

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

FCC 99-146

In the Matter of)
)
Assessment and Collection) MD Docket No. 98-200
of Regulatory Fees for)
Fiscal Year 1999)

REPORT AND ORDER

Adopted: June 11, 1999 ; **Released:** June 18, 1999

By the Commission:

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I. Introduction

1. By this Report and Order, the Commission concludes a proceeding to revise its Schedule of Regulatory Fees in order to collect the amount of regulatory fees that Congress has required it to collect for Fiscal Year (FY) 1999.¹

2. Congress has required that we collect \$172,523,000 through regulatory fees in order to recover the costs of our enforcement, policy and rulemaking, international and user information activities for FY 1999.² This amount is \$10,000,000 or approximately 6% more than the amount that Congress designated for recovery through regulatory fees for FY 1998.³ Thus, we are revising our fees in order to collect the increased amount that Congress has required for us to collect. Additionally, we are amending the Schedule in order to simplify and streamline it.⁴

3. In revising our fees, we adjusted the payment units and revenue requirement for each service subject to a fee, consistent with sections 159(b)(2) and (3). In addition, we are making changes to the fees pursuant to public interest considerations. The current Schedule of Regulatory Fees is set forth in sections 1.1152 through 1.1156 of the Commission's rules.⁵

II. Background

4. Section 9(a) of the Communications Act of 1934, as amended, authorizes the Commission to assess and collect annual regulatory fees to recover the costs, as determined annually by Congress, that it incurs in carrying out enforcement, policy and rulemaking, international, and user information activities.⁶ See Attachment G for a description of these activities. In our FY 1994 Fee Order,⁷ we adopted the Schedule of Regulatory Fees that Congress established, and we prescribed rules to govern payment of the fees, as required by Congress.⁸ Subsequently, we modified the fee Schedule to increase the fees in accordance with the amounts Congress required us to collect in each succeeding fiscal year. We also amended the rules governing our

¹ Assessment and Collection of Regulatory Fees for Fiscal Year 1999, FCC 98-298, released December 4, 1998, 63 FR 70090 (Dec. 18, 1998) and FCC-99-44, released March 27, 1999, 64 FR 16661 (Apr. 6, 1999).

² Public Law 105-277 and 47 U.S.C. 159(a)(2).

³ Assessment and Collection of Regulatory Fees for Fiscal Year 1998, FCC 98-115, released June 16, 1998, 63 FR 35847 (Jul. 1, 1998).

⁴ 47 U.S.C. 159(b)(3).

⁵ 47 CFR 1.1152 through 1.1156.

⁶ 47 U.S.C. 159(a).

⁷ 59 FR 30984 (Jun. 16, 1994).

⁸ 47 U.S.C. 159(b), (f)(1).

regulatory fee program based upon our experience administering the program in prior years.⁹

5. As noted above, for FY 1994 we adopted the Schedule of Regulatory Fees established in section 9(g) of the Act. For fiscal years after FY 1994, however, sections 9(b)(2) and (3), respectively, provide for "Mandatory Adjustments" and "Permitted Amendments" to the Schedule of Regulatory Fees.¹⁰ Section 9(b)(2), entitled "Mandatory Adjustments," requires that we revise the Schedule of Regulatory Fees whenever Congress changes the amount that we are to recover through regulatory fees.¹¹

6. Section 9(b)(3), entitled "Permitted Amendments," requires that we determine annually whether additional adjustments to the fees are warranted, taking into account factors that are reasonably related to the payer of the fee and factors that are in the public interest. In making these amendments, we are to "add, delete, or reclassify services in the Schedule to reflect additions, deletions or changes in the nature of its services."¹²

7. Section 9(i) requires that we develop accounting systems necessary to adjust our fees pursuant to subsection b(3), and for other purposes.¹³ For FY 1997, we relied for the first time on cost accounting data to identify our regulatory costs and to develop our FY 1997 fees based upon these costs. Also, for FY 1997, we limited the increase in the amount of the fee for any service, so that we can phase in our reliance on cost-based fees for those services, whose revenue requirement would be more than 25 percent above the revenue requirement which would have resulted from the "mandatory adjustments" to the FY 1997 fees without incorporation of these costs. This methodology, which we continued to utilize for FY 1998, enabled us to develop regulatory fees which we believed to be more reflective of our costs of regulation, and allowed us to make revisions to our fees based on the fullest extent possible, and consistent with the public interest, on the actual costs of regulating those services subject to a fee. Finally, section 9(b)(4)(B) requires that we notify Congress of any permitted amendments 90 days before those amendments go into effect.¹⁴

III. Discussion

A. Summary of FY 1999 Fee Methodology

8. As noted above, Congress has required that the Commission recover \$172,523,000 for FY

⁹ 47 CFR 1.1151 *et seq.*

¹⁰ 47 U.S.C. 159(b)(2), (b)(3).

¹¹ 47 U.S.C. 159(b)(2).

¹² 47 U.S.C. 159(b)(3).

¹³ 47 U.S.C. 159(i).

¹⁴ 47 U.S.C. 159(b)(4)(B).

1999 through the collection of regulatory fees, representing the costs applicable to our enforcement, policy and rulemaking, international, and user information activities.¹⁵ This fact is the overriding principle that determines how the fee schedule is adjusted. Notwithstanding any considerations of benefit to the fee payer, it is a zero-sum mandate in which any adjustment downward must be met with a corresponding adjustment upward for all others to ensure collection of the aggregate amount mandated by Congress in its appropriation Act.

9. In developing our FY 1999 fee schedule, we first determined that we would continue to use the same general methodology for "Mandatory Adjustments" to the Fee Schedule as we used in developing fees for previous fiscal years. As required by section 9(b)(2), we estimated the number of payment units¹⁶ for FY 1999 in order to determine the aggregate amount of revenue we would collect without any revision to our FY 1998 fees. Next, we compared this revenue amount to the \$172,523,000 that Congress has required us to collect in FY 1999 and pro-rated the difference among all the existing fee categories.

10. Once we established our tentative FY 1999 fees, we evaluated proposals made by Commission staff concerning "Permitted Amendments" to the Fee Schedule and to our collection procedures. However, as stated in paragraph 8, any permitted amendment made affects all other feeable categories to ensure the total amount required will still be collected. These proposals are discussed in paragraphs 16-31 and are factored into our FY 1999 Schedule of Regulatory Fees, set forth in Attachment D.

11. It should be further noted that the requirement to derive fees based on the number of full-time equivalent number of employees is superseded by the cost accounting system developed pursuant to section 9(i) which is combined with the payroll and benefits system to incorporate that information. Non-employee contractual activities are not charged to feeable activities directly, but are factored into overhead. Also, the primary purpose of the cost accounting system is to support the making of permitted amendments, and it is not required to be used in developing the fee schedule.

12. Finally, we have incorporated, as Attachment F, proposed Guidance containing detailed descriptions of each fee category, information on the individual or entity responsible for paying a particular fee and other critical information designed to assist potential fee payers in determining the extent of their fee liability, if any, for FY 1999. In the following paragraphs, we describe in greater detail our methodology for establishing our FY 1999 regulatory fees.

B. Development of FY 1999 Fees

i. Adjustment of Payment Units

13. In calculating individual service regulatory fees for FY 1999, we adjusted the estimated

¹⁵ 47 U.S.C. 159(a).

¹⁶ Payment units are the number of subscribers, mobile units, pagers, cellular telephones, licenses, call signs, adjusted gross revenue dollars, etc. which represent the base volumes against which fee amounts are calculated.

payment units for each service because payment units for many services have changed substantially since we adopted our FY 1998 fees. We obtained our estimated payment units through a variety of means, including our licensee data bases, actual prior year payment records, and industry and trade group projections. Whenever possible, we verified these estimates from multiple sources to ensure the accuracy of these estimates. Attachment B provides a summary of how revised payment units were determined for each fee category.¹⁷

ii. Calculation of Revenue Requirements

14. We next multiplied the revised payment units for each service by the FY 1998 fees in each category to determine how much revenue we would collect without any change to the FY 1998 Schedule of Regulatory Fees. The amount of revenue which we would collect without changes to the Fee Schedule is approximately \$157.6 million. This amount is approximately \$14.9 million less than the amount the Commission is required to collect in FY 1999. We then adjusted the revenue requirements for each category on a proportional basis, consistent with Section 9(b)(2) of the Act, to obtain an estimate of the revenue requirements for each fee category so that the Commission could collect \$172,523,000 as required by Congress. Attachment C provides detailed calculations showing how we determined the revised revenue amounts to be raised for each service.

iii. Recalculation of Fees

15. Once we determined the amount of fee revenue that is necessary to collect from each class of licensee, we divided the revenue requirement by the number of payment units (and by the license term, if applicable, for "small" fees) to obtain actual fee amounts for each fee category. These calculated fee amounts were then rounded in accordance with section 9(b)(3) of the Act. See Attachment C.

C. Changes to Fee Schedule

16. We examined the results of our calculations to determine if further adjustments of the fees and/or changes to payment procedures were warranted based upon the public interest and other criteria established in 47 U.S.C. 159(b)(3).¹⁸ As a result of this review, we are making the following "Permitted Amendments" to our Fee Schedule:

i. FY 1999 Fee Schedule Based on Mandatory Adjustments

17. The FY 1999 fee schedule is based on the "Mandatory Adjustments" as computed in

¹⁷ It is important to also note that Congress' required revenue increase in regulatory fee payments of approximately six percent in FY 1999 will not fall equally on all payers because payment units have changed in several services. When the number of payment units in a service increase from one year to another, fees do not have to rise as much as they would if payment units had decreased or remained stable. Declining payment units have the opposite effect on fees.

¹⁸ In FY 1997 and FY 1998 we limited increases to 25%. For FY 1999, none of the proposed fee increases exceed 25%.

Attachment C and in accordance with section 9(b)(2) of the Act. After the NPRM was issued, the staff determined that its original estimates of the number of payment units for Marine (Ship) should be reduced from 16,800 to 7,100 to reflect a reduction in renewal applications caused by the transition from five-year to ten-year license terms. Likewise, the number of payment units for Aviation (Aircraft) is being reduced from 4,800 to 4,500.

ii. Reduction of the FM Construction Permit Fee

18. In the original Congressional fee schedule, the FM Construction Permit fee was set at \$500 (five times the AM Construction Permit fee of \$100). In succeeding year's schedules, nearly the same relationship has prevailed as evidenced by the calculated FM Construction Permit fee for FY 1999 of \$1,250 (compared to the calculated AM Construction Permit fee for FY 1999 of \$260). While the Commission's regulatory costs in processing FM Construction Permit fees are higher than its costs for AM Construction Permit fees, several parties have expressed concern that the FM Construction Permit fee is nevertheless disproportionately high particularly in less populated areas.

19. In the NPRM, we sought comment on a staff proposal to make a permitted amendment to the schedule of regulatory fees for FY 1999 reducing the FM Construction Permit fee to three times the AM Construction Permit fee. The Commission did not receive comments on the proposal to reduce the FM Construction Permit regulatory fee, and is adopting the proposal herein.

iii. Redesignation of Small SMR Systems as CMRS Messaging

20. In the NOI¹⁹, we solicited comment on whether the Commercial Mobile Radio Services ("CMRS") fee categories should be revised to reflect types of service or usage. In FY 1998, the demarcation of fee categories was based on the authorized bandwidth, rather than the nature of the service offered. CMRS licensees authorized to operate on broadband spectrum were classified within the CMRS Mobile Services fee category, while CMRS licensees authorized to operate on narrowband spectrum were classified within the CMRS Messaging fee category. In this context, several parties, including BellSouth Wireless Data, the Paging Network ("PageNet"), and ARDIS Company (Ardis) urge the Commission to reclassify the 900 MHz Specialized Mobile Radio Service ("SMR") systems for regulatory fee purposes. Specifically, the commenters assert that SMR systems used for mobile data services are similar to and compete with CMRS messaging services, and accordingly, should be classified as such for section 9 purposes. The Council of Independent Communications Suppliers ("CICS") and the American Mobile Telecommunications Association, Inc. ("AMTA") further maintain that all "traditional" SMR are similarly situated to messaging services in terms of the limited amount of spectrum utilized and the limited nature of the services offered, and thus recommend the reclassification of all traditional SMR services.

¹⁹ See FY 1999 *NOI* at ¶ 9.

21. We are persuaded by the comments that the SMR service is similar to the CMRS Messaging service, that the SMR service should be accorded similar treatment with respect to regulatory fee requirements, and thus that reclassification is warranted. Accordingly, we are revising our designation of services contained in the CMRS Messaging fee category. For FY 1999, the CMRS Messaging fee category will also include all SMR systems authorized for operation with less than 10 MHz bandwidth.

iv. Other Comments Regarding Adjustments to CMRS

22. In the NOI²⁰, we specifically asked commenters to provide proposals to establish models, or direct us to available sources of data, that estimate the number of payment units (number of subscribers) in the CMRS service to enable us to calculate fees that more accurately reflect the regulatory costs associated with this service. The Cellular Telecommunications Industry Association (CTIA) takes issue with the Commission's methodology and projections. CTIA argues that section 9(i) of the Communications Act of 1934 ("Act"), as amended, "requires that [the Commission] develop accounting systems necessary to adjust [its] fees pursuant to changes in the costs of regulation of various services that are subject to a fee."²¹ Instead, they argue further, the Commission has adopted a more complicated, and ultimately unreliable, approach described in detail in the Notice.²² CTIA argues that the Notice prescribes fees that raise an additional 6 percent above FY 1998, but that the proposed increase to CMRS Mobile services is over 10 percent. CTIA argues that this approach is wrong because it bases fees on growth in a particular sector of the industry instead of on the costs of regulating that sector, and it uses a figure that underestimates the number of wireless subscribers. We disagree and believe our actions are proper and consistent with the Act. As described above, the Commission began by estimating the number of units²³ for FY 1999 for each industry and multiplying that figure by each industry's FY 1998 per unit charge. The amount which resulted was \$157.6 million, \$14.9 million less than required by Congress.²⁴ To collect the difference, the Commission "then adjusted the revenue requirements for each category on a proportional basis."²⁵ In other words, each communications sector's proportional contribution percentage was multiplied by the anticipated shortfall, and the result was added to that

²⁰ See FY 1999 *NOI* at ¶ 9.

²¹ CTIA comments at p. 2.

²² CTIA comments at p. 2.

²³ "Payment units are the number of subscribers, mobile units, pagers, cellular telephones, licenses, call signs, adjusted gross revenue dollars, etc. which represent the base volumes against which fee amounts are calculated." Notice at ¶ 9 n.16. For the purpose of these Comments, the term "subscribers" is used interchangeably with "units."

²⁴ CTIA comments at p. 2.

²⁵ CTIA comments at p. 2-3.

sector's total revenue requirement for FY 1999. Finally, the total revenue requirement was divided by the total number of estimated units to determine the per unit fee for each category.²⁶

23. Section 9(i) states that "(t)he Commission shall develop accounting systems necessary to making the adjustments authorized by subsection (b)(3)." Subsection (b)(3) states that "(i)n addition to the adjustments required by paragraph (2), the Commission shall, by regulation, amend the Schedule of Regulatory Fees if the Commission determines that the Schedule requires an amendment to comply with the requirements of paragraph (1)(A)." Paragraph (2) refers to paragraph (b)(2) which requires that "the Commission shall, by rule, revise the Schedule of Regulatory Fees by proportionate increases or decreases to reflect, in accordance with paragraph (1)(B), changes in the amount appropriated for the performance of the activities described in subsection (a) for such fiscal year." Subsection (b)(2)(A) requires the adjustments to be made in accordance with the "increases or decreases in the number of licensees or units subject to payment of such fees." Subsection (b)(2)(B) requires that the fees be "established at amounts that will result in collection of an aggregate amount of fees pursuant to this section that can reasonably be expected to equal the aggregate amount of fees that are required to be collected by appropriations Acts pursuant to paragraph (1)(B)."

24. Given the provisions as a whole, the statute requires that, first and foremost, we must attempt to collect the aggregate amount that Congress requires in the appropriation Act, i.e. \$172,523,000 for FY 1999. To achieve this, we must first adjust our estimates of payment units and apply proportionate shares of the shortfall to all fee categories until the \$172,523,000 total is reached. At this point, we have the option of making permitted amendments, if we determine that it is required. Bearing in mind that any reduction in the fee obligations for any fee category must result in additional increases in the fee obligations imposed on all other fee categories to insure full collection of the \$173,523,000, we (with one minor exception, namely FM Construction Permits) did not propose such amendments, and use of the cost accounting system to support such adjustments was not necessary. Finally, our cost accounting system has been previously explained in great detail in our FY 1996 and FY 1997 proceedings. It is the language of the Act in section (b)(2) which establishes the relationship between the number of payment units and the costs we must recover for our regulatory activities. Nothing in CTIA's argument convinces us that we erred in our methodology.

25. CTIA also argues that we have seriously underestimated the number of CMRS units. It states that it "is confident that the number of CMRS mobile services units has risen dramatically over last year -- enough to result in a substantial decrease in per unit charges."²⁷ CTIA states that the "correct number for FY 1999 is 69,209,000 units, not the 55,540,000

²⁶ CTIA comments at p. 3.

²⁷ CTIA comments at p. 5

units the Commission has estimated."²⁸ In its comments, AirTouch also argues that our estimate is too low.

26. In determining its estimates of the number of payment units, the Commission consults several sources, if available. We have found that there are often large disparities in the estimates provided by various industry associations. These differences may be due to the differences in purposes for which the data is gathered, sampling methods used, etc. It should be further noted that our experience with industry estimates in prior years has resulted in high levels of underpayment in the CMRS category. Given the fact that we are required by the statute to collect "an amount that can reasonably be expected to equal the amount appropriated..." we have proposed to establish estimates that more closely match the number of units for which payments have been received. With regard to the CMRS sector, the following chart shows the number of subscriber payment units estimated and the actual number based on fee payments per year.

	CMRS MOBILE	CMRS MESSAGING
FY 1995 ESTIMATE	23,400,000	19,600,000
FY 1995 ACTUAL	22,959,273	12,189,094
FY 1996 ESTIMATE	30,000,000	24,500,000
FY 1996 ACTUAL	24,560,543	18,810,299
FY 1997 ESTIMATE	51,472,190	48,900,000
FY 1997 ACTUAL	43,553,534	31,047,469
FY 1998 ESTIMATE	55,540,000	39,592,000
FY 1998 ACTUAL	54,730,365	34,373,200

Given the data before us, while recognizing it is a conservative increase over the 1998 actual figure, we continue to believe our estimate for 1999 is reasonable, especially in light of our reclassification of small SMR systems.

v. Re-activation of Interactive Video Data Services Fee (now 218-219 MHz Service)

27. When the NPRM was being developed, it was thought that there would be no interactive video data service (IVDS) applications received in FY 1999. No new assignments are available and most previous authorizations were granted for a ten-year license term (none of which expire

²⁸ CTIA comments at p. 5.

in FY 1999). After release of the NPRM, it was discovered that there are 513 IVDS licenses that were issued with five-year expiration dates that will come up for renewal in FY 1999. Therefore, we are re-activating the regulatory fee for IVDS (now 218-219 MHz Service) and have calculated it to be \$13 on an annual basis. The entire regulatory fee will be \$65 for a five-year term.

D. Other Issues Raised by Commenters

28. On November 10, 1998, the Commission adopted a Notice of Inquiry in this proceeding seeking comments on five specific issues.²⁹ Briefly, the issues for which comments were sought included: (1) clarification of the Commercial Mobile Radio Services ("CMRS") fee categories and demarcation of which types of services or usage to include in each category;³⁰ (2) determination of the appropriate basis for assessing regulatory fees on geostationary orbit space stations ("GSOs"); (3) determination of the appropriate method of assessing our regulatory costs associated with non-geostationary orbit space station systems ("NGSOs") to licensees which have launched satellites or to all NGSO licensees; (4) whether we should base revenues for interstate telephone service providers on the Universal Services Fund's end user methodology rather than the Telecommunication Relay Services Fund's adjusted gross revenue methodology; and (5) whether we should create a "new services" category in our cost accounting system in which costs associated with development of new services, regardless of the service, would be proportionately assessed to all feeable categories rather than assessed to existing licensees in the same service category. In the interest of expediting the NPRM, we deferred analysis of the comments and replies received pursuant to the NOI for inclusion in this final Report and Order.

29. In addition to the comments which support the changes we are adopting in this Report and Order, commenters expressed other views which we intend to address here. These issues cover comments and reply comments received on both the NOI and the NPRM.

i. Interstate Telephone Service Providers

30. In the NOI³¹, we solicited comment on BellSouth Corporation's (BellSouth) proposal to change the methodology used to assess fees upon interstate telephone service providers. Specifically, BellSouth proposed that the regulatory fees imposed upon interstate telephone service providers be based on their end user revenues (i.e., the same contribution base used for the Universal Fund), instead of the current methodology, which is based on their proportionate share of industry net revenues (i.e., the same contribution base used for the TRS Fund). BellSouth contended that its proposal is "more competitively neutral," given that the current methodology

²⁹ 63 FR 70090 (Dec. 18, 1998).

³⁰ In this regard we specifically requested additional comments on a proposal raised by BellSouth Wireless in its Petitions for Reconsideration of the FY 1997 and FY 1998 Rulemakings, that the Commission reclassify 900 MHz SMR Service into the CMRS Message Service.

³¹ See FY 1999 NOI at ¶ 15.

favors interexchange carriers ("IXCs") by virtue of the fact that they are able to deduct payments made to the underlying carriers. The end user methodology was opposed by MCI WorldCom, Inc. (MCI WorldCom), which claimed that this methodology effectively would shift regulatory costs from the local exchange carriers ("LECs") to the "highly competitive, price sensitive" IXCs (which unlike LECs cannot recover their costs through regulated rates) and, as such, would not be competitively neutral. BellSouth supported the end user methodology, but recommended that the Commission defer consideration on the appropriate methodology until it concludes the pending rulemaking (CC Docket No. 98-171, In the Matter of 1998 Biennial Regulatory Review - Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms), which is examining, among other things, both TRS and Universal Fund support mechanisms.³² We believe that properly calculated, the end result should be relatively equivalent regardless of whether the fee is based on gross revenues less expenses paid to the underlying carriers or end user revenues.

31. We are unpersuaded by MCI WorldCom, Inc.'s contention that the end-user telecommunications revenue method is not competitively neutral simply because it will attribute a greater portion of direct contributions to IXCs.³³ As support for its proposal that the Commission utilize a net telecommunications revenue basis for NANP and TRS, MCI correctly observes that the portion of contributions paid by IXCs will likely increase, as compared to that paid directly by local service providers, under an end-user telecommunications revenue basis, primarily because toll carriers, including IXCs, will contribute based on the revenues they collect from their end users to pay incumbent LECs' access charges. As described above, however, the end-user basis meets our two prong test for competitive neutrality, as set out in the *LNP Cost Recovery Order*³⁴ The fact that carriers -- whether IXCs or incumbent LECs -- providing interstate toll services to end users may bear a slightly higher portion of contributions does not alter that analysis, because, even assuming that MCI's projections are correct, this change would not give one service provider an appreciable, incremental cost advantage when competing for a particular subscriber.

32. Further, we believe that MCI's analysis of the purported burden shift falls short. We do not believe that this change in revenue basis will significantly favor one segment of the industry over another. To the extent that direct contributions are shifted, we note that IXCs would incur those costs attributable to access revenues under both a net telecommunications revenue basis and an end-user telecommunications revenue basis.³⁵ For example, contributions to

³² FCC 98-233, released September 25, 1998, 63 FR 54090 (Oct. 8, 1998).

³³ See MCI Reply Comments at 4.

³⁴ See *LNP Cost Recovery Order*, paragraph 106-107.

³⁵ See *Telecommunications Relay Services and the Americans with Disabilities Act of 1990*, Second Order on Reconsideration and Fourth Report and Order, FCC 93-463, Docket No. 90-571, 9 FCC Rcd 1637 (rel. Sept. 29, 1993) (clarifying that TRS Fund contributions may be treated as exogenous costs under price cap regulation). To this end, we believe that AT&T suggestion concerning price cap reductions would be more appropriately considered in access charge proceedings. See CFR section 69.1. See also *LNP Cost Recovery Order*, paragraph 109 (suggesting that incumbent LECs would like pass on shared costs of number portability to IXCs

the TRS mechanism under the current gross telecommunications revenue basis are treated as exogenous costs under price cap regulation, meaning that the overwhelming majority of these costs are passed through to toll carriers under either methodology.³⁶ As the Commission concluded in the *LNP Cost Recovery Order*, because the end-user telecommunications revenue basis reaches the same result, but without the inefficiency and added complication of the pass-through step, we prefer the end-user telecommunications revenue basis.³⁷ In any event, we agree with BellSouth that any decision on the appropriate methodology should be deferred until the conclusion of the pending rulemaking proceeding.

ii. New Services Fee Category

33. In the NOI we sought comments on establishing a new services fee category. The regulatory costs associated with the policy and rulemaking to establish new and emerging technologies and services were to be charged to the new services activity. The costs attributed to the new services category were then to be distributed proportionally to all other feeable activities, and would not be borne by a specific, established service.

34. GE American Communications, Inc. (GE) argues in support of establishing a new services fee category on the basis that until an authorization is granted, licensees are unknown and it would be unfair to attribute the costs to existing licensees. BellSouth, Personal Communications Industry Association (PCIA), and Lockheed Martin, on the other hand, disagree that it would be appropriate to charge costs to licensees in other unrelated service categories in the form of overhead when it is clear that they derive no benefit from the regulatory activity. Indeed, as BellSouth points out, under section 9(a)(1), the Commission shall assess and collect regulatory fees for rulemaking proceedings, which would include the costs associated with the introduction of new services. However, section 9(b)(1)(A) provides that the fees assessed must be adjusted "to take into account factors that are reasonably related to the payor of the fee." BellSouth thus asserts that an "across-the-board" new service fee category would not comply with section 9(b)(1)(A), because it would impose fees on payers who are not benefited by the introduction of the new service.

35. We are not persuaded that creation of a new services category is appropriate at this time. Further, this concept presents technical and policy problems with respect to our current cost accounting system which cannot be resolved for FY 1999 fee collections. Data is not available in its present form and costs cannot be reallocated as would be necessary to implement a new services fee category now. We are in the planning stages for rewriting the software for our cost accounting system, and this issue will become part of those discussions.

through exogenous treatment in their access rates).

³⁶ Id.

³⁷ See *LNP Cost Recovery Order*, paragraph 109.

iii. COMSAT and Non-U.S. Licensees

36. PanAmSat and GE American Communications argue that we should impose fees on COMSAT Corporation (COMSAT) to recover the Signatory and other expenses created by COMSAT. Loral Space & Communications states that because COMSAT competes with other U.S. satellite operators that are subject to regulatory fees, it is given a clear advantage over its competitors. Loral Space and Communications, therefore, contends that the Commission should impose fair and equitable fees on COMSAT. This issue has been considered and dismissed several times. In addition, GE, the Satellite Industry Association (SIA), and PanAmSat contend that the cost of regulation should be borne by all satellite service providers, which in light of the recent privatization of Inmarsat Limited, should include fair share payments from COMSAT and foreign-licensed satellite providers. Previously, because of the International Organization Immunities Act, COMSAT was exempt from paying regulatory fee payments for Inmarsat space stations. In its reply comments, COMSAT argues to the contrary that neither COMSAT, INTELSAT, nor Inmarsat are subject to Section 9 of the Communications Act of 1934, and neither Inmarsat nor its satellites are subject to Title III of the Act. In short, COMSAT argues that the FCC lacks jurisdiction in imposing space station or any new category of fees on COMSAT because "regulatory fees apply only to space stations directly licensed by the FCC under Title III of the Communications Act." Finally, SIA questions the estimate of 42.5 GSO space stations.

37. COMSAT has in the past and continues to be responsible for payment of regulatory fees for its licensed facilities. For example, in FY 1998, COMSAT paid regulatory fees for two geostationary space stations, 142 earth stations, and 53,957 international bearer circuits for a total of \$585,172. With respect to the estimate of 42.5 GSO space stations, based on the October 1, 1998 cut-off date, there are 43 satellites in operation. However, Columbia received a waiver for one-half the capacity for one of its satellites. The waiver was granted because Columbia established that, unlike other U.S. fixed satellite service licensees, it was under contract with NASA, its satellite capacity was not entirely within its control, and its use was secondary to NASA's.³⁸ Therefore, the GSO fees was formulated based on 42.5 satellites.

38. The space station facilities owned by INTELSAT and Inmarsat are not licensed to COMSAT. COMSAT has been designated to represent the United States as its signatory agent. As COMSAT argues, the courts have ruled that we may not assess a fee upon COMSAT for its role in the administration of the INTELSAT and Inmarsat space stations. Moreover, commenters have argued that since Inmarsat space stations were converted "to a newly created private company, Inmarsat Limited (incorporated in the United Kingdom), COMSAT's exemption from payment in relation to the Inmarsat system should be eliminated. Legislation requiring INTELSAT to privatize is currently pending before Congress, and full privatization is not

³⁸ 1999 Westlaw 22920. In regarding Application of Columbia Communications Corporation, FCC 98-299 (January 22, 1999) (WESTLAW, FCOM-FCC library).

complete. At present, it is not clear who will hold the license after privatization. Therefore, COMSAT presently remains as the designated U.S. Signatory to INTELSAT. Regardless of COMSAT's interest in the INTELSAT satellites in question, they are not licensed under Title III and, therefore, not subject to regulatory fees.³⁹

39. It has also been suggested that non-U.S. licensed satellite service providers who operate in the U.S. should be assessed regulatory fees. Clearly, legislative history provides that only space stations licensed under Title III may be subject to regulatory fees. Although non-U.S.-licensed satellite operators do compete with U.S.-licensed satellite operators, they are not licensed under Title III. Therefore, we cannot include operators of non-U.S.-licensed satellite space stations among regulatory fee payers.

iv. Non-Common Carrier Bearer Circuits

40. The Satellite Industry Association ("SIA") maintains that the Commission should revisit whether it is authorized to assess international bearer circuit regulatory fees on non-common carrier satellite operators. According to SIA, because section 9 of the Communications Act specifies that *carriers* are required to pay international bearer circuit fees, the Commission is *only* authorized to collect such fees from common carriers, *not* non-common carrier satellite operators. PanAmSat, in support of SIA, asserts that because non-common carrier bearer circuits are offered on a private basis and not subject to Title II regulations, they do not exact the same regulatory costs and should not be subject to the same regulatory fees as common carrier satellite operators.

41. In response to SIA's position that international bearer circuit regulatory fees be imposed only on common carriers, the Commission contends that SIA's argument is a matter of terminology. When section 9 was initially drafted, the fee schedule was divided along the lines of the existing bureaus and offices at the time. Since then, the Commission has undergone reorganizations and shifting of responsibilities for administering several services. When the original legislation was drafted, international bearer circuits were administered by the Common Carrier Bureau -- thus in the Common Carrier Bureau section of the original schedule. With the creation of the International Bureau, international bearer circuits became the responsibility of the International Bureau. Moreover, justification for including non-common carrier circuits, which serve users internationally, was provided in previous years' proceedings.⁴⁰

v. Geostationary Orbit Space Stations ("GSOs")

³⁹ Assessment and Collection of Regulatory Fees for Fiscal Year 1995, 60 FR 30004 (June 29, 1995) and Assessment and Collection of Regulatory Fees for Fiscal Year 1997, 62 FR 37408 (July 11, 1997); COMSAT Corp v. Federal Communications Commission, 114 F. 3d 223 (D.C. Cir. 1997).

⁴⁰ See FY 1998 *Report & Order* at paragraphs 57-63.

42. In the NOI⁴¹, we noted that the method of calculating and assessing the regulatory fees imposed on GSO licensees on a "per satellite basis" has been controversial and the subject of comments for several years. Therefore, we solicited comment on alternative methods for calculating and assessing GSOs regulatory fees. In this connection, we specifically requested commenters to "specify the data upon which we can base any alternative approach and the most feasible method for obtaining the data necessary to calculate fees".⁴² However, notwithstanding alternative methods for calculating regulatory fees, it is important to note that the percentage of increase in FY 1999 fees will not exactly match the overall Congressional increase of 6 percent. For most fee categories, the increase will be less than 10 percent, which is necessary to cover the costs of services that are exempt from payment of regulatory fees. In our FY 1998 Report and Order at paragraph 51, we explained that the costs used to develop our fees were derived from our cost accounting system which separates application processing costs from regulatory costs. We find nothing in the arguments put forth by the Satellite Industry Association ("SIA") and GE American Communications ("GE") which persuade us that our methodology is incorrect.

43. PanAmSat, Loral and GE argue that the regulatory fees imposed on in-orbit GSOs bear scant relationship to the Commission's costs. Specifically, they argue that the Commission's costs are primarily incurred at the application stage, and are recovered through the substantial application fees imposed on GSO licensees. Because the Commission's oversight is very limited once the GSO space station is in orbit, they urge the Commission to re-examine the assessment of regulatory fees in this context to ensure that GSO licensees are not subsidizing other services.

44. The Commission incurs costs for satellite policy and rulemaking, enforcement and user information activities. As directed by Congress, these costs must be recovered through the collection of regulatory fees. In accordance with the provisions of Section 9, the Commission's overall goal is to recover all of the costs associated with satellite regulatory activities and to distribute these costs fairly amongst fee payers, taking into account factors reasonably related to the benefits provided by the payer, as well as "other factors we determine are necessary in the public interest".

vi. Non-Geostationary Orbit Space Stations ("NGSOs")

45. In our NOI⁴³, we noted that Orbital Communications Corporation ("ORBCOMM") had submitted comments in our FY 1998 rulemaking proceeding, challenging the Commission's practice of requiring each NGSO licensee pay regulatory fees upon commencement or certification of its first satellite's operation.⁴⁴ ORBCOMM contended that because all NGSOs

⁴¹ See FY 1999 *NOI* at ¶ 10.

⁴² See FY 1999 *NOI* at ¶ 10.

⁴³ See FY 1999 *NOI* at ¶ 11.

⁴⁴ See FY 1998 *Report & Order* at paragraph 55.

licensees benefit from the Commission's policy, enforcement and information activities and services, they all should be required to pay regulatory fees, irrespective of whether they have launched their first satellite. Space Imaging L.P. (Space Imaging) suggests that the Commission should create a new regulatory fee category for small constellations of non-geostationary orbit (NGSO) satellites. Further, Space Imaging recommends that the two categories be: 1) systems of up to five satellites and 2) systems of more than five satellites. Orbital Communications Corporation (ORBCOMM) argues that all NGSO systems authorized should pay regulatory fees regardless of whether or not there is at least one satellite launched and operational. L/Q Licensee, Inc. (LQL) and Globalstar LP (Globalstar) contend that a NGSO system is not operational until more than one satellite is capable of operating. LQL and Globalstar recommend that we delay requiring fee payment until the full constellation is completed, or that we establish a lower fee of 25% when only the first satellite becomes operational.

46. For the reasons stated above, we believe that the methodology for establishing the fee increase is reasonable. Regarding L/QL's and Globalstar's proposal to delay fee payments, we decline to adopt the proposal. We have previously dismissed the idea of waiting until the full constellation is completed because of the potentially lengthy time that it takes to construct the entire system.⁴⁵ The amount of revenue required for commercial viability will also vary from system to system, particularly since there is no standard time-frame to achieve commercial viability. Further, we are concerned that any attempt to establish a lower percentage fee will be fraught with endless discussion of what that percentage should be. The concept of establishing separate categories for small and large constellations may warrant consideration. However, further study is needed and more systems need to be operational before we can properly evaluate its appropriateness. For FY 1999, the fee payment criteria for NGSO systems will remain unchanged.

vii. Commercial Radio and Television

47. The National Association of Broadcasters (NAB) supports the Commission's use of allocating fees for AM and FM stations based on station class and population served by each station. According to NAB, it received fewer complaints in 1998 after the Commission revised its AM and FM station fee methodology. Although NAB acknowledges that the Commission's 1998 fee methodology is a noticeable improvement from 1997, NAB argues that stations located in suburban areas, but close to larger urban centers, are assessed a larger licensing fee simply because they are located near larger advertising markets. For equitable reasons, NAB urges the Commission to entertain requests for partial fee waivers from stations that are located close to a larger listening audience.

48. Although NAB supports the Commission on its allocation of fees on an individual station basis, NAB disagrees with the Commission for increasing the broadcast industry's overall fees by

⁴⁵ Assessment and Collections of Regulatory Fees for Fiscal Year 1997, 62 FR 37408 (July 11, 1997), at ¶ 75.

9.4 percent rather than by the 6% that Congress required the Commission to collect. NAB acknowledges that the increase is a congressional requirement, but feels that the 9.4% increase for the broadcast industry as a whole is far greater than what Congress required of the Commission, particularly since the number of payment units in the broadcast industry has increased from the previous year. Furthermore, NAB also argues that the Commission does not explain the basis of its costs in regulating the broadcast industry, except by showing that the number of FY 1999 estimated units were multiplied by the FY 1998 fee, and pro-rated among all existing fee categories. Hence, according to NAB, without these calculations, it is not easily apparent whether the cost of regulating the broadcast industry has actually increased or decreased, or whether the broadcast industry is bearing the costs of regulating other aspects of the communication industry. Finally, NAB also argues that the fruits of the Commission's streamlining efforts should be incorporated into the fee methodology, resulting in lower application and regulatory fees.

49. With respect to NAB's request that partial fee waivers be granted, the Commission's rules already provide for petitions for waivers. We will consider such requests on an individual basis and on the particular merits of the situation. Absent specific information to indicate whether a waiver is warranted, it would be inappropriate to guarantee results in favor of any group of broadcast licensees in general herein.

50. Although the overall regulatory fee increase is approximately 6%, factoring in costs for exempt entities, overhead, and changes due to increases or decreases in payment units could cause some shifting or cross-subsidization, which means that application of the required increase may not fall equally on every group of fee payers. Cost data from our cost accounting system was reviewed before making the decision not to apply the data across-the-board to all services as wholesale permitted amendments. The use of the cost data in implementing this cost shifting proved too extreme and would have required significantly higher increases in several fee categories than the 9.4 percent that NAB questions. This occurs because the actual costs attributable to several other services would require fees that are as much as several thousand percent above what it would be reasonable and fair to charge. Also, a few services would have decreases in fees which would require adding more costs to other services in order to collect the amount that Congress requires us. Finally, as many other commenters, NAB argues that its industry is being streamlined or deregulated. Nearly all commenters have argued that deregulation has benefited one industry over another. However, ultimately, it does not change the fact that we must collect the full \$172.5 million proportionately from all payers.

viii. Fee Filing Software

51. The Walt Disney Company states that while the Commission prefers that payers of multiple fees file using FCC software, that software has been plagued with errors and released too near the payment deadline.

52. The Commission recognizes, and is striving to remedy, the problems associated with the software and the late release last year. We are planning to conduct beta testing and to release the "fee filer" user software in July 1999, well in advance of the filing deadline of mid-September. A

Public Notice will be released including a detailed description of the software application. Anyone wishing to participate in the beta testing may contact Linwood Jenkins at (202) 418-1995.

53. Regulatees paying for more than 50 licenses may utilize the "fee filer" software, or complete the individual copies of the FCC Form 159 and 159C. The FCC Form 159 must be completed in its entirety. Improperly completing the FCC Form 159 and 159C will result in a delay in crediting your account. These are the only two acceptable methods of submission. The Commission will not accept any attachments listing call signs. Each call sign must be listed separately on the Form 159/159C in order to receive proper credit.

E. Procedures for Payment of Regulatory Fees

54. Generally, we will retain the procedures that we have established for the payment of regulatory fees. Section 9(f) requires that we permit "payment by installments in the case of fees in large amounts, and in the case of small amounts, shall require the payment of the fee in advance for a number of years not to exceed the term of the license held by the payer." See 47 U.S.C. § 159(f)(1). Consistent with section 9(f), we are again establishing three categories of fee payments, based upon the category of service for which the fee payment is due and the amount of the fee to be paid. The fee categories are (1) "standard" fees, (2) "large" fees, and (3) "small" fees.

i. Annual Payments of Standard Fees

55. As we have in the past, we are treating regulatory fee payments by certain licensees as "standard fees" which are those regulatory fees that are payable in full on an annual basis. Payers of standard fees are not required to make advance payments for their full license term and are not eligible for installment payments. All standard fees are payable in full on the date we establish for payment of fees in their respective regulatory fee category. The payment dates for each regulatory fee category will be announced either in this Report and Order terminating this proceeding or by public notice in the Federal Register pursuant to authority delegated to the Managing Director.

ii. Installment Payments for Large Fees

56. As we noted in the NPRM, time constraints will preclude an opportunity for installment payments. Due to statutory constraints concerning notification to Congress prior to actual collection of the fees, there will not be sufficient time for installment payments, and regulatees eligible to make installment payments will be required to pay these fees on the last date that fee payments may be submitted. The dates for a single payment will be announced either in this Report and Order terminating this proceeding or by public notice published in the Federal Register pursuant to authority delegated to the Managing Director.

iii. Advance Payments of Small Fees

57. As we have in the past, we are treating regulatory fee payments by certain licensees as "small" fees subject to advance payment consistent with the requirements of section 9(f)(2).

Advance payments will be required from licensees of those services that we decided would be subject to advance payments in our FY 1994 Report and Order, and to those additional payers set forth herein.⁴⁶ Payers of advance fees will submit the entire fee due for the full term of their licenses when filing their initial, renewal, or reinstatement application. Regulatees subject to a payment of small fees shall pay the amount due for the current fiscal year multiplied by the number of years in the term of their requested license. In the event that the required fee is adjusted following their payment of the fee, the payer would not be subject to the payment of a new fee until filing an application for renewal or reinstatement of the license. Thus, payment for the full license term must be made based upon the regulatory fee applicable at the time the application is filed. The effective date for payment of small fees established in this proceeding will be announced in this Report and Order terminating this proceeding or by public notice published in the Federal Register pursuant to authority delegated to the Managing Director.

iv. Minimum Fee Payment Liability

58. As we have in the past, we are establishing that regulatees whose total regulatory fee liability, including all categories of fees for which payment is due by an entity, amounts to less than \$10 will be exempted from fee payment in FY 1999.

v. Standard Fee Calculations and Payment Dates

59. As noted, the time for payment of standard fees and any installment payments will be announced in this Report and Order terminating this proceeding or will be published in the Federal Register pursuant to authority delegated to the Managing Director. For licensees, permittees and holders of other authorizations in the Common Carrier, Mass Media, and Cable Services, whose fees are not based on a subscriber, unit, or circuit count, fees must be paid for any authorization issued on or before October 1, 1998.⁴⁷

60. In the case of regulatees whose fees are based upon a subscriber, unit or circuit count, the number of the regulatees' subscribers, units or circuits on December 31, 1998, will be used to calculate the fee payment.⁴⁸

⁴⁶ Applicants for new, renewal and reinstatement licenses in the following services will be required to pay their regulatory fees in advance: Land Mobile Services, Microwave Services, Marine (Ship) Service, Marine (Coast) Service, Private Land Mobile (Other) Services, Aviation (Aircraft) Service, Aviation (Ground) Service, 218-219 MHz Service (previously IVDS), and General Mobile Radio Service (GMRS).

⁴⁷ Where a license or authorization is transferred or assigned after October 1, 1998, the fee shall be paid by the licensee or holder of the authorization on the date that the payment is due.

⁴⁸ Cable system operators are to compute their subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Cable system operators may base their count on "a typical day in the last full week" of December 1998, rather than on a count as of December 31, 1998.

vi. Improved Fee Collection Systems

61. The Commission is taking several steps to improve its fee collection program. Development of a new fee collections system is currently underway that will provide a single improved internal source of information for all of the Commission's financial transactions. In addition, we are establishing procedures that will require assignment of a unique identifier code to each entity doing business with the FCC to enable it to track payments and other transactions made by the entity, even when its name or ownership changes. These enhancements will assist the FCC in identifying all feeable entities and ensuring that proper payments are received and recorded accurately.

vii. Late or Insufficient Regulatory Fee Payment

62. As a reminder, in accordance with section 1.1164 of the Commission's Rules, regulatees will be subject to a 25 percent penalty for late or insufficient regulatory fee payment. All payments not received by the due date shall be assessed the penalty.

F. Schedule of Regulatory Fees

63. The Commission's Schedule of Regulatory Fees for FY 1999 is contained in Attachment D of this Report and Order.

IV. Procedural Matters

A. Ordering Clause

64. Accordingly, it is ordered that the rule changes specified herein are adopted. It is further ordered that the rule changes made herein will become effective 60 days from the date of publication in the Federal Register, except that changes to the Schedule of Regulatory Fees made pursuant to section 9(b)(3) of the Communications Act, and incorporating regulatory fees for FY 1999, will become effective September 10, 1999, which is 90 days from the date of notification to Congress. Finally, it is ordered that this proceeding is Terminated.

B. Authority and Further Information

65. This action is taken pursuant to sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended,⁴⁹ 47 U.S.C. 154(i) and (j), 9, and 303(r).

66. Further information about this proceeding may be obtained by contacting the Fees Hotline at (202) 418-0192.

⁴⁹ 47 U.S.C. 154(i)-(j), 159, & 303(r).

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Radio, Telecommunications, Television.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

RULE CHANGES

For the reasons discussed in the preamble, part 1 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 1 - PRACTICE AND PROCEDURE

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

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

2. Sec. 1.1152 is revised to read as follows:

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

Exclusive use services (per license)	Fee Amount ⁵⁰	Address
1. Land Mobile (Above 470 MHz, Base Station & SMRS)(47 CFR, Part 90)		
a)800 MHz New, Renewal, Reinstatement Pittsburgh, PA (FCC 600) 15251-5130	\$13.00	FCC, 800 MHz P . O . B o x 3 5 8 1 3 0
b)900 MHz New, Renewal, Reinstatement (FCC 600)	\$13.00	FCC, 900 MHz P.O. Box 358130 Pittsburgh, PA 15251-5130
c)470-512,800,900, 220 MHz,	\$13.00	FCC, 470-512

⁵⁰ Note that "small fees" are collected in advance for the entire license term. Therefore, the annual fee amount shown in this table must be multiplied by the 5- or 10-year license term, as appropriate, to arrive at the total amount of regulatory fees owed. It should be further noted that application fees may also apply as detailed in §1.1102 of this chapter.

220 MHz Nationwide Renewal (FCC 574R, FCC 405A)		P.O. Box 358245 Pittsburgh, PA 15251-5245
d)Correspondence Blanket Renewal (470-512,800,900,220 MHz) (Remittance Advice, Correspondence)	\$13.00	FCC, Corres. P.O. Box 358130 Pittsburgh, PA 15251-5130
e)220 MHz New, Renewal, Reinstatement (FCC 600)	\$13.00	FCC, 220 MHz P.O. Box 358130 Pittsburgh, PA 15251-5130
f)470-512 MHz New, Renewal, P.O. Box 358130 Reinstatement (FCC 600)	\$13.00	FCC, 470-512 Pittsburgh, PA 15251-5130
g)220 MHz Nationwide New, Renewal, Reinstatement (FCC 600)	\$13.00	FCC, Nationwide P.O. Box 358130 Pittsburgh, PA 15251-5130

2. Microwave (47 CFR Pt. 101)

a)Microwave New, Renewal, Reinstatement (FCC 415) 15251-5130	\$13.00	FCC, Microwave P.O. Box 358130 Pittsburgh, PA
b)Microwave Renewal (FCC 402R)	\$13.00	FCC, Microwave P.O. Box 358255 Pittsburgh, PA 15251-5255
c)Correspondence Blanket Renewal (Microwave) (Remittance Advice, Correspondence)	\$13.00	FCC, Corres. P.O. Box 358130 Pittsburgh, PA 15251-5130

3. 218-219 MHz Service

a)New, Renewal (FCC 574 or FCC 600)	\$13.00	FCC, 218-219 MHz Service P.O. Box 358130 Pittsburgh, PA 15251-5130
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4. Shared Use Services

a)Land Transportation (LT) New, Renewal, Reinstatement (FCC 600)	\$7.00	FCC, Land Trans. P.O. Box 358130 Pittsburgh, PA 15251-5130
b)Business (Bus.) New, Renewal, Reinstatement (FCC 600)	\$7.00	FCC, Business P.O. Box 358130 Pittsburgh, PA 15251-5130
c)Other Industrial (OI) New, Renewal, Reinstatement (FCC 600)	\$7.00	FCC, Other Indus. P.O. Box 358130 Pittsburgh, PA 15251-5130
d)General Mobile Radio Service (GMRS) New, Renewal, Modifications (RM) (FCC 605)	\$7.00	FCC, GMRS P.O. Box 358130 Pittsburgh, PA 15251-5130
e)Business,Other Industrial, Land Transportation Renewal (FCC 574R, FCC 405A)	\$7.00	FCC,Bus.,OI,LT P.O. Box 358245 Pittsburgh, PA 15251-5245
f)GMRS Renewal (RO) (FCC 605)	\$7.00	FCC,GMRS P.O. Box 358245 Pittsburgh, PA 15251-5245
g)Ground New, Renewal, Reinstatement (FCC 406)	\$7.00	FCC, Ground P.O. Box 358130 Pittsburgh, PA 15251-5130

h)Coast New, Renewal, Reinstatement (FCC 503)	\$7.00	FCC, Coast P.O. Box 358130 Pittsburgh, PA 15251-5130
i)Ground Renewal (FCC 452R)	\$7.00	FCC, Ground P.O. Box 358270 Pittsburgh, PA 15251-5270
j)Coast FCC, Coast Renewal (FCC 452R)	\$7.00	P.O. Box 358270 Pittsburgh, PA 15251-5270
k)Ship New, Renewal, Reinstatement (FCC 506)	\$7.00	FCC, Ship P.O. Box 358130 Pittsburgh, PA 15251-5130
l)Aircraft New, Renewal, Modification (RM) Reinstatement Pittsburgh, PA (FCC 605) 15251-5130	\$7.00	FCC, Aircraft P.O. Box 358130
m)Ship Renewal (FCC 405B)	\$7.00	FCC, Ship P.O. Box 358290 Pittsburgh, PA 15251-5290
n)Aircraft Renewal (RO) (FCC 605)	\$7.00	FCC, Aircraft P.O. Box 358245 Pittsburgh, PA 15251-5245
o)Correspondence Blanket Renewal (Bus.,OI,LT) (Remittance Advice, Correspondence)	\$7.00	FCC, Corres. P.O. Box 358130 Pittsburgh, PA 15251-5130

p)Correspondence Blanket Renewal (Ground) (Remittance Advice, Correspondence)	\$7.00	FCC, Corres. P.O. Box 358130 Pittsburgh, PA 15251-5130
q)Correspondence Blanket Renewal (Coast) (Remittance Advice, Correspondence)	\$7.00	FCC, Corres. P.O. Box 358130 Pittsburgh, PA 15251-5130
r)Correspondence Blanket Renewal (Ship) (Remittance Advice, Correspondence)	\$7.00	FCC, Corres. P.O. Box 358130 Pittsburgh, PA 15251-5130
5. Amateur Vanity Call Signs	\$1.40	FCC, Amateur Vanity P.O. Box 358924 Pittsburgh, PA 15251-5924
6. CMRS Mobile Services (per unit)	\$.32	FCC, Cellular P.O. Box 358835 Pittsburgh, PA 15251-5835
7. CMRS Messaging Services (per unit)	\$.04	FCC, Messaging P.O. Box 358835 Pittsburgh, PA 15251-5835

3. Sec. 1.1153 is revised to read as follows:

§ 1.1153 Schedule of annual regulatory fees and filing locations for mass media services.

Radio [AM and FM] (47 CFR, Part 73)	Fee Amount	Address
1. <u>AM Class A</u>		
<=20,000 population	\$430	FCC, Radio
20,001-50,000 population	\$825	P.O. Box 358835

50,001-125,000 population	\$1,350
125,001-400,000 population	\$2,000
400,001-1,000,000 population	\$2,750
>1,000,000 population	\$4,400

Pittsburgh, PA
15251-5835

2. AM Class B

<=20,000 population	\$325
20,001-50,000 population	\$650
50,001-125,000 population	\$875
125,001-400,000 population	\$1,400
400,001-1,000,000 population	\$2,250
>1,000,000 population	\$3,600

3. AM Class C

<=20,000 population	\$225
20,001-50,000 population	\$325
50,001-125,000 population	\$450
125,001-400,000 population	\$675
400,001-1,000,000 population	\$1,250
>1,000,000 population	\$1,750

4. AM Class D

<=20,000 population	\$275
20,001-50,000 population	\$450
50,001-125,000 population	\$675
125,001-400,000 population	\$825
400,001-1,000,000 population	\$1,500
>1,000,000 population	\$2,250

5. AM Construction Permit \$260

6. FM Classes A, B1 and C3

<=20,000 population	\$325
20,001-50,000 population	\$650
50,001-125,000 population	\$875
125,001-400,000 population	\$1,400
400,001-1,000,000 population	\$2,250
>1,000,000 population	\$3,600

7.	<u>FM Classes B, C, C1 and C2</u>	
	<=20,000 population	\$430
	20,001-50,000 population	\$825
	50,001-125,000 population	\$1,350
	125,001-400,000 population	\$2,000
	400,001-1,000,000 population	\$2,750
	>1,000,000 population	\$4,400
8.	FM Construction Permits	\$780

**TV (47 CFR, Part 73)
VHF Commercial**

1.	Markets 1 thru 10	\$41,225	FCC, TV Branch
2.	Markets 11 thru 25	\$34,325	P.O. Box 358835
3.	Markets 26 thru 50	\$23,475	Pittsburgh, PA
4.	Markets 51 thru 100	\$13,150	15251-5835
5.	Remaining Markets	\$ 3,400	
6.	Construction Permits	\$ 2,775	

UHF Commercial

1.	Markets 1 thru 10	\$15,550	FCC, UHF Commercial
2.	Markets 11 thru 25	\$11,775	P.O. Box 358835
3.	Markets 26 thru 50	\$ 7,300	Pittsburgh, PA
4.	Markets 51 thru 100	\$ 4,350	15251-5835
5.	Remaining Markets	\$ 1,175	
6.	Construction Permits	\$ 2,900	

Satellite UHF/VHF Commercial

1.	All Markets	\$1,300	FCC Satellite TV
2.	Construction Permits	\$ 460	P.O. Box 358835
			Pittsburgh, PA
			15251-5835

Low Power TV, TV/FM Translator, & TV/FM Booster (47 CFR, Part 74)	\$ 290	FCC, Low Power
		P.O. Box 358835
		Pittsburgh, PA
		15251-5835

Broadcast Auxiliary	\$ 12	FCC, Auxiliary
		P.O. Box 358835
		Pittsburgh, PA
		15251-5835

Multipoint Distribution	\$ 285	FCC, Multipoint
		P.O. Box 358835
		Pittsburgh, PA
		15251-5835

4. Sec. 1.1154 is revised to read as follows:

§ 1.1154 Schedule of annual regulatory charges and filing locations for common carrier services.

Radio Facilities	Fee Amount	Address
1. Microwave (Domestic Public Fixed)	\$13	FCC, Common Carrier P.O. Box 358130 Pittsburgh, PA 15251-5130

Carriers

1. Interstate Telephone Service Providers (per dollar contributed to TRS Fund)	\$.00121	FCC, Carriers P.O. Box 358835 Pittsburgh, PA
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5. Sec. 1.1155 is revised to read as follows:

§ 1.1155 Schedule of regulatory fees and filing locations for cable television services.

	Fee Amount	Address
1. Cable Antenna Relay Service	\$55	FCC, Cable
2. Cable TV System (per subscriber)	\$.48	P.O. Box 358835 Pittsburgh, PA 15251-5835

6. Section 1.1156 is revised to read as follows:

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

Radio Facilities	Fee Amount	Address
1. International (HF) Broadcast	\$520	FCC, International P.O. Box 358835 Pittsburgh, PA 15251-5835
2. International Public Fixed	\$410	FCC, International P.O. Box 358835 Pittsburgh, PA 15251-5835

Space Stations (Geostationary Orbit)	\$130,550	FCC, Space Stations P.O. Box 358835 Pittsburgh, PA 15251-5835
Space Stations (Non-Geostationary Orbit)	\$180,800	FCC, Space Stations P.O. Box 358835 Pittsburgh, PA 15251-5835
Earth Stations Transmit/Receive & Transmit Only (per authorization or registration)	\$180	FCC, Earth Station P.O. Box 358835 Pittsburgh, PA 15251-5835
Carriers		
1. International Bearer Circuits (per active 64KB circuit or equivalent)	\$ 7.00	FCC, International P.O. Box 358835 Pittsburgh, PA 15251-5835

FINAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by the Regulatory Flexibility Act (RFA),⁵¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking, In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1999, 64 FR 16661 (Apr. 6, 1999). The Commission sought written public comments on the proposals in its FY 1999 regulatory fees NPRM, including on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA, as amended.

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

2. This rulemaking proceeding was initiated in order to collect regulatory fees in the amount of \$172,523,000, the amount that Congress has required the Commission to recover through the collection of regulatory fees in FY 1999. The Commission seeks to collect the necessary amount through its revised regulatory fees, as contained in the attached Schedule of Regulatory Fees, in the most efficient manner possible and without undue burden on the public.

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

3. None.

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

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁵² The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁵³ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁵⁴ A small business concern is one which: (1) is independently owned and

⁵¹ 5 U.S.C. 603. The RFA, 5 U.S.C. 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

⁵² 5 U.S.C. 603(b)(3).

⁵³ *Id.* 601(6).

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

operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁵⁵ A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."⁵⁶ Nationwide, as of 1992, there were approximately 275,801 small organizations.⁵⁷ "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."⁵⁸ As of 1992, there were approximately 85,006 such jurisdictions in the United States.⁵⁹ This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.⁶⁰ The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the rules, herein adopted.

CABLE SERVICES OR SYSTEMS

5. The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating \$11 million or less in revenue annually.⁶¹ This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,788 total cable and other pay television services and 1,423 had less than \$11 million in revenue.⁶²

6. The Commission has developed its own definition of a small cable system operator for purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide.⁶³ Based on our most recent information, we

⁵⁵ Small Business Act, 15 U.S.C. 632 (1996).

⁵⁶ 5 U.S.C. 601(4).

⁵⁷ 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

⁵⁸ 5 U.S.C. 601(5).

⁵⁹ U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

⁶⁰ Id.

⁶¹ 13 CFR 121.201, SIC code 4841.

⁶² 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D, SIC code 4841 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

⁶³ 47 CFR 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of \$100 million or less. Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393 (1995), 60 FR 10534 (Feb. 27, 1995).

estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995.⁶⁴ Since then, some of those companies may have grown, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators.

7. The Communications Act also contains a definition of a small cable system operator, 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."⁶⁵ The Commission has determined that there are 64,000,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate.⁶⁶ Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1,450.⁶⁷ We do not request nor do we collect information concerning whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000,⁶⁸ and thus are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act. It should be further noted that recent industry estimates project that there will be a total 64,000,000 subscribers, and we have based our fee revenue estimates on that figure.

8. **Other Pay Services.** Other pay television services are also classified under Standard Industrial Classification (SIC) 4841, which includes cable systems operators, closed circuit television services, direct broadcast satellite services (DBS),⁶⁹ multipoint distribution systems (MDS),⁷⁰ satellite master antenna systems (SMATV), and subscription television services.

COMMON CARRIER SERVICES AND RELATED ENTITIES

9. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears

⁶⁴ Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

⁶⁵ 47 U.S.C. 543(m)(2).

⁶⁶ Id. 76.1403(b).

⁶⁷ Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

⁶⁸ We do receive such information on a case-by-case basis only 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 76.1403(b) of the Commission's rules. See 47 CFR 76.1403(d).

⁶⁹ Direct Broadcast Services (DBS) are discussed with the international services, infra.

⁷⁰ Multipoint Distribution Services (MDS) are discussed with the mass media services, infra.

to be data the Commission publishes in its Trends in Telephone Service report.⁷¹ According to data in the most recent report, there are 3,528 interstate carriers.⁷² These carriers include, inter alia, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

10. The SBA has defined establishments engaged in providing "Radiotelephone Communications" and "Telephone Communications, Except Radiotelephone" to be small businesses when they have no more than 1,500 employees.⁷³ Below, we discuss the total estimated number of telephone companies falling within the two categories and the number of small businesses in each, and we then attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

11. Although some affected incumbent local exchange carriers (ILECs) may have 1,500 or fewer employees, we do not believe that such entities should be considered small entities within the meaning of the RFA because they are either dominant in their field of operations or are not independently owned and operated, and therefore by definition not "small entities" or "small business concerns" under the RFA. Accordingly, our use of the terms "small entities" and "small businesses" does not encompass small ILECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will separately consider small ILECs within this analysis and use the term "small ILECs" to refer to any ILECs that arguably might be defined by the SBA as "small business concerns."⁷⁴

12. **Total Number of Telephone Companies Affected.** The U.S. Bureau of the Census ("Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.⁷⁵ This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, covered specialized mobile radio providers, and resellers. It seems certain that some of these 3,497 telephone service firms may not qualify as small entities or small ILECs because they are not "independently owned and operated."⁷⁶ For example, a reseller that is

⁷¹ FCC, Common Carrier Bureau, Industry Analysis Division, Trends in Telephone Service, Table 19.3 (February 19, 1999).

⁷² Id.

⁷³ 13 CFR 121.201, Standard Industrial Classification (SIC) codes 4812 and 4813. See also Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987).

⁷⁴ 13 CFR 121.201, SIC code 4813. Since the time of the Commission's 1996 decision, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499, 16144-45 (1996), 61 FR 45476 (Aug. 29, 1996), the Commission has consistently addressed in its regulatory flexibility analyses the impact of its rules on such ILECs.

⁷⁵ U.S. Department of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size, at Firm Size 1-123 (1995) (1992 Census).

⁷⁶ See generally 15 U.S.C. 632(a)(1).

affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It is reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small ILECs that may be affected by the rules, herein adopted.

13. Wireline Carriers and Service Providers. The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992.⁷⁷ According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons.⁷⁸ All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small ILECs. We do not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 2,295 small telephone communications companies other than radiotelephone companies are small entities or small ILECs that may be affected by the rules, herein adopted.

14. Local Exchange Carriers. Neither the Commission nor the SBA has developed a definition for small providers of local exchange services (LECs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.⁷⁹ According to the most recent Telecommunications Industry Revenue data, 1,410 carriers reported that they were engaged in the provision of local exchange services.⁸⁰ We do not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 1,410 providers of local exchange service are small entities or small ILECs that may be affected by the rules, herein adopted.

15. Interexchange Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for telephone communications companies other than

⁷⁷ 1992 Census, supra, at Firm Size 1-123.

⁷⁸ 13 CFR 121.201, SIC code 4813.

⁷⁹ Id.

⁸⁰ Trends in Telephone Service, Table 19.3 (February 19, 1999).

radiotelephone (wireless) companies.⁸¹ According to the most recent Trends in Telephone Service data, 151 carriers reported that they were engaged in the provision of interexchange services.⁸² We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 151 small entity IXCs that may be affected by the rules, herein adopted.

16. Competitive Access Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is for telephone communications companies other than except radiotelephone (wireless) companies.⁸³ According to the most recent Trends in Telephone Service data, 147 carriers reported that they were engaged in the provision of competitive local exchange services.⁸⁴ We do not have data specifying the number of these carriers that are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 147 small entity CAPs that may be affected by the rules, herein adopted.

17. Operator Service Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.⁸⁵ According to the most recent Trends in Telephone Service data, 32 carriers reported that they were engaged in the provision of operator services.⁸⁶ We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 32 small entity operator service providers that may be affected by the rules, herein adopted.

18. Pay Telephone Operators. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable

⁸¹ 13 CFR 121.201, SIC code 4813.

⁸² Trends in Telephone Service, Table 19.3 (February 19, 1999).

⁸³ 13 CFR 121.201, SIC code 4813.

⁸⁴ Trends in Telephone Service, Table 19.3 (February 19, 1999).

⁸⁵ 13 CFR 121.201, SIC code 4813.

⁸⁶ Trends in Telephone Service, Table 19.3 (February 19, 1999).

definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.⁸⁷ According to the most recent Trends in Telephone Service data, 509 carriers reported that they were engaged in the provision of pay telephone services.⁸⁸ We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 509 small entity pay telephone operators that may be affected by the rules, herein adopted.

19. Resellers (including debit card providers). Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company other than radiotelephone (wireless) companies.⁸⁹ According to the most recent Trends in Telephone Service data, 358 reported that they were engaged in the resale of telephone service.⁹⁰ We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 358 small entity resellers that may be affected by the rules, herein adopted.

20. 800 and 800-Like Service Subscribers.⁹¹ Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to 800 and 800-like service ("toll free") subscribers. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, and 877 numbers in use.⁹² According to our most recent data, at the end of January 1999, the number of 800 numbers assigned was 7,692,955; the number of 888 numbers that had been assigned was 7,706,393; and the number of 877 numbers assigned was 1,946,538. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 7,692,955 small entity 800 subscribers, fewer than 7,706,393 small entity 888 subscribers, and fewer than 1,946,538 small entity 877 subscribers may be affected by the rules, herein adopted.

⁸⁷ 13 CFR 121.201, SIC code 4813.

⁸⁸ Trends in Telephone Service, Table 19.3 (February 19, 1999).

⁸⁹ 13 CFR 121.201, SIC code 4813.

⁹⁰ Trends in Telephone Service, Table 19.3 (February 19, 1999).

⁹¹ We include all toll-free number subscribers in this category, including 888 numbers.

⁹² FCC, CCB Industry Analysis Division, FCC Releases, Study on Telephone Trends, Tbls. 21.2, 21.3 and 21.4 (February 19, 1999).

INTERNATIONAL SERVICES

21. The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC).⁹³ This definition provides that a small entity is expressed as one with \$11.0 million or less in annual receipts.⁹⁴ According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than \$9.999 million.⁹⁵ The Census report does not provide more precise data.

22. International Broadcast Stations. Commission records show that there are 20 international broadcast station licensees. We do not request nor collect annual revenue information, and thus are unable to estimate the number of international broadcast licensees that would constitute a small business under the SBA definition. However, the Commission estimates that only six international broadcast stations are subject to regulatory fee payments.

23. International Public Fixed Radio (Public and Control Stations).

There are 3 licensees in this service subject to payment of regulatory fees. We do not request nor collect annual revenue information, and thus are unable to estimate the number of international broadcast licensees that would constitute a small business under the SBA definition.

24. Fixed Satellite Transmit/Receive Earth Stations. Based on actual payments from FY 1998, there are approximately 3,100 earth station authorizations, a portion of which are Fixed Satellite Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and thus are unable to estimate the number of the earth stations that would constitute a small business under the SBA definition.

25. Fixed Satellite Small Transmit/Receive Earth Stations. There are 3,100 earth station authorizations, a portion of which are Fixed Satellite Small Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and thus are unable to estimate the number of fixed satellite transmit/receive earth stations that would constitute a small business under the SBA definition.

26. Fixed Satellite Very Small Aperture Terminal (VSAT) Systems. These stations operate on a primary basis, and frequency coordination with terrestrial microwave systems is not required. Thus, a single "blanket" application may be filed for a specified number of small antennas and one or more hub stations. The Commission has processed 377 applications. We do not request nor collect annual

⁹³ An exception is the Direct Broadcast Satellite (DBS) Service, *infra*.

⁹⁴ 13 CFR 120.121, SIC code 4899.

⁹⁵ 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D, SIC code 4899 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

revenue information, and thus are unable to estimate the number of VSAT systems that would constitute a small business under the SBA definition.

27. **Mobile Satellite Earth Stations.** There are 11 licensees. We do not request nor collect annual revenue information, and thus are unable to estimate the number of mobile satellite earth stations that would constitute a small business under the SBA definition.

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

29. **Space Stations (Geostationary).** Commission records reveal that there are 43 Geostationary Space Station licensees. We do not request nor collect annual revenue information, and thus are unable to estimate the number of geostationary space stations that would constitute a small business under the SBA definition.

30. **Space Stations (Non-Geostationary).** There are 12 Non-Geostationary Space Station licensees, of which only two systems are operational. We do not request nor collect annual revenue information, and thus are unable to estimate the number of non-geostationary space stations that would constitute a small business under the SBA definition.

31. **Direct Broadcast Satellites.** Because DBS provides subscription services, DBS falls within the SBA-recognized definition of "Cable and Other Pay Television Services."⁹⁶ This definition provides that a small entity is one with \$11.0 million or less in annual receipts.⁹⁷ As of December 1996, there were eight DBS licensees. However, the Commission does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that would be impacted by these proposed rules. Although DBS service requires a great investment of capital for operation, there are several new entrants in this field that may not yet have generated \$11 million in annual receipts, and therefore may be categorized as small businesses, if independently owned and operated.

MASS MEDIA SERVICES

32. **Commercial Radio and Television Services.** The proposed rules and policies will apply to television broadcasting licensees and radio broadcasting licensees.⁹⁸ The SBA defines a television broadcasting station that has \$10.5 million or less in annual receipts as a small business.⁹⁹ Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.¹⁰⁰ Included in this industry are commercial, religious, educational, and other television stations.¹⁰¹ Also included are establishments primarily engaged in television broadcasting and which produce taped

⁹⁶ 13 CFR 120.121, SIC code 4841.

⁹⁷ 13 CFR 121.201, SIC code 4841.

⁹⁸ While we tentatively believe that the SBA's definition of "small business" greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small television and radio stations, for purposes of this Notice we utilize the SBA's definition in determining the number of small businesses to which the proposed rules would apply. We reserve the right to adopt, in the future, a more suitable definition of "small business" as applied to radio and television broadcast stations or other entities subject to the proposed rules in this Notice, and to consider further the issue of the number of small entities that are radio and television broadcasters or other small media entities. See Report and Order in MM Docket No. 93-48 (Children's Television Programming), 11 FCC Rcd 10660, 10737-38 (1996), 61 FR 43981 (Aug. 27, 1996), citing 5 U.S.C. 601(3).

⁹⁹ 13 CFR 121.201, SIC code 4833.

¹⁰⁰ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92-S-1, Appendix A-9 (1995) (1992 Census, Series UC92-S-1).

¹⁰¹ Id.; see Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987), at 283, which describes "Television Broadcasting Stations" (SIC code 4833) as:

Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

television program materials.¹⁰² Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.¹⁰³ There were 1,509 television stations operating in the nation in 1992.¹⁰⁴ That number has remained fairly constant as indicated by the approximately 1,564 operating television broadcasting stations in the nation as of December 31, 1997.¹⁰⁵ For 1992,¹⁰⁶ the number of television stations that produced less than \$10.0 million in revenue was 1,155 establishments.¹⁰⁷ Only commercial stations are subject to regulatory fees.

33. Additionally, the Small Business Administration defines a radio broadcasting station that has \$5 million or less in annual receipts as a small business.¹⁰⁸ A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.¹⁰⁹ Included in this industry are commercial, religious, educational, and other radio stations.¹¹⁰ Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included.¹¹¹ However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number.¹¹² The 1992 Census indicates that 96 percent (5,861 of 6,127) radio station establishments produced less than \$5 million in revenue in 1992.¹¹³ Official Commission records

¹⁰² 1992 Census, Series UC92-S-1, at Appendix A-9.

¹⁰³ Id., SIC code 7812 (Motion Picture and Video Tape Production); SIC code 7922 (Theatrical Producers and Miscellaneous Theatrical Services) (producers of live radio and television programs).

¹⁰⁴ FCC News Release No. 31327 (Jan. 13, 1993); 1992 Census, Series UC92-S-1, at Appendix A-9.

¹⁰⁵ FCC News Release, "Broadcast Station Totals as of Dec. 31, 1997."

¹⁰⁶ A census to determine the estimated number of Communications establishments is performed every five years, in years ending with a "2" or "7." *See* 1992 Census, Series UC92-S-1, at III.

¹⁰⁷ The amount of \$10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at \$9,999,999 and began at \$10,000,000. No category for \$10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

¹⁰⁸ 13 CFR 121.201, SIC code 4832.

¹⁰⁹ 1992 Census, Series UC92-S-1, at Appendix A-9.

¹¹⁰ Id.

¹¹¹ Id.

¹¹² Id.

¹¹³ The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.

indicate that 11,334 individual radio stations were operating in 1992.¹¹⁴ As of December 31, 1997, Commission records indicate that 12,270 radio stations were operating, of which 7,465 were FM stations.¹¹⁵ Only commercial stations are subject to regulatory fees.

34. Thus, the rules may affect approximately 1,558 full power television stations, approximately 1,200 of which are considered small businesses.¹¹⁶ Additionally, the proposed rules will affect some 12,156 full power radio stations, approximately 11,670 of which are small businesses.¹¹⁷ These estimates may overstate the number of small entities because the revenue figures on which they are based do not include or aggregate revenues from non-television or non-radio affiliated companies. There are also 1,952 low power television stations (LPTV).¹¹⁸ Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA definition.

Alternative Classification of Small Stations

35. An alternative way to classify small radio and television stations is by number of employees. The Commission currently applies a standard based on the number of employees in administering its Equal Employment Opportunity Rule (EEO) for broadcasting.¹¹⁹ Thus, radio or television stations with fewer than five full-time employees are exempted from certain EEO reporting and record keeping requirements.¹²⁰ We estimate that the total number of broadcast stations with 4 or

¹¹⁴ FCC News Release, No. 31327 (Jan. 13, 1993).

¹¹⁵ FCC News Release, "Broadcast Station Totals as of December 31, 1997."

¹¹⁶ We use the 77 percent figure of TV stations operating at less than \$10 million for 1992 and apply it to the 1997 total of 1558 TV stations to arrive at 1,200 stations categorized as small businesses.

¹¹⁷ We use the 96% figure of radio station establishments with less than \$5 million revenue from the Census data and apply it to the 12,088 individual station count to arrive at 11,605 individual stations as small businesses.

¹¹⁸ FCC News Release, No. 7033 (Mar. 6, 1997).

¹¹⁹ The Commission's definition of a small broadcast station for purposes of applying its EEO rules was adopted prior to the requirement of approval by the SBA pursuant to section 3(a) of the Small Business Act, 15 U.S.C. 632(a), as amended by section 222 of the Small Business Credit and Business Opportunity Enhancement Act of 1992, Public Law 102-366, 222(b)(1), 106 Stat. 999 (1992), as further amended by the Small Business Administration Reauthorization and Amendments Act of 1994, Public Law 103-403, 301, 108 Stat. 4187 (1994). However, this definition was adopted after public notice and the opportunity for comment. See Report and Order in Docket No. 18244, 23 FCC 2d 430 (1970), 35 FR 8925 (Jun. 6, 1970).

¹²⁰ See, e.g., 47 CFR 73.3612 (Requirement to file annual employment reports on Form 395 applies to licensees with five or more full-time employees); First Report and Order in Docket No.21474 (Amendment of Broadcast Equal Employment Opportunity Rules and FCC Form 395), 70 FCC 2d 1466 (1979), 50 FR 50329 (Dec. 10, 1985). The Commission is currently considering how to decrease the administrative burdens imposed by the EEO rule on small stations while maintaining the effectiveness of our broadcast EEO enforcement. Order and Notice of Proposed Rule Making in MM Docket No. 96-16 (Streamlining Broadcast EEO Rule and Policies,

fewer employees is approximately 4,239.¹²¹

Auxiliary, Special Broadcast and other program distribution services

36. 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. Therefore, the applicable definitions of small entities are those, noted previously, under the SBA rules applicable to radio broadcasting stations and television broadcasting stations.¹²²

37. There are currently 2,720 FM translators and boosters, and 4,952 TV translators.¹²³ The FCC 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, however, that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most 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 (either \$5 million for a radio station or \$10.5 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a "small business concern" because they are not independently owned and operated.¹²⁴

38. **Multipoint Distribution Service (MDS).** This service involves a variety of transmitters, which are used to relay programming to the home or office, similar to that provided by cable television systems.¹²⁵ In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues for the three preceding years not in excess of \$40 million.¹²⁶ This definition of a small entity in the context of MDS auctions has been

Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines, 11 FCC Rcd 5154 (1996), 61 FR 9964 (Mar. 12, 1996). One option under consideration is whether to define a small station for purposes of affording such relief as one with ten or fewer full-time employees.

¹²¹ Compilation of 1994 Broadcast Station Annual Employment Reports (FCC Form B), Equal Opportunity Employment Branch, Mass Media Bureau, FCC.

¹²² 13 CFR 121.201, SIC code 4832.

¹²³ FCC News Release, Broadcast Station Totals as of December 31, 1996, No. 71831 (Jan. 21, 1997).

¹²⁴ 15 U.S.C. 632.

¹²⁵ For purposes of this item, MDS includes both the single channel Multipoint Distribution Service (MDS) and the Multichannel Multipoint Distribution Service (MMDS).

¹²⁶ 47 CFR 1.2110 (a)(1).

approved by the SBA.¹²⁷ These stations were licensed prior to implementation of Section 309(j) of the Communications Act of 1934, as amended.¹²⁸ Licenses for new MDS facilities are now awarded to auction winners in Basic Trading Areas (BTAs) and BTA-like areas.¹²⁹ The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 BTAs. Of the 67 auction winners, 61 meet the definition of a small business. There are 1,573 previously authorized and proposed MDS stations currently licensed. Thus, we conclude that there are 1,634 MDS providers that are small businesses as deemed by the SBA and the Commission's auction rules. It is estimated, however, that only 1,650 MDS licensees are subject to regulatory fees, and the number which are small businesses is unknown.

WIRELESS AND COMMERCIAL MOBILE SERVICES

39. Cellular Licensees. Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons.¹³⁰ According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.¹³¹ Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent Telecommunications Industry Revenue data, 732 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data.¹³² We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 732 small cellular service carriers that may be affected by the rules, herein adopted.

¹²⁷ 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, 10 FCC Rcd 9589 (1995), 60 FR 36524 (Jul. 17, 1995).

¹²⁸ 47 U.S.C. 309(j).

¹²⁹ Id. A Basic Trading Area (BTA) is the geographic area by which the Multipoint Distribution Service is licensed. See Rand McNally 1992 Commercial Atlas and Marketing Guide, 123rd Edition, pp. 36-39.

¹³⁰ 13 CFR 121.201, SIC code 4812.

¹³¹ 1992 Census, Series UC92-S-1, at Table 5, SIC code 4812.

¹³² Trends in Telephone Service, Table 19.3 (February 19, 1999).

40. 220 MHz Radio Service -- Phase I Licensees. The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.¹³³ According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.¹³⁴ Therefore, if this general ratio continues in 1999 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

41. 220 MHz Radio Service -- Phase II Licensees. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz Third Report and Order, we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.¹³⁵ We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, 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 \$3 million for the preceding three years.¹³⁶ The SBA has approved these definitions.¹³⁷ An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.¹³⁸ Nine hundred and eight (908) licenses were auctioned in 3 different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: one of the Nationwide licenses, 67% of the Regional licenses, and 54% of the EA licenses. As of January 22, 1999, the Commission

¹³³ 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) code 4812.

¹³⁴ U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, SIC code 4812 (issued May 1995).

¹³⁵ 220 MHz Third Report and Order, 12 FCC Rcd 10943, 11068-70, at paras. 291- 295 (1997).

¹³⁶ 220 MHz Third Report and Order, 12 FCC Rcd at 11068-69, para. 291.

¹³⁷ See Letter from A. Alvarez, Administrator, SBA, to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC (Jan. 6, 1998).

¹³⁸ See generally Public Notice, "220 MHz Service Auction Closes," Report No. WT 98-36 (Wireless Telecom. Bur. Oct. 23, 1998).

announced that it was prepared to grant 654 of the Phase II licenses won at auction.¹³⁹ A re-auction of the remaining, unsold licenses is likely to take place during calendar year 1999.

42. Private and Common Carrier Paging. The Commission has proposed a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. Under the proposal, a small business will be defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than \$3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than \$15 million. Because the SBA has not yet approved this definition for paging services, we will utilize the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.¹⁴⁰ At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to the most recent Telecommunications Industry Revenue data, 137 carriers reported that they were engaged in the provision of either paging or "other mobile" services, which are placed together in the data.¹⁴¹ We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 137 small paging carriers that may be affected by the proposed rules, if adopted. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

43. Mobile Service Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. As noted above in the section concerning paging service carriers, the closest applicable definition under the SBA rules is that for radiotelephone (wireless) companies,¹⁴² and the most recent Telecommunications Industry Revenue data shows that 23 carriers reported that they were engaged in the provision of SMR dispatching and "other mobile" services.¹⁴³ Consequently, we estimate that there are fewer than 23 small mobile service carriers that may be affected by the rules, herein adopted.

44. Broadband Personal Communications Service (PCS). The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions

¹³⁹ Public Notice, "FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made," Report No. AUC-18-H, DA No. 99-229 (Wireless Telecom. Bur. Jan. 22, 1999).

¹⁴⁰ 13 CFR 121.201, SIC code 4812.

¹⁴¹ Trends in Telephone Service, Table 19.3 (February 19, 1999).

¹⁴² 13 CFR 121.201, SIC code 4812.

¹⁴³ Trends in Telephone Service, Table 19.3 (February 19, 1999).

for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.¹⁴⁴ For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.¹⁴⁵ These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA.¹⁴⁶ No small businesses within the SBA-approved definition 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% of the 1,479 licenses for Blocks D, E, and F.¹⁴⁷ Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

45. Narrowband PCS. The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

¹⁴⁴ 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, FCC 96-278, WT Docket No. 96-59, paras. 57- 60 (released Jun. 24, 1996), 61 FR 33859 (Jul. 1, 1996); see also 47 CFR 24.720(b).

¹⁴⁵ 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, FCC 96-278, WT Docket No. 96-59, para. 60 (1996), 61 FR 33859 (Jul. 1, 1996).

¹⁴⁶ See, e.g., Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5532, 5581-84 (1994).

¹⁴⁷ FCC News, Broadband PCS, D, E and F Block Auction Closes, No. 71744 (released Jan. 14, 1997).

46. **Rural Radiotelephone Service.** The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.¹⁴⁸ A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).¹⁴⁹ We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.¹⁵⁰ There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

47. **Air-Ground Radiotelephone Service.** The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service.¹⁵¹ Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.¹⁵² There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

48. **Specialized Mobile Radio (SMR).** The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to firms that had revenues of no more than \$15 million in each of the three previous calendar years.¹⁵³ In the context of 900 MHz SMR, this regulation defining "small entity" has been approved by the SBA; approval concerning 800 MHz SMR is being sought.

49. The proposed fees in the NPRM apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. We assume, for purposes of this IRFA, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA.

50. For geographic area licenses in the 900 MHz SMR band, there are 60 who qualified as small entities. For the 800 MHz SMR's, 38 are small or very small entities.

51. **Private Land Mobile Radio (PLMR).** PLMR systems serve an essential role in a range of

¹⁴⁸ The service is defined in Section 22.99 of the Commission's Rules, 47 CFR 22.99.

¹⁴⁹ BETRS is defined in Sections 22.757 and 22.759 of the Commission's Rules, 47 CFR 22.757 and 22.759.

¹⁵⁰ 13 CFR 121.201, SIC code 4812.

¹⁵¹ The service is defined in Section 22.99 of the Commission's Rules, 47 CFR 22.99.

¹⁵² 13 CFR 121.201, SIC code 4812.

¹⁵³ 47 CFR 90.814(b)(1).

industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. The Commission has not developed a definition of small entity specifically applicable to PLMR licensees due to the vast array of PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area.

52. The Commission is unable at this time to estimate the number of small businesses which could be impacted by the rules. However, the Commission's 1994 Annual Report on PLMRs¹⁵⁴ 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. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the proposed rules in this context could potentially impact every small business in the United States.

53. **Amateur Radio Service.** We estimate that 6,800 applicants will apply for vanity call signs in FY 1999. All are presumed to be individuals. All other amateur licensees are exempt from payment of regulatory fees.

54. **Aviation and Marine Radio Service.** Small businesses in the aviation and marine radio services use a marine very high frequency (VHF) radio, any type of emergency position indicating radio beacon (EPIRB) and/or radar, a VHF aircraft radio, and/or any type of emergency locator transmitter (ELT). The Commission has not developed a definition of small entities specifically applicable to these small businesses. Therefore, the applicable definition of small entity is the definition under the SBA rules for radiotelephone communications.¹⁵⁵

55. 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. Therefore, for purposes of our evaluations and conclusions in this IRFA, we estimate that there may be at least 712,000 potential licensees which are individuals or are small entities, as that term is defined by the SBA. We estimate, however, that only 11,600 will be subject to FY 1999 regulatory fees.

¹⁵⁴ Federal Communications Commission, 60th Annual Report, Fiscal Year 1994, at 116.

¹⁵⁵ 13 CFR 121.201, SIC code 4812.

56. Fixed Microwave Services. Microwave services include common carrier,¹⁵⁶ private-operational fixed,¹⁵⁷ and broadcast auxiliary radio services.¹⁵⁸ 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 yet defined a small business with respect to microwave services. For purposes of this IRFA, we will utilize the SBA's definition applicable to radiotelephone companies -- *i.e.*, an entity with no more than 1,500 persons.¹⁵⁹ We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

57. Public Safety Radio Services. Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.¹⁶⁰ There are a total of approximately 127,540 licensees within these services. Governmental entities as well as private businesses comprise the licensees for these services. As indicated *supra* in paragraph four of this IRFA, all governmental entities with populations of less than 50,000 fall within the definition of a small entity.¹⁶¹ All licensees in this category are exempt from the payment of regulatory fees.

¹⁵⁶ 47 CFR 101 *et seq.* (formerly, part 21 of the Commission's Rules).

¹⁵⁷ 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.

¹⁵⁸ Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's Rules. *See* 47 CFR 74 *et seq.* 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 TV pickups, which relay signals from a remote location back to the studio.

¹⁵⁹ 13 CFR 121.201, SIC 4812.

¹⁶⁰ 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 26,608 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes 22,677 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 40,512 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are 7,325 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 9,480 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 1,460 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 19,478 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.

¹⁶¹ 5 U.S.C. 601(5).

58. **Personal Radio Services.** Personal radio services provide short-range, low power radio for personal communications, radio signalling, and business communications not provided for in other services. The services include the citizen's band (CB) radio service, general mobile radio service (GMRS), radio control radio service, and family radio service (FRS).¹⁶² Inasmuch as the CB, GMRS, and FRS licensees are individuals, no small business definition applies for these services. We are unable at this time to estimate the number of other licensees that would qualify as small under the SBA's definition; however, only GMRS licensees are subject to regulatory fees.

59. **Offshore Radiotelephone Service.** This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico.¹⁶³ At present, there are approximately 55 licensees in this service. We are unable at this time to estimate the number of licensees that would qualify as small under the SBA's definition for radiotelephone communications.

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

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

61. With certain exceptions, the Commission's Schedule of Regulatory Fees applies to all Commission licensees and regulatees. Most licensees will be required to count the number of licenses or call signs authorized, complete and submit an FCC Form 159 ("FCC Remittance Advice"), and pay a regulatory fee based on the number of licenses or call signs.¹⁶⁴ Interstate

¹⁶² Licensees in the Citizens Band (CB) Radio Service, General Mobile Radio Service (GMRS), Radio Control (R/C) Radio Service and Family Radio Service (FRS) are governed by Subpart D, Subpart A, Subpart C, and Subpart B, respectively, of part 95 of the Commission's Rules. 47 CFR 95.401 - 95.428; 95.1 - 95.181; 95.201 - 95.225; 47 CFR 95.191 - 95.194.

¹⁶³ This service is governed by subpart I of part 22 of the Commission's Rules. See 47 CFR 22.1001 - 22.1037.

¹⁶⁴ The following categories are exempt from the Commission's Schedule of Regulatory Fees: Amateur radio licensees (except applicants for vanity call signs) and operators in other non-licensed services (e.g., Personal Radio, part 15, ship and aircraft). Governments and non-profit (exempt under section 501(c) of the Internal Revenue Code) entities are exempt from payment of regulatory fees and need not submit payment. Non-commercial educational broadcast licensees are exempt from regulatory fees as are licensees of auxiliary broadcast

telephone service providers must compute their annual regulatory fee based on their adjusted gross interstate revenue using information they already supply to the Commission in compliance with the Telecommunications Relay Service (TRS) Fund, 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.

62. Each licensee must submit the FCC Form 159 to the Commission's lockbox bank after computing the number of units subject to the fee. As an option, licensees are permitted to file electronically or on computer diskette to minimize the burden of submitting multiple copies of the FCC Form 159. This latter, optional procedure may require additional technical skills. Applicants who pay small fees in advance supply fee information as part of their application or by attaching FCC Form 159, where applicable.

63. 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 fee of 25 percent in addition to the required fee.¹⁶⁵ Until payment is received, no new or pending applications will be processed, and existing authorizations may be subject to rescission.¹⁶⁶ Further, in accordance with the Debt Collection Improvement Act of 1996, federal agencies may bar a person or entity from obtaining a federal loan or loan insurance guarantee if that person or entity fails to pay a delinquent debt owed to any federal agency.¹⁶⁷ Thus, 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.¹⁶⁸

64. The Commission's rules currently provide for relief in exceptional circumstances. Persons or entities that believe they have been placed in the wrong regulatory fee category or are experiencing extraordinary and compelling financial hardship, upon a showing that such

services such as low power auxiliary stations, television auxiliary service stations, remote pickup stations and aural broadcast auxiliary stations where such licenses are used in conjunction with commonly owned non-commercial educational stations. Emergency Alert System licenses for auxiliary service facilities are also exempt as are instructional television fixed service licensees. Regulatory fees are automatically waived for the licensee of any translator station that: (1) is not licensed to, in whole or in part, and does not have common ownership with, the licensee of a commercial broadcast station; (2) does not derive income from advertising; and (3) is dependent on subscriptions or contributions from members of the community served for support. Receive only earth station permittees are exempt from payment of regulatory fees. A regulatee will be relieved of its fee payment requirement if its total fee due, including all categories of fees for which payment is due by the entity, amounts to less than \$10.

¹⁶⁵ 47 U.S.C. 1.1164(a).

¹⁶⁶ 47 U.S.C. 1.1164(c).

¹⁶⁷ Public Law 104-134, 110 Stat. 1321 (1996).

¹⁶⁸ 31 U.S.C. 7701(c)(2)(B).

circumstances override the public interest in reimbursing the Commission for its regulatory costs, may request a waiver, reduction or deferment of payment of the regulatory fee.¹⁶⁹ 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 accept a petition to defer payment along with a waiver or reduction request.

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

65. The Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY 1999, Public Law 105-277 requires the Commission to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress, pursuant to Section 9(a) of the Communications Act, as amended, has required the Commission to collect for Fiscal Year (FY) 1999.¹⁷⁰ We have sought comment on the proposed methodology for implementing these statutory requirements and any other potential impact of these proposals on small business entities.

66. With the use of actual cost accounting data for computation of regulatory fees, we found that some fees which were very small in previous years would have increased dramatically. The methodology we are adopting in this Report and Order minimizes this impact by limiting the amount of increase and shifting costs to other services which, for the most part, are larger entities.

67. Several categories of licensees and regulatees are exempt from payment of regulatory fees. See, e.g., footnote 164, supra, and Attachment F of the Report and Order, infra.

Report to Small Business Administration: The Commission will send a copy of this Report and Order, including a copy of the initial certification, to the Chief Counsel for Advocacy of the Small Business Administration. The certification will also be published in the Federal Register pursuant to 5 U.S.C. 605(b).

Report to Congress: The Commission shall include a copy of this Final Regulatory Flexibility Analysis, along with this Report and Order, including a copy of the final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). A copy of this FRFA (or summary thereof) will also be published in the Federal Register, along with this Report and Order.

¹⁶⁹ 47 U.S.C. 1.1166.

¹⁷⁰ 47 U.S.C.159(a).

Attachment B

SOURCES OF PAYMENT UNIT ESTIMATES FOR FY 1999

In order to calculate individual service fees for FY 1999, we adjusted FY 1998 payment units for each service to more accurately reflect expected FY 1999 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections when available. We tried to obtain verification for these estimates from multiple sources and, in all cases, we compared FY 1999 estimates with actual FY 1998 payment units to ensure that our revised estimates were reasonable. Where it made sense, 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 1999 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical or other reasons. Therefore, when we note, for example, that our estimated FY 1999 payment units are based on FY 1998 actual payment units, it does not necessarily mean that our FY 1999 projection is exactly the same number as FY 1998. It means that we have either rounded the FY 1999 number or adjusted it slightly to account for these variables.

FEE CATEGORY	SOURCES OF PAYMENT UNIT ESTIMATES
Land Mobile (All), Microwave, IVDS (now 218-219 MHz Serv.) ¹⁷¹ , Marine (Ship & Coast), Aviation (Aircraft & Ground), GMRS, Amateur Vanity Call Signs, Domestic Public Fixed	Based on Wireless Telecommunications Bureau (WTB) projections of new applications and renewals taking into consideration existing Commission licensee data bases. Aviation (Aircraft) and Marine (Ship) estimates have been adjusted to take into consideration the licensing of portions of these services on a voluntary basis.
CMRS Mobile Services	Based on actual FY 1998 payment units adjusted to take into consideration industry estimates of growth between FY 1998 and FY 1999 and Wireless Telecommunications Bureau projections of new applications and average number of mobile units associated with each application.
CMRS Messaging Services	Based on industry estimates of the number of units in operation.
AM/FM Radio Stations	Based on actual FY 1998 payment units.
UHF/VHF Television Stations	Based on actual FY 1998 payment units.
AM/FM/TV Construction Permits	Based on actual FY 1998 payment units.
LPTV, Translators and Boosters	Based on actual FY 1998 payment units.
Auxiliaries	Based on actual FY 1998 payment units.
MDS/MMDS	Based on actual FY 1998 payment units.
Cable Antenna Relay Service (CARS)	Based on actual FY 1998 payment units.
Cable Television System Subscribers	Based on Cable Services Bureau and industry estimates of subscribership.
Interstate Telephone Service Providers	Based on actual FY 1998 interstate revenues associated with contributions to the Telecommunications Relay System (TRS) Fund, adjusted to take into consideration FY 1999 revenue growth in this industry as estimated by the Common Carrier Bureau.
Earth Stations	Based on actual FY 1998 payment units.
Space Stations (GSOs & NGSOs)	Based on International Bureau licensee data bases.
International Bearer Circuits	Based on International Bureau estimate.
International HF Broadcast Stations, International Public Fixed Radio Service	Based on actual FY 1998 payment units.

¹⁷¹ After the NPRM was issued in this proceeding, the Wireless Telecommunications Bureau's staff advised that they anticipate receiving 513 renewal applications for IVDS in FY 1999. Therefore, there will be a regulatory fee in the 218-219 MHz Service (previously IVDS) category for FY 1999.

Attachment CCALCULATION OF REVENUE REQUIREMENTS AND PRO-RATA FEES

Fee Category	FY 1999 Payment Units	(times) FY 1998 Fee	(times) Payment Years	(equals) Computed FY 1999 Revenue Requirement	Pro-Rated Revenue Requirement*	Rounded New FY 1999 Regulatory Fee	Expected FY 1999 Revenue
LM (220 MHz, >470 MHz-Base, SMRS)	5,800	12	5	348,000	381,799	13	377,000
Private Microwave	5,375	12	10	645,000	707,645	13	698,750
Domestic Public Fixed/Comc'l Microwave	1,000	12	10	120,000	131,655	13	130,000
218-219 MHz Service	513	(12 assumed)	5	30,780	33,769	13	33,345
Marine (Ship)	7,100	6	10	426,000	467,375	7	497,000
GMRS/Other LM	68,700	6	5	2,061,000	2,261,172	7	2,404,500
Aviation (Aircraft)	4,500	6	10	270,000	296,223	7	315,000
Marine (Coast)	1,400	6	5	42,000	46,079	7	49,000
Aviation (Ground)	1,600	6	5	48,000	52,662	7	56,000
Amateur Vanity Call Signs	6,800	6	10	88,400	96,986	1.43	96,732
AM/FM Radio	8,905	1,370	1	12,195,735	13,380,229	1,500	13,381,900
AM Construction Permits	75	235	1	17,625	19,337	260	19,500
FM Construction Permits	300	1,150	1	345,000	378,508	1,250	375,000
Satellite TV	109	1,175	1	128,075	140,514	1,300	141,700
Satellite TV Construction Permit	6	420	1	2,520	2,765	460	2,760
VHF Markets 1-10	42	37,575	1	1,578,150	1,731,426	41,225	1,731,450
VHF Markets 11-25	60	31,275	1	1,876,500	2,058,752	34,325	2,059,500
VHF Markets 26-50	70	21,400	1	1,498,000	1,643,491	23,475	1,643,250
VHF Markets 51-100	119	11,975	1	1,425,025	1,563,429	13,150	1,564,850
VHF Remaining Markets	205	3,100	1	635,500	697,222	3,400	697,000
VHF Construction Permits	15	2,525	1	37,875	41,554	2,775	41,625
UHF Markets 1-10	68	14,175	1	963,900	1,057,517	15,550	1,057,400
UHF Markets 11-25	67	10,725	1	718,575	788,366	11,775	788,925
UHF Markets 26-50	100	6,650	1	665,000	729,587	7,300	730,000
UHF Markets 51-100	150	3,975	1	596,250	654,160	4,350	652,500
UHF Remaining Markets	180	1,075	1	193,500	212,293	1,175	211,500
UHF Construction Permits	60	2,650	1	159,000	174,443	2,900	174,000
Auxiliaries	22,000	11	1	242,000	265,504	12	264,000
International HF Broadcast	5	475	1	2,375	2,606	520	2,600
LPTV/Translators/Boosters	2,020	265	1	535,300	587,290	290	585,800
CARS	1,687	50	1	84,350	92,542	55	92,785
Cable Systems	64,000,000	0.44	1	28,160,000	30,895,000	0.48	30,895,000
Interstate Telephone Service Providers	67,732,300,000	0.0011	1	74,505,530	81,741,773	0.00121	81,741,773
CMRS Mobile Services	55,540,000	0.29	1	16,106,600	17,670,931	0.32	17,670,931
CMRS Messaging Services	34,500,000	0.04	1	1,380,000	1,514,031	0.04	1,514,031
MDS/MMDS	1,650	260	1	429,000	470,666	285	470,250
International Circuits	465,000	6	1	2,790,000	3,060,975	7	3,255,000
International Public Fixed	3	375	1	1,125	1,234	410	1,230
Earth Stations	3,100	165	1	511,500	561,179	180	558,000
Space Stations (Geostationary)	42.5	119,000	1	5,057,500	5,548,702	130,550	5,548,375
Space Stations (Non-geostationary)	2	164,800	1	329,600	361,612	180,800	361,600
***** Total Estimated Revenue Collected				157,250,290	172,523,000		172,894,779
***** Total Revenue Requirement				172,523,000	172,523,000		172,523,000
Difference				(15,272,710)	0		371,779

* 1.097123573 factor applied

FY 1999 SCHEDULE OF REGULATORY FEES

Fee Category	Annual Regulatory Fee (U.S. \$'s)
PMRS (per license) (Formerly Land Mobile - Exclusive Use at 220-222 MHz, above 470 MHz, Base Station and SMRS) (47 CFR part 90)	13
Microwave (per license) (47 CFR part 101)	13
218-219 MHz Service (per license) (47 CFR part 95)	13
Marine (Ship) (per station) (47 CFR part 80)	7
Marine (Coast) (per license) (47 CFR part 80)	7
General Mobile Radio Service (per license) (47 CFR part 95)	7
Land Mobile (per license) (all stations not covered by PMRS and CMRS)	7
Aviation (Aircraft) (per station) (47 CFR part 87)	7
Aviation (Ground) (per license) (47 CFR part 87)	7
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.40
CMRS Mobile Services (per unit) (47 CFR parts 20, 22, 24, 80 and 90)	.32
CMRS Messaging Services (per unit) (47 CFR parts 20, 22 and 90)	.04
Multipoint Distribution Services (per call sign) (47 CFR part 21)	285
AM Radio Construction Permits	260
FM Radio Construction Permits	780
TV (47 CFR part 73) VHF Commercial	
Markets 1-10	41,225
Markets 11-25	34,325
Markets 26-50	23,475
Markets 51-100	13,150
Remaining Markets	3,400
Construction Permits	2,775
TV (47 CFR part 73) UHF Commercial	
Markets 1-10	15,550
Markets 11-25	11,775

Fee Category	Annual Regulatory Fee (U.S. \$'s)
Markets 26-50	7,300
Markets 51-100	4,350
Remaining Markets	1,175
Construction Permits	2,900
Satellite Television Stations (All Markets)	1,300
Construction Permits - Satellite Television Stations	460
Low Power TV, TV/FM Translators & Boosters (47 CFR part 74)	290
Broadcast Auxiliary (47 CFR part 74)	12
Cable Antenna Relay Service (47 CFR part 78)	55
Cable Television Systems (per subscriber) (47 CFR part 76)	.48
Interstate Telephone Service Providers (per revenue dollar)	.00121
Earth Stations (47 CFR part 25)	180
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)	130,550
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	180,800
International Bearer Circuits (per active 64KB circuit)	7
International Public Fixed (per call sign) (47 CFR part 23)	410
International (HF) Broadcast (47 CFR part 73)	520

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, C1 & C2
< = 20,000	430	325	225	275	325	430
20,001 - 50,000	825	650	325	450	650	825
50,001 - 125,000	1,350	875	450	675	875	1,350
125,001 - 400,000	2,000	1,400	675	825	1,400	2,000
400,001 - 1,000,000	2,750	2,250	1,250	1,500	2,250	2,750

> 1,000,000	4,400	3,600	1,750	2,250	3,600	4,400
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**COMPARISON BETWEEN FY 1998, FY 1999 PROPOSED
& FY 1999 FINAL REGULATORY FEES**

Fee Category	Annual Regulatory Fee FY 1998	NPRM Proposed Fee FY 1999	Annual Regulatory Fee FY 1999
PMRS (per license) (Formerly Land Mobile-Exclusive Use at 220-222 Mhz, above 470 Mhz, Base Station and SMRS) (47 CFR part 90)	12	13	13
Microwave (per license) (47 CFR part 101)	12	13	13
218-219 MHz Service (per license) (47 CFR part 95)	No Fee	No Fee	13
Marine (Ship) (per station) (47 CFR part 80)	6	7	7
Marine (Coast) (per license) (47 CFR part 80)	6	7	7
General Mobile Radio Service (per license) (47 CFR part 95)	6	7	7
Land Mobile (per license) (all stations not covered by PMRS and CMRS)	6	7	7
Aviation (Aircraft) (per station) (47 CFR part 87)	6	7	7
Aviation (Ground) (per license) (47 CFR part 87)	6	7	7
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.30	1.42	1.40
CMRS Mobile Services (per unit) (47 CFR parts 20, 22, 24, 80 and 90)	.29	.32	.32
CMRS Messaging Services [formerly One Way Paging] (per unit) (47 CFR parts 20, 22, and 90)	.04	.04	.04
Multipoint Distribution Services (per call sign) (47 CFR part 21)	260	285	285
AM Construction Permits	235	255	260
FM Construction Permits	1,150	1,250	780
TV (47 CFR part 73) VHF Commercial			
Markets 1-10	37,575	41,125	41,225
Markets 11-25	31,275	34,225	34,325
Markets 26-50	21,400	23,425	23,475
Markets 51-100	11,975	13,100	13,150
Remaining Markets	3,100	3,400	3,400
Construction Permits	2,525	2,775	2,775
TV (47 CFR part 73) UHF Commercial			
Markets 1-10	14,175	15,500	15,550
Markets 11-25	10,725	11,725	11,775

Markets 26-50	6,650	7,275	7,300
Markets 51-100	3,975	4,350	4,350
Remaining Markets	1,075	1,175	1,175
Construction Permits	2,650	2,900	2,900
Satellite Television Stations (All Markets)	1,175	1,275	1,300
Construction Permits - Satellite Television Stations	420	460	460
Low Power TV, TV/FM Translators & Boosters (47 CFR part 74)	265	290	290
Broadcast Auxiliary (47 CFR part 74)	11	12	12
Cable Antenna Relay Service (47 CFR part 78)	50	55	55
Earth Stations (47 CFR part 25)	165	180	180
Cable Television Systems (per subscriber) (47 CFR part 76)	.44	.48	.48
Interstate Telephone Service Providers (per revenue dollar)	.0011	.0012	.00121
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)	119,000	130,225	130,550
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	164,800	180,325	180,800
International Bearer Circuits (per active 64KB circuit)	6	7	7
International Public Fixed (per call sign) (47 CFR part 23)	375	410	410
International (HF) Broadcast (47 CFR part 73)	475	520	520

FY 1998 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, C1 & C2
< = 20,000	400	300	200	250	300	400
20,001 - 50,000	750	600	300	400	600	750
50,001 - 125,000	1,250	800	400	600	800	1,250
125,001 - 400,000	1,750	1,250	600	750	1,250	1,750
400,001 - 1,000,000	2,500	2,000	1,000	1,250	2,000	2,500
> 1,000,000	4,000	3,250	1,500	2,000	3,250	4,000

FY 1999 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, C1 & C2
< = 20,000	430	325	225	275	325	430
20,001 - 50,000	825	650	325	450	650	825
50,001 - 125,000	1,350	875	450	675	875	1,350
125,001 - 400,000	2,000	1,400	675	825	1,400	2,000
400,001 - 1,000,000	2,750	2,250	1,250	1,500	2,250	2,750
> 1,000,000	4,400	3,600	1,750	2,250	3,600	4,400

DETAILED GUIDANCE ON WHO MUST PAY REGULATORY FEES

1. The guidelines below provide an explanation of regulatory fee categories established by the Schedule of Regulatory Fees in section 9 (g) of the Communications Act,¹⁷² as modified in the instant Report and Order. Where regulatory fee categories need interpretation or clarification, we have relied on the legislative history of section 9, and our own experience in establishing and regulating the Schedule of Regulatory Fees for Fiscal Years (FY) 1994, 1995, 1996, 1997, and 1998 and the services subject to the fee schedule. The categories and amounts set out in the schedule have been modified to reflect changes in the number of payment units, additions and changes in the services subject to the fee requirement and the benefits derived from the Commission's regulatory activities, and to simplify the structure of the schedule. The schedule may be similarly modified or adjusted in future years to reflect changes in the Commission's budget and in the services regulated by the Commission.¹⁷³

2. Exemptions. Governments and nonprofit entities are exempt from paying regulatory fees and should not submit payment. A nonprofit entity may be asked to submit a current IRS Determination Letter documenting that it is exempt from taxes under section 501 of the Internal Revenue Code or the certification of a governmental authority attesting to its nonprofit status. The governmental exemption applies even where the government-owned or community-owned facility is in competition with a commercial operation. Other specific exemptions are discussed below in the descriptions of other particular service categories.

1. Private Wireless Radio Services

3. Two levels of statutory fees were established for the Private Wireless Radio Services -- exclusive use services and shared use services. Thus, licensees who generally receive a higher quality communication channel due to exclusive or lightly shared frequency assignments will pay a higher fee than those who share marginal quality assignments. This dichotomy is consistent with the directive of section 9, that the regulatory fees reflect the benefits provided to the licensees.¹⁷⁴ In addition, because of the generally small amount of the fees assessed against Private Wireless Radio Service licensees, applicants for new licenses and reinstatements and for renewal of existing licenses are required to pay a regulatory fee covering the entire license term, with only a percentage of all licensees paying a regulatory fee in any one year. Applications for modification or assignment of existing authorizations do not require the payment of regulatory fees. The expiration date of those authorizations will reflect only the unexpired term of the underlying license rather than a new license term.

¹⁷² 47 U.S.C. 159(g)

¹⁷³ 47 U.S.C. 159(b)(2), (3).

¹⁷⁴ 47 U.S.C. 159(b)(1)(A).

a. Exclusive Use Services

4. Private Mobile Radio Services (PMRS): Regulatees in this category include those authorized under part 90 of the Commission's Rules to provide limited access Wireless Radio service that allows high quality voice or digital communications between vehicles or to fixed stations to further the business activities of the licensee. These services, using the 220-222 MHz band and frequencies at 470 MHz and above, may be offered on a private carrier basis in the Specialized Mobile Radio Services (SMRS).¹⁷⁵ For FY 1999, PMRS licensees will pay a \$13 annual regulatory fee per license, payable for an entire five or ten year license term at the time of application for a new, renewal, or reinstatement license.¹⁷⁶ The total regulatory fee due is either \$65 for a license with a five year term or \$130 for a license with a 10 year term.

5. Microwave Services: These services include private and commercial microwave systems and private and commercial carrier systems authorized under part 101 of the Commission's Rules to provide telecommunications services between fixed points on a high quality channel of communications. Microwave systems are often used to relay data and to control railroad, pipeline, and utility equipment. Commercial systems typically are used for video or data transmission or distribution. For FY 1999, Microwave licensees will pay a \$13 annual regulatory fee per license, payable for an entire ten year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is \$130 for the ten year license term.

6. Interactive Video Data Service (now 218-219 MHz Service): The 218-219 MHz Service is a two-way, point-to-multi-point radio service allocated high quality channels of communications and authorized under part 95 of the Commission's Rules. The 218-219 MHz Service provides information, products, and services, and also the capability to obtain responses from subscribers in a specific service area. The 218-219 MHz Service is offered on a private carrier basis. The Commission anticipates receiving 513 renewal applications for the 218-219 MHz Service during FY 1999. Therefore, for FY 1999, the regulatory fee for 218-219 MHz Service licensees will be \$13 per renewal, payable for an entire five year term. The total regulatory fee due is \$65 for the five year license term.

b. Shared Use Services

7. Marine (Ship) Service: This service is a shipboard radio service authorized under part 80 of the Commission's Rules to provide telecommunications between watercraft or between watercraft and shore-based stations. Radio installations are required by domestic and international law for large passenger or cargo vessels. Radio equipment may be voluntarily installed on smaller vessels,

¹⁷⁵ This category only applies to licensees of shared-use private 220-222 MHz and 470 MHz and above in the Specialized Mobile Radio (SMR) service who have elected not to change to the Commercial Mobile Radio Service (CMRS). Those who have elected to change to the CMRS are referred to paragraph 14 of this Attachment.

¹⁷⁶ Although this fee category includes licenses with ten-year terms, the estimated volume of ten-year license applications in FY 1999 is less than one-tenth of one percent and, therefore, is statistically insignificant.

such as recreational boats. The Telecommunications Act of 1996 gave the Commission the authority to license certain ship stations by rule rather than by individual license. The Commission exercises that authority. Thus, private boat operators sailing entirely within domestic U.S. waters and who are not otherwise required by treaty or agreement to carry a radio, are no longer required to hold a marine license, and they will not be required to pay a regulatory fee. For FY 1999, parties required to be licensed and those choosing to be licensed for Marine (Ship) Stations will pay a \$7 annual regulatory fee per station, payable for an entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is \$70 for the ten year license term.

8. Marine (Coast) Service: This service includes land-based stations in the maritime services, authorized under part 80 of the Commission's Rules, to provide communications services to ships and other watercraft in coastal and inland waterways. For FY 1999, licensees of Marine (Coast) Stations will pay a \$7 annual regulatory fee per call sign, payable for the entire five-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is \$35 per call sign for the five-year license term.

9. Private Land Mobile (Other) Services: These services include Land Mobile Radio Services operating under parts 90 and 95 of the Commission's Rules. Services in this category provide one- or two-way communications between vehicles, persons or fixed stations on a shared basis and include radiolocation services, industrial radio services, and land transportation radio services. For FY 1999, licensees of services in this category will pay a \$7 annual regulatory fee per call sign, payable for an entire five-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is \$35 for the five-year license term.

10. Aviation (Aircraft) Service: These services include stations authorized to provide communications between aircraft and between aircraft and ground stations and include frequencies used to communicate with air traffic control facilities pursuant to part 87 of the Commission's Rules. The Telecommunications Act of 1996 gave the Commission the authority to license certain aircraft radio stations by rule rather than by individual license. The commission exercises that authority. Thus, private aircraft operators flying entirely within domestic U.S. airspace and who are not otherwise required by treaty or agreement to carry a radio are no longer required to hold an aircraft license, and they will not be required to pay a regulatory fee. For FY 1999, parties required to be licensed and those choosing to be licensed for Aviation (Aircraft) Stations will pay a \$7 annual regulatory fee per station, payable for the entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is \$70 per station for the ten-year license term.

11. Aviation (Ground) Service: This service includes stations authorized to provide ground-based communications to aircraft for weather or landing information, or for logistical support pursuant to part 87 of the Commission's Rules. Certain ground-based stations which only serve itinerant traffic, i.e., possess no actual units on which to assess a fee, are exempt from payment of regulatory fees. For FY 1999, licensees of Aviation (Ground) Stations will pay a \$7 annual regulatory fee per license, payable for the entire five-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee is \$35 per call sign for the

five-year license term.

12. General Mobile Radio Service (GMRS): These services include Land Mobile Radio licensees providing personal and limited business communications between vehicles or to fixed stations for short-range, two-way communications pursuant to part 95 of the Commission's Rules. For FY 1999, GMRS licensees will pay a \$7 annual regulatory fee per license, payable for an entire five-year license term at the time of application for a new, renewal or reinstatement license. The total regulatory fee due is \$35 per license for the five-year license term.

c. Amateur Radio Vanity Call Signs

13. Amateur Vanity Call Signs: This category covers voluntary requests for specific call signs in the Amateur Radio Service authorized under part 97 of the Commission's Rules. Applicants for Amateur Vanity Call-Signs will continue to pay a \$1.30 annual regulatory fee per call sign, as prescribed in the FY 1998 fee schedule, payable for an entire ten-year license term at the time of application for a vanity call sign until the FY 1999 fee schedule becomes effective. The total regulatory fee due would be \$13 per license for the ten-year license term.¹⁷⁷ For FY 1999, Amateur Vanity Call Sign applicants will pay a \$1.40 annual regulatory fee per call sign, payable for an entire ten-year term at the time of application for a new, renewal or reinstatement license. The total regulatory fee due is \$14.00 per call sign for the ten-year license term.

d. Commercial Wireless Radio Services

14. Commercial Mobile Radio Services (CMRS) Mobile Services: The Commercial Mobile Radio Service (CMRS) is an "umbrella" descriptive term attributed to various existing broadband services authorized to provide interconnected mobile radio services for profit to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public. CMRS Mobile Services include certain licensees which formerly were licensed as part of the Private Radio Services (e.g., Specialized Mobile Radio Services) and others formerly licensed as part of the Common Carrier Radio Services (e.g., Public Mobile Services and Cellular Radio Service). While specific rules pertaining to each covered service remain in separate parts 22, 24, 27, 80 and 90, general rules for CMRS are contained in part 20. CMRS Mobile Services will include: Specialized Mobile Radio Services (part 90);¹⁷⁸ Broadband Personal Communications Services (part 24), Public Coast Stations (part 80); Public Mobile Radio (Cellular, 800 MHz Air-Ground Radiotelephone, and Offshore Radio Services) (part 22); and Wireless Communications Service (part 27). Each licensee in this group will pay an annual regulatory fee for each mobile or

¹⁷⁷ Section 9(h) exempts "amateur radio operator licenses under part 97 of the Commission's rules (47 CFR part 97)" from the requirement. However, section 9(g)'s fee schedule explicitly includes "Amateur vanity call signs" as a category subject to the payment of a regulatory fee.

¹⁷⁸ This category does not include licensees of private shared-use 220 MHz and 470 MHz and above in the Specialized Mobile Radio (SMR) service who have elected to remain non-commercial. Those who have elected not to change to the Commercial Mobile Radio Service (CMRS) are referred to paragraph 4 of this Attachment.

cellular unit (mobile or telephone number), assigned to its customers, including resellers of its services. For FY 1999, the regulatory fee is \$.32 per unit.

15. Commercial Mobile Radio Services (CMRS) Messaging Services: The Commercial Mobile Radio Service (CMRS) is an "umbrella" descriptive term attributed to various existing narrowband services authorized to provide interconnected mobile radio services for profit to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public. CMRS Messaging Services include certain licensees which formerly were licensed as part of the Private Radio Services (e.g., Private Paging and Radiotelephone Service), licensees formerly licensed as part of the Common Carrier Radio Services (e.g., Public Mobile One-Way Paging), licensees of Narrowband Personal Communications Service (PCS) (e.g., one-way and two-way paging), and 220-222 MHz Band and Interconnected Business Radio Service. In addition, for FY 1999, this category will also include small SMR systems authorized for use of less than 10 MHz of bandwidth. While specific rules pertaining to each covered service remain in separate parts 22, 24 and 90, general rules for CMRS are contained in part 20. Each licensee in the CMRS Messaging Services will pay an annual regulatory fee for each unit (pager, telephone number, or mobile) assigned to its customers, including resellers of its services. For FY 1999, the regulatory fee is \$.04 per unit.

16. Finally, we are reiterating our definition of CMRS payment units to make it clear that fees are assessable on each PCS or cellular telephone and each one-way or two-way pager capable of receiving or transmitting information, whether or not the unit is "active" on the "as-of" date for payment of these fees. The unit becomes "feeable" if the end user or assignee of the unit has possession of the unit and the unit is capable of transmitting or receiving voice or non-voice messages or data and the unit is either owned and operated by the licensee of the CMRS system or a reseller, or the end user of a unit has a contractual agreement for the provision of a CMRS service from a licensee of a CMRS system or a reseller of a CMRS service. The responsible payer of the regulatory fee is the CMRS licensee. For example, John Doe purchases a pager and contractually obtains paging services from Paging Licensee X. Paging Licensee X is responsible for paying the applicable regulatory fee for this unit. Likewise, Cellular Licensee Y donates cellular phones to a high school and the high school either pays for or obtains free cellular service from Cellular Licensee Y. In this situation, Cellular Licensee Y is responsible for paying the applicable regulatory fees for these units.

2. Mass Media Services

17. The regulatory fees for the Mass Media fee category apply to broadcast licensees and permittees. Noncommercial Educational Broadcasters are exempt from regulatory fees.

a. Commercial Radio

18. These categories include licensed Commercial AM (Classes A, B, C, and D) and FM (Classes A, B, B1, C, C1, C2, and C3) Radio Stations operating under part 73 of the Commission's

Rules.¹⁷⁹ We have combined class of station and city grade contour population data to formulate a schedule of radio fees which differentiate between stations based on class of station and population served. In general, higher class stations and stations in metropolitan areas will pay higher fees than lower class stations and stations located in rural areas. The specific fee that a station must pay is determined by where it ranks after weighting its fee requirement (determined by class of station) with its population. The regulatory fee classifications for Radio Stations for FY 1999 are as follows:

FY 1999 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, C1 & C2
<=20,000	430	325	225	275	325	430
20,001 - 50,000	825	650	325	450	650	825
50,001 - 125,000	1,350	875	450	675	875	1,350
125,001 - 400,000	2,000	1,400	675	825	1,400	2,000
400,001 - 1,000,000	2,750	2,250	1,250	1,500	2,250	2,750
>1,000,000	4,400	3,600	1,750	2,250	3,600	4,400

19. Licensees may determine the appropriate fee payment by referring to a list which will be provided as an attachment to the final Report and Order in this proceeding. This same information will be available on the FCC's Internet world wide web site (<http://www.fcc.gov>) by calling the FCC's National Call Center (1-888-225-5322), and may be included in the Public Notices mailed to each licensee for which we have a current address on file (**Note: Non-receipt of a Public Notice does not relieve a licensee of its obligation to submit its regulatory fee payment**).

b. Construction Permits - Commercial AM Radio

20. This category includes holders of permits to construct new Commercial AM Stations. For FY 1999, permittees will pay a fee of \$260 for each permit held. Upon issuance of an operating license, this fee would no longer be applicable and licensees would be required to pay the applicable fee for the designated group within which the station appears.

¹⁷⁹ The Commission acknowledges that certain stations operating in Puerto Rico and Guam have been assigned a higher level station class than would be expected if the station were located on the mainland. Although this results in a higher regulatory fee, we believe that the increased interference protection associated with the higher station class is necessary and justifies the fee.

c. Construction Permits - Commercial FM Radio

21. This category includes holders of permits to construct new Commercial FM Stations. For FY 1999, permittees will pay a fee of \$780 for each permit held. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a regulatory fee based upon the designated group within which the station appears.

d. Commercial Television Stations

22. This category includes licensed Commercial VHF and UHF Television Stations covered under part 73 of the Commission's Rules, except commonly owned Television Satellite Stations, addressed separately below. Markets are Nielsen Designated Market Areas (DMA) as listed in the Television & Cable Factbook, Stations Volume No. 67, 1999 Edition, Warren Publishing, Inc. The fees for each category of station are as follows:

VHF Markets 1-10.....	\$41,225
VHF Markets 11-25.....	34,325
VHF Markets 26-50.....	23,475
VHF Markets 51-100.....	13,150
VHF Remaining Markets.....	3,400
UHF Markets 1-10.....	\$15,550
UHF Markets 11-25.....	11,775
UHF Markets 26-50.....	7,300
UHF Markets 51-100.....	4,350
UHF Remaining Markets.....	1,175

e. Commercial Television Satellite Stations

23. Commonly owned Television Satellite Stations in any market (authorized pursuant to Note 5 of §73.3555 of the Commission's Rules) that retransmit programming of the primary station are assessed a fee of \$1,300 annually. Those stations designated as Television Satellite Stations in the 1999 Edition of the Television and Cable Factbook are subject to the fee applicable to Television Satellite Stations. All other television licensees are subject to the regulatory fee payment required for their class of station and market.

f. Construction Permits - Commercial VHF Television Stations

24. This category includes holders of permits to construct new Commercial VHF Television Stations. For FY 1999, VHF permittees will pay an annual regulatory fee of \$2,775. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a fee based upon the designated market of the station.

g. Construction Permits - Commercial UHF Television Stations

25 This category includes holders of permits to construct new UHF Television Stations. For FY 1999, UHF Television permittees will pay an annual regulatory fee of \$2,900. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a fee based upon the designated market of the station.

h. Construction Permits - Satellite Television Stations

26. The fee for UHF and VHF Television Satellite Station construction permits for FY 1999 is \$460. An individual regulatory fee payment is to be made for each Television Satellite Station construction permit held.

i. Low Power Television, FM Translator and Booster Stations, TV Translator and Booster Stations

27. This category includes Low Power UHF/VHF Television stations operating under part 74 of the Commission's Rules with a transmitter power output limited to 1 kW for a UHF facility and, generally, 0.01 kW for a VHF facility. Low Power Television (LPTV) stations may retransmit the programs and signals of a TV Broadcast Station, originate programming, and/or operate as a subscription service. This category also includes translators and boosters operating under part 74 which rebroadcast the signals of full service stations on a frequency different from the parent station (translators) or on the same frequency (boosters). The stations in this category are secondary to full service stations in terms of frequency priority. We have also received requests for waivers of the regulatory fees from operators of community based Translators. These Translators are generally not affiliated with commercial broadcasters, are nonprofit, non-profitable, or only marginally profitable, serve small rural communities, and are supported financially by the residents of the communities served. We are aware of the difficulties these Translators have in paying even minimal regulatory fees, and we have addressed those concerns in the ruling on reconsideration of the FY 1994 Report and Order. Community-based Translators are exempt from regulatory fees. For FY 1999, licensees in low power television, FM translator and booster, and TV translator and booster category will pay a regulatory fee of \$290 for each license held.

j. Broadcast Auxiliary Stations

28. This category includes licensees of remote pickup stations (either base or mobile) and associated accessory equipment authorized pursuant to a single license, Aural Broadcast Auxiliary Stations (Studio Transmitter Link and Inter-City Relay) and Television Broadcast

Auxiliary Stations (TV Pickup, TV Studio Transmitter Link, TV Relay) authorized under part 74 of the Commission's Rules. Auxiliary Stations are generally associated with a particular television or radio broadcast station or cable television system. This category does not include translators and boosters (see paragraph 26 *infra*). For FY 1999, licensees of Commercial Auxiliary Stations will pay an \$12 annual regulatory fee on a per call sign basis.

k. Multipoint Distribution Service

29. This category includes Multipoint Distribution Service (MDS), Local Multipoint Distribution (LMDS), and Multichannel Multipoint Distribution Service (MMDS), authorized under part 21 of the Commission's Rules to use microwave frequencies for video and data distribution within the United States. For FY 1999, MDS, LMDS, and MMDS stations will pay an annual regulatory fee of \$285 per call sign.

3. Cable Services

a. Cable Television Systems

30. This category includes operators of Cable Television Systems, providing or distributing programming or other services to subscribers under part 76 of the Commission's Rules. For FY 1999, Cable Systems will pay a regulatory fee of \$.48 per subscriber.¹⁸⁰ Payments for Cable Systems are to be made on a per subscriber basis as of December 31, 1998. Cable Systems should determine their subscriber numbers by calculating the number of single family dwellings, the number of individual households in multiple dwelling units, *e.g.*, apartments, condominiums, mobile home parks, etc., paying at the basic subscriber rate, the number of bulk rate customers, and the number of courtesy or fee customers. In order to determine the number of bulk rate subscribers, a system should divide its bulk rate charge by the annual subscription rate for individual households. See FY 1994 Report and Order, Appendix B at paragraph 31.

b. Cable Antenna Relay Service

31. This category includes Cable Antenna Relay Service (CARS) stations used to transmit television and related audio signals, signals of AM and FM Broadcast Stations, and cablecasting from the point of reception to a terminal point from where the signals are distributed to the public by a Cable Television System. For FY 1999, licensees will pay an annual regulatory fee of \$55 per CARS license.

4. Common Carrier Services

a. Commercial Microwave (Domestic Public Fixed Radio Service)

32. This category includes licensees in the Point-to-Point Microwave Radio Service, Local Television Transmission Radio Service, and Digital Electronic Message Service, authorized

¹⁸⁰ Cable systems are to pay their regulatory fees on a per subscriber basis rather than per 1,000 subscribers as set forth in the statutory fee schedule. See FY 1994 Report and Order at paragraph 100.

under part 101 of the Commission's Rules to use microwave frequencies for video and data distribution within the United States. These services are now included in the Microwave category (see paragraph 5 *infra*).

b. Interstate Telephone Service Providers

33. This category includes Inter-Exchange Carriers (IXCs), Local Exchange Carriers (LECs), Competitive Access Providers (CAPs), domestic and international carriers that provide operator services, Wide Area Telephone Service (WATS), 800, 900, telex, telegraph, video, other switched, interstate access, special access, and alternative access services either by using their own facilities or by reselling facilities and services of other carriers or telephone carrier holding companies, and companies other than traditional local telephone companies that provide interstate access services to long distance carriers and other customers. This category also includes pre-paid calling card providers. These common carriers, including resellers, must submit fee payments based upon their proportionate share of gross interstate revenues using the methodology that we have adopted for calculating contributions to the TRS fund.¹⁸¹ In order to avoid imposing any double payment burden on resellers, we will permit carriers to subtract from their gross interstate revenues, as reported to NECA in connection with their TRS contribution, any payments made to underlying common carriers for telecommunications facilities and services, including payments for interstate access service, that are sold in the form of interstate service. For this purpose, resold telecommunications facilities and services are only intended to include payments that correspond to revenues that will be included by another carrier reporting interstate revenue. For FY 1999, carriers must multiply their adjusted gross revenue figure (gross revenue reduced by the total amount of their payments to underlying common carriers for telecommunications facilities or services) by the factor 0.00121 to determine the appropriate fee for this category of service. Regulatees may want to use the following worksheet to determine their fee payment:

	TOTAL	INTERSTATE
(1) Revenue reported in TRS Fund worksheets		
(2) Less: Access charges paid		
(3) Less: Other telecommunications facilities and services taken for resale		
(4) Adjusted revenues (1)minus(2)minus(3)		
(5) Fee factor		0.00121
(6) Fee due (4)times(5)		

¹⁸¹ See Telecommunications Relay Services, 8 FCC Rcd 5300 (1993), 58 FR 39671 (Jul. 26, 1993).

5. International Services

a. Earth Stations

34. Very Small Aperture Terminal (VSAT) Earth Stations, equivalent C-Band Earth Stations and antennas, and earth station systems comprised of very small aperture terminals operate in the 12 and 14 GHz bands and provide a variety of communications services to other stations in the network. VSAT systems consist of a network of technically-identical small Fixed-Satellite Earth Stations which often include a larger hub station. VSAT Earth Stations and C-Band Equivalent Earth Stations are authorized pursuant to part 25 of the Commission's Rules. Mobile Satellite Earth Stations, operating pursuant to part 25 of the Commission's Rules under blanket licenses for mobile antennas (transceivers), are smaller than one meter and provide voice or data communications, including position location information for mobile platforms such as cars, buses, or trucks.¹⁸² Fixed-Satellite Transmit/Receive and Transmit-Only Earth Station antennas, authorized or registered under part 25 of the Commission's Rules, are operated by private and public carriers to provide telephone, television, data, and other forms of communications. Included in this category are telemetry, tracking and control (TT&C) earth stations, and earth station uplinks. For FY 1999, licensees of VSATs, Mobile Satellite Earth Stations, and Fixed-Satellite Transmit/Receive and Transmit-Only Earth Stations will pay a fee of \$180 per authorization or registration as well as a separate fee of \$180 for each associated Hub Station.

35. Receive-only earth stations. For FY 1999, there is no regulatory fee for receive-only earth stations.

b. Space Stations (Geostationary Orbit)

36. Geostationary Orbit (also referred to as Geosynchronous) Space Stations are domestic and international satellites positioned in orbit to remain approximately fixed relative to the earth. Most are authorized under part 25 of the Commission's Rules to provide communications between satellites and earth stations on a common carrier and/or private carrier basis. In addition, this category includes Direct Broadcast Satellite (DBS) Service which includes space stations authorized under part 100 of the Commission's rules to transmit or re-transmit signals for direct reception by the general public encompassing both individual and community reception. For FY 1999, entities authorized to operate geostationary space stations (including DBS satellites) will be assessed an annual regulatory fee of \$130,550 per operational station in orbit. Payment is required for any geostationary satellite that has been launched and tested and is authorized to provide service.

c. Space Stations (Non-Geostationary Orbit)

37. Non-Geostationary Orbit Systems (such as Low Earth Orbit (LEO) Systems) are space stations that orbit the earth in non-geosynchronous orbit. They are authorized under part 25 of the Commission's rules to provide communications between satellites and earth stations on a

¹⁸² Mobile earth stations are hand-held or vehicle-based units capable of operation while the operator or vehicle is in motion. In contrast, transportable units are moved to a fixed location and operate in a stationary (fixed) mode. Both are assessed the same regulatory fee for FY 1999.

common carrier and/or private carrier basis. For FY 1999, entities authorized to operate Non-Geostationary Orbit Systems (NGSOs) will be assessed an annual regulatory fee of \$180,800 per operational system in orbit. Payment is required for any NGSO System that has one or more operational satellites operational. In our FY 1997 Report and Order at paragraph 75 we retained our requirement that licensees of LEOs pay the LEO regulatory fee upon their certification of operation of a single satellite pursuant to section 25.120(d). We require payment of this fee following commencement of operations of a system's first satellite to insure that we recover our regulatory costs related to LEO systems from licensees of these systems as early as possible so that other regulatees are not burdened with these costs any longer than necessary. Because section 25.120(d) has significant implications beyond regulatory fees (such as whether the entire planned cluster is operational in accordance with the terms and conditions of the license) we are clarifying our current definition of an operational LEO satellite to prevent misinterpretation of our intent as follows:

Licensees of Non-Geostationary Satellite Systems (such as LEOs) are assessed a regulatory fee upon the commencement of operation of a system's first satellite as reported annually pursuant to sections 25.142(c), 25.143(e), 25.145(g), or upon certification of operation of a single satellite pursuant to section 25.120(d).

d. International Bearer Circuits

38 Regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers (either domestic or international) activating the circuit in any transmission facility for the provision of service to an end user or resale carrier. Payment of the fee for bearer circuits by non-common carrier submarine cable operators is required for circuits sold on an indefeasible right of use (IRU) basis or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. Compare FY 1994 Report and Order at 5367. Payment of the international bearer circuit fee is also required by non-common carrier satellite operators for circuits 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. The fee is based upon active 64 kbps circuits, or equivalent circuits. Under this formulation, 64 kbps circuits or their equivalent will be assessed a fee. Equivalent circuits include the 64 kbps circuit equivalent of larger bit stream circuits. For example, the 64 kbps circuit equivalent of a 2.048 Mbps circuit is 30 64 kbps circuits. Analog circuits such as 3 and 4 kHz circuits used for international service are also included as 64 kbps circuits. However, circuits derived from 64 kbps circuits by the use of digital circuit multiplication systems are not equivalent 64 kbps circuits. Such circuits are not subject to fees. Only the 64 kbps circuit from which they have been derived will be subject to payment of a fee. For FY 1999, the regulatory fee is \$7.00 for each active 64 kbps circuit or equivalent. For analog television channels we will assess fees as follows:

Analog Television Channel Size in MHz	No. of equivalent 64 kbps Circuits
36.....	630
24.....	288
18.....	240

e. International Public Fixed

39. This fee category includes common carriers authorized under part 23 of the Commission's Rules to provide radio communications between the United States and a foreign point via microwave or HF troposcatter systems, other than satellites and satellite earth stations, but not including service between the United States and Mexico, and the United States and Canada, using frequencies above 72 MHz. For FY 1999, International Public Fixed Radio Service licensees will pay a \$410 annual regulatory fee per call sign.

f. International (HF) Broadcast

40. This category covers International Broadcast Stations licensed under part 73 of the Commission's Rules to operate on frequencies in the 5,950 kHz to 26,100 kHz range to provide service to the general public in foreign countries. For FY 1999, International HF Broadcast Stations will pay an annual regulatory fee of \$520 per station license.

Description of FCC Activities

Authorization of Service: The authorization or licensing of radio stations, telecommunications equipment, and radio operators, as well as the authorization of common carrier and other services and facilities. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with authorization activities.¹⁸³

Policy and Rulemaking: Formal inquiries, rulemaking proceedings to establish or amend the Commission's rules and regulations, action on petitions for rulemaking, and requests for rule interpretations or waivers; economic studies and analyses; spectrum planning, modeling, propagation-interference analyses, and allocation; and development of equipment standards. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with policy and rulemaking activities.

Enforcement: Enforcement of the Commission's rules, regulations and authorizations, including investigations, inspections, compliance monitoring, and sanctions of all types. Also includes the receipt and disposition of formal and informal complaints regarding common carrier rates and services, the review and acceptance/rejection of carrier tariffs, and the review, prescription and audit of carrier accounting practices. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with enforcement activities.

Public Information Services: The publication and dissemination of Commission decisions and actions, and related activities; public reference and library services; the duplication and dissemination of Commission records and databases; the receipt and disposition of public inquiries; consumer, small business, and public assistance; and public affairs and media relations. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with public information activities.

¹⁸³ Although Authorization of Service is described in this exhibit, it is not one of the activities included as a feeable activity for regulatory fee purposes pursuant to section 9(a)(1) of the Act. 47 U.S.C. 159(a)(1).

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

AM Stations

Specific information on each day tower, including field ratio, phasing, spacing and orientation was retrieved, as well as the theoretical pattern RMS figure (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.¹⁸⁴ Radiation values were calculated for each of 72 radials around the transmitter site (every 5 degrees of azimuth). Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure M3. Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the city grade (5 mV/m) contour was predicted for each of the 72 radials. The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 1990 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

FM Stations

The maximum of the horizontal and vertical HAAT (m) and ERP (kW) was used. Where the antenna HAMS L was available, it was used in lieu of the overall HAAT figure to calculate specific HAAT figures for each of 72 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the propagation curves specified in section 73.313 of the Commission's rules to predict the distance to the city grade (70 dBuV/m or 3.17 mV/m) contour for each of the 72 radials.¹⁸⁵ The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 1990 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

¹⁸⁴ 47 U.S.C. 73.150 and 73.152.

¹⁸⁵ 47 U.S.C. 73.313.

Parties Filing Comments on the Notice of Inquiry

MCI WorldCom, Inc.
BellSouth Corporation
Paging Network, Inc.
American Mobile Telecommunications Association, Inc.
Small Business in Telecommunications
ARDIS Company
Personal Communications Industry Association
Industrial Telecommunications Association, Inc.
GE American Communications, Inc.
Space Imaging L.P.
Lockheed Martin Corporation
PanAmSat Corporation
Orbital Communications Corporation
L/Q Licensee, Inc.

Parties Filing Reply Comments on the Notice of Inquiry

BellSouth Corporation (Late Filed)
L/Q Licensee, Inc.
GE American Communications, Inc.
COMSAT Corporation
Loral Space & Communications Ltd.

Parties Filing Comments on the Notice of Proposed Rule Making

Rural Telecommunications Group (Oral Ex Parte)
Council of Independent Communications Suppliers
Satellite Industry Association
AirTouch Communications, Inc.
Cellular Telecommunications Industry Association
National Association of Broadcasters
Walt Disney Company
PanAmSat Corporation
GE American Communications, Inc.
BellSouth Corporation

Parties Filing Reply Comments on the Notice of Proposed Rule Making

PrimeCo Personal Communications, L.P.
GE American Communications, Inc.
COMSAT Corporation
Blooston, Mordkofsky, Jackson & Dickens
American Mobile Telecommunications Association, Inc. (also filed Oral Ex Parte)

AM and FM Radio Regulatory Fees

A list of AM and FM Radio Regulatory Fees will be published in a separate public notice.