	2,818,125
VHF Markets 51-100	118	1	2,480,950	2,708,256	22,951	22,950	2,708,100
VHF Remaining Markets	200	1	1,092,000	1,191,542	5,958	5,950	1,190,000
VHF Construction Permits[1]	3	1	22,400	17,850	5,950	5,950	17,850
UHF Markets 1-10	87	1	1,931,475	2,109,219	24,244	24,250	2,109,750
UHF Markets 11-25	81	1	1,596,950	1,744,200	21,533	21,525	1,743,525
UHF Markets 26-50	110	1	1,344,700	1,468,956	13,354	13,350	1,468,500
UHF Markets 51-100	164	1	1,142,400	1,247,604	7,607	7,600	1,246,400
UHF Remaining Markets	195	1	347,400	379,068	1,944	1,950	380,250
UHF Construction Permits[1]	15	1	32,400	29,250	1,950	1,950	29,250
Broadcast Auxiliaries	27,500	1	276,000	301,159	11	10	275,000
LPTV/Trans-lators/Boosters/ Class A TV	3,450	1	1,277,500	1,393,952	404	400	1,380,000
CARS Stations	650	1	153,750	167,765	258	260	169,000
Cable TV Systems	64,500,000	1	51,840,000	56,565,522	0.8769	0.88	56,760,000
Interstate Tele-communication Service Providers	$46,800,000,000	1	146,638,00	160,004,920	0.0034189	0.00342	160,056,000
CMRS Mobile	270,000,000	1	44,200,000	48,280,138	0.1788	0.180	48,600,000

Fee Category	FY 2009 Payment Units	Years	FY 2008 Revenue Estimate	Pro-Rated FY 2009 Revenue Require-ment	Computed New FY 2009 Regulatory Fee	Rounded New FY 2009 Regula-tory Fee	Expected FY 2009 Revenue
Services (Cellular/Public Mobile)							
CMRS Messag. Services	7,000,000	1	560,000	560,000	0.080	0.080	560,000
BRS[2]	1,725	1	501,500	552,000	320	320	552,000
LMDS	335	1	98,825	107,200	320	320	107,200
International Bearer Circuits	10,500,000	1	8,137,500	8,879,281	.846	.85	8,925,000
International Public Fixed	1	1	2,025	2,210	2,210	2,200	2,200
Earth Stations	4,050	1	780,000	851,102	210	210	850,500
International HF Broadcast	5	1	4,300	4,692	938	950	4,750
Space Stations (Geostationary)	87	1	10,140,500	11,064,866	127,182	127,175	11,064,225
Space Stations (Non-Geostationary	6	1	754,500	823,277	137,213	137,225	823,350
****** Total Estimated Revenue to be Collected			313,311,610	341,875,966			341,980,675
****** Total Revenue Requirement			312,000,000	341,875,000			341,875,000
Difference			1,311,610	966			105,675

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

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

Proposed FY 2009 Schedule of Regulatory Fees

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

Fee Category	Annual Regulatory Fee (U.S. $'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	40
Microwave (per license) (47 CFR part 101)	30
218-219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	65
Marine (Ship) (per station) (47 CFR part 80)	10
Marine (Coast) (per license) (47 CFR part 80)	45
General Mobile Radio Service (per license) (47 CFR part 95)	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	20
PLMRS (Shared Use) (per license) (47 CFR part 90)	20
Aviation (Aircraft) (per station) (47 CFR part 87)	5
Aviation (Ground) (per license) (47 CFR part 87)	10
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.34
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.18
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08
Broadband Radio Service (formerly MMDS/ MDS) (per license) (47 CFR part 21)	320
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	320
AM Radio Construction Permits	480
FM Radio Construction Permits	650
TV (47 CFR part 73) VHF Commercial	
Markets 1-10	77,575
Markets 11-25	60,550
Markets 26-50	37,575

Fee Category	Annual Regulatory Fee (U.S. $'s)
Markets 51-100	22,950
Remaining Markets	5,950
Construction Permits	5,950
TV (47 CFR part 73) UHF Commercial	
Markets 1-10	24,250
Markets 11-25	21,525
Markets 26-50	13,350
Markets 51-100	7,600
Remaining Markets	1,950
Construction Permits	1,950
Satellite Television Stations (All Markets)	1,275
Construction Permits – Satellite Television Stations	650
Low Power TV, Class A TV, TV/FM Translators & Boosters (47 CFR part 74)	400
Broadcast Auxiliaries (47 CFR part 74)	10
CARS (47 CFR part 78)	260
Cable Television Systems (per subscriber) (47 CFR part 76)	.88
Interstate Telecommunication Service Providers (per revenue dollar)	.00342
Earth Stations (47 CFR part 25)	210
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100)	127,175
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	137,225
International Bearer Circuits (per active 64KB circuit) [1]	.85
International Public Fixed (per call sign) (47 CFR part 23)	2,200
International (HF) Broadcast (47 CFR part 73)	950

[1] As discussed previously herein, we recently revised the Commission's IBC fee rules by adopting a new methodology for calculating regulatory fees on both common carrier and non-common carrier international submarine cable systems based on a per system fee. See Submarine Cable Order. Under section 9(b)(4)(B) of the Act, we must notify Congress 90 days before a permitted amendment to the regulatory fees can take effect. The 90 day period will elapse as of July 15, 2009. For this reason, we are calculating proposed regulatory fees for FY 2009 for this service using both the new methodology and the old (pre-FY 2009) methodology. The proposed regulatory

fees for international submarine cable systems based on the new methodology adopted in the Submarine Cable Order are contained in this document. Also contained are the proposed regulatory fees for international submarine cable systems based on the current methodology which remains in effect pending the Congressional notification process. If the 90 day period elapses without Congressional objection to the permitted amendment, we will use the new methodology contained in this document to calculate submarine cable fees in our FY 2009 report and order. Terrestrial and satellite facilities do not have cable landing licenses and will continue to pay regulatory fees on a per 64KB circuit basis, under our historic methodology as revised in the Submarine Cable Order. See Submarine Cable Order at paragraph 20.

FY 2009 SCHEDULE OF REGULATORY FEES (continued)

FY 2009 RADIO STATION REGULATORY FEES						
Population Served	**AM Class A**	**AM Class B**	**AM Class C**	**AM Class D**	**FM Classes A, B1 & C3**	**FM Classes B, C, C0, C1 & C2**
<=25,000	$675	$550	$500	$575	$650	$825
25,001 – 75,000	$1,350	$1,075	$750	$875	$1,325	$1,450
75,001 – 150,000	$2,025	$1,350	$1,000	$1,450	$1,825	$2,725
150,001 – 500,000	$3,050	$2,300	$1,500	$1,725	$2,800	$3,550
500,001 – 1,200,000	$4,400	$3,500	$2,500	$2,875	$4,450	$5,225
1,200,001 – 3,000,00	$6,750	$5,400	$3,750	$4,600	$7,250	$8,350
>3,000,000	$8,100	$6,475	$4,750	$5,750	$9,250	$10,850

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

AM Stations

For stations with nondirectional daytime antennas, the theoretical radiation was used at all azimuths. For stations with directional daytime antennas, specific information on each day tower, including field ratio, phasing, spacing and orientation was retrieved, as well as the theoretical pattern root-mean-square of the radiation in all directions in the horizontal plane (''RMS'') figure milliVolt per meter (mV/m) @ 1 km) for the antenna system. The standard, or modified standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in sections 73.150 and 73.152 of the Commission's rules.[1] Radiation values were calculated for each of 360 radials around the transmitter site. Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure R3.[2] Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the principal community (5 mV/m) contour was predicted for each of the 360 radials. The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 block centroids were contained in the polygon. (A block centroid is the center point of a small area containing population as computed by the U.S. Census Bureau.) The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

FM Stations

The greater of the horizontal or vertical effective radiated power (''ERP'') (kW) and respective height above average terrain (''HAAT'') (m) combination was used. Where the antenna height above mean sea level (''HAMSL'') was available, it was used in lieu of the average HAAT figure to calculate specific HAAT figures for each of 360 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with

[1] 47 CFR 73.150 and 73.152.

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

the Field Strength (50–50) propagation curves specified in 47 CFR section 73.313 of the Commission's rules to predict the distance to the principal community (70 dBu (decibel above 1 microVolt per meter) or 3.17 mV/m) contour for each of the 360 radials.[3] The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

FY 2008 Schedule of Regulatory Fees

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 sign) (47 CFR part 21)	295
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	295
AM Radio Construction Permits	415
FM Radio Construction Permits	600
TV (47 CFR part 73) VHF Commercial	
Markets 1-10	71,050
Markets 11-25	53,525
Markets 26-50	33,525
Markets 51-100	21,025
Remaining Markets	5,600
Construction Permits	5,600
TV (47 CFR part 73) UHF Commercial	

[3] 47 CFR 73.313.

Fee Category	Annual Regulatory Fee (U.S. $'s)
Markets 1-10	21,225
Markets 11-25	19,475
Markets 26-50	11,900
Markets 51-100	6,800
Remaining Markets	1,800
Construction Permits	1,800
Satellite Television Stations (All Markets)	1,175
Construction Permits – Satellite Television Stations	595
Low Power TV, TV/FM Translators & Boosters (47 CFR part 74)	365
Broadcast Auxiliary (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)	.00314
Earth Stations (47 CFR part 25)	195
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)	119,300
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	125,750
International Bearer Circuits (per active 64KB circuit)	.93
International Public Fixed (per call sign) (47 CFR part 23)	2,025
International (HF) Broadcast (47 CFR part 73)	860

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

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Statement of Acting Chairman Michael J. Copps

Re: *Assessment and Collection of Regulatory Fees for Fiscal Year 2009*, MD Docket No. 09–65, *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, MD Docket No. 08–65.

This item begins the process of assessing regulatory fees for this fiscal year (FY 2009) pursuant to Section 9 of the Communications Act. Section 9 requires that the Commission collect fees each year to recover the regulatory costs that are associated with its enforcement, policy and rulemaking, user information, and international activities.

I am particularly pleased that the Notice of Proposed Rulemaking includes the new methodology for calculating regulatory fees for submarine cable operators finally adopted by the Commission in March. Implementing this new methodology, however, is only a precursor of our completion of a long overdue, comprehensive review of the Commission's regulatory fee framework, a project that my colleague Jonathan Adelstein and I have been pushing for years and that was finally launched by the Commission last August. As I have said before, it is hard to believe that we are still generally assessing fees based on the communications marketplace as it existed in 1994. To be frank, we are not yet able to say what a modernized fee structure will look like. But I do intend to press the Commission for action on this before we issue next year's Notice of Proposed Rulemaking for FY 2010. I look forward to working with my fellow Commissioners and interested stakeholders to update our rules to accurately and equitably reflect today's regulatory practices.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules for FY 2009 International Bearer Circuit Fees [283]

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Claims, Communications common carriers, Penalties, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303, 309.

2. The FCC proposes to further amend the final rule published at 74 FR 22110, May 12, 2009, and effective July 13, 2009, in § 1.1156, by revising paragraphs (b) and (c) to read as follows:

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

* * * * *

(b) *International Terrestrial and Satellite*. Regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers that have active (used or leased) international bearer circuits as of December 31, of the prior year in any terrestrial or satellite transmission facility for the provision of service to an end user or resale carrier, which includes active circuits to themselves or to their affiliates.

In addition, non-common carrier satellite operators must pay a fee for each circuit sold or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. ''Active circuits'' for these purposes include backup and redundant circuits. In addition, whether circuits are used specifically for voice or data is not relevant in determining that they are active circuits.

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

International Terrestrial and Satellite (capacity as of December 31, 2008)	Fee amount	Address
Terrestrial Common Carrier Satellite Common Carrier Satellite Non-Common Carrier	$0.75 per 64 KB Circuit	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.

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

Submarine Cable Systems (capacity as of December 31)	Fee amount	Address
< 2.5 Gbps	$14,189	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
2.5 Gbps or greater, but less than 5 Gbps	28,379	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
5 Gbps or greater, but less than 10 Gbps	56,757	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.

[283] As discussed previously herein, we recently revised the Commission's IBC fee rules by adopting a new methodology for calculating regulatory fees on both common carrier and non-common carrier international submarine cable systems based on a per system fee. *See Submarine Cable Order*. Under section 9(b)(4)(B) of the Act, we must notify Congress 90 days before a permitted amendment to the regulatory fees can take effect. The 90 day period will elapse as of July 15, 2009. For this reason, we are calculating proposed regulatory fees for FY 2009 for this service using both the new methodology and the old (pre-FY 2009) methodology. Appendix A contains the proposed regulatory fees for international based on the new methodology adopted in the *Submarine Cable Order*. See Appendix I for the proposed regulatory fees for international submarine cable systems based on the current methodology which remains in effect pending the Congressional notification process. If the 90 day period elapses without Congressional objection to the permitted amendment, we will use the new methodology contained in Appendix A to calculate submarine cable fees in our FY 2009 report and order. Terrestrial and satellite facilities do not have cable landing licenses and will continue to pay regulatory fees on a per 64KB circuit basis, under our historic methodology as revised in the *Submarine Cable Order*. *See Submarine Cable Order* at paragraph 20.

Submarine Cable Systems (capacity as of December 31)	Fee amount	Address
10 Gbps or greater, but less than 20 Gbps	113,514	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
20 Gbps or greater	227,029	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.

[FR Doc. E9–12594 Filed 6–1–09; 8:45 am]

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