

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**42 CFR Part 121**

**Organ Procurement and Transplantation Network; Final Rule Revision of Comment Period and Effective Dates**

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Extension of Comment Period and Delay of Effective Date for the Organ Procurement and Transplantation Network.

**SUMMARY:** This document sets forth the revisions required by the Fiscal Year 1998 Supplemental Appropriations Act, Public Law 105-174, signed into law by the President on May 1, 1998. Section 4002 of that Act states that public comments on the Organ Procurement and Transplantation Network (OPTN) Final Rule are permitted until August 31, 1998, and that the OPTN rule will not become effective before October 1, 1998. This document is provided to notify the public about these provisions and to make corresponding changes to the regulation.

**DATES:** The effective date of the final rule published April 2, 1998 (63 FR 16296), as amended in this rule, is delayed until October 1, 1998.

Comments on the final rule may be submitted through August 31, 1998.

**ADDRESSES:** Written comments may be addressed to Jon L. Nelson, Associate Director, Office of Special Programs, Room 123, Park Building, 12420 Parklawn Drive, Rockville, MD 20857 as provided in the April 2, 1998, final rule, 63 FR 16296.

**FOR FURTHER INFORMATION CONTACT:** Jon L. Nelson, Associate Director, Office of Special Programs, 5600 Fishers Lane, Room 7-29, Rockville, MD 20857, telephone 301-443-7577.

**SUPPLEMENTARY INFORMATION:** On April 2, 1998, the Secretary of Health and Human Services published in the **Federal Register** a final rule governing the operation of the Organ Procurement and Transplantation Network. That document invited public comments for a period of sixty days, ending on June 1, 1998. The final rule was to be effective on July 1, 1998.

As a result of the enactment of the Supplemental Appropriations Act, the comment period has been extended until August 31, 1998, and the final rule will become effective on October 1, 1998. Consistent with these extensions, several of the provisions of the final rule whose internal deadlines were tied to the effective date of the final rule are also being extended.

Therefore, 42 CFR Part 121, as promulgated at 63 FR 16296-16338, is amended as follows:

1. The authority citation for Part 121 continues to read as follows:

**Authority:** Sections 215, 371-376 of the Public Health Service Act (42 U.S.C. 216, 273-274d); Sections 1102, 1106, 1138, and 1872 of the Social Security Act (42 U.S.C. 1302, 1306, 1320b-8 and 1395ii).

**§ 121.3 [Amended]**

2. In § 121.3(e), revise "July 1, 1998," wherever it appears to read "October 1, 1998,".

**§ 121.8 [Amended]**

3. § 121.8(c)(1), revise "July 1, 1999" to read "October 1, 1999".

4. § 121.8(c)(2), revise "August 31, 1998" to read "November 30, 1998".

Dated: June 2, 1998.

**Claude Earl Fox,**  
*Administrator.*

Approved: June 23, 1998.

**Donna E. Shalala,**  
*Secretary.*

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 1**

[MD Docket No. 98-36; FCC 98-115]

**Assessment and Collection of Regulatory Fees for Fiscal Year 1998**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission has revised its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress has required it to collect for fiscal year 1998. Section 9 of the Communications Act of 1934, as amended, provides for the annual assessment and collection of regulatory fees. For fiscal year 1998 sections 9(b)(2) and (3) provide for annual "Mandatory Adjustments" and "Permitted Amendments" to the Schedule of Regulatory Fees. These revisions will further the National Performance Review goals of reinventing Government by requiring beneficiaries of Commission services to pay for such services.

**EFFECTIVE DATE:** August 31, 1998.

**FOR FURTHER INFORMATION:** Terry Johnson, (202) 418-0445, Office of Managing Director.

**SUPPLEMENTARY INFORMATION:**

Adopted: June 9, 1998; Released: June 16, 1998

By the Commission:

TABLE OF CONTENTS

Topic	Paragraph No.
I. Introduction .....	1
II. Background .....	5
III. Discussion	
A. Cost-Based Fee Methodology .....	9
B. Relationship of Cost Service to Revenue Requirement .....	15
C. The 25% Ceiling on Fees .....	21
D. Application of Cost-Based Methodology to Determine Fee Amounts	
i. Adjustment of Payment Units .....	25
ii. Calculation of Revenue Requirements .....	26
iii. Calculation of Regulatory Costs .....	27
iv. Application of 25% Revenue Ceiling .....	28
v. Recalculation of Fees .....	29
vi. Proposed Changes to Fee Schedule .....	30
a. Commercial AM & FM Radio .....	31
b. CMRS .....	41

TABLE OF CONTENTS—Continued

Topic	Paragraph No.
c. Space Stations and Bearer Circuits	
i. Geostationary Satellites .....	50
ii. Non-geostationary Satellites .....	54
iii. Bearer Circuits .....	57
d. Interstate Telephone Service Providers .....	64
E. Schedule of Regulatory Fees .....	68
F. Effect of Revenue Redistributions on Major Constituencies .....	69
G. Procedures for Payment of Regulatory Fees	
i. Installment Payments for Large Fees .....	70
ii. Annual Payments of Standard Fees .....	72
iii. Advance Payment of Small Fees .....	73
iv. Standard Fee Calculations and Payment Dates .....	74
v. Minimum Fee Payment Liability .....	76
IV. Ordering Clause .....	77
V. Authority and Further Information .....	78

Attachment A—Final Regulatory Flexibility Analysis
Attachment B—Sources of Payment Unit Estimates
Attachment C—Calculation of Revenue Requirements
Attachment D—Calculation of Regulatory Costs
Attachment E—Calculation of FY 1998 Regulatory Fees
Attachment F—Schedule of Regulatory Fees
Attachment G—Comparison between FY 1997 and FY 1998 Proposed & Final Regulatory Fees
Attachment H—Detailed Guidance on Who Must Pay Regulatory Fees
Attachment I—Description of FCC Activities
Attachment J—Factors, measurements and calculations that go into determining station signal contours and associated population coverages
Attachment K—Parties Filing Comments and Reply Comments
Attachment L—FY 1998 AM/FM Regulatory Fees

**I. Introduction**

1. By this *Report and Order*, the Commission concludes its rulemaking proceeding to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress has required it to collect for Fiscal Year (FY) 1998. See 47 U.S.C. 159(a).

2. Congress has required us to collect \$162,523,000 in regulatory fees in order to recover the costs of our enforcement, policy and rulemaking, international and user information activities for FY 1998. See Pub. L. 105-119 and 47 U.S.C. 159(a)(2). This amount is \$10,000,000 or nearly 7% more than the amount that Congress designated for recovery through regulatory fees for FY 1997. See *Assessment and Collection of Regulatory Fees for Fiscal Year 1997*, FCC 97-215, released June 26, 1997, 62 FR 37408, July 11, 1997. Thus, we are revising our fees in order to collect the increased amount as specified by Congress. Additionally, we are

amending the Schedule in order to simplify and streamline the Fee Schedule, including clarification of feeable categories in the Commercial Mobile Radio Services (CMRS), renaming the LEO category as Space Stations Non-geostationary, and clarifying when those stations must begin paying regulatory fees. We have also revised our methodologies for assessing AM and FM radio fees. See 47 U.S.C. 159(b)(3).

3. In revising the fees, we have 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 have made changes to the fees pursuant to public interest considerations such as the 25% cap on increases in the fees which is explained in more detail below. We are amending §§ 1.1152 through 1.1156 to reflect the fee revisions. See 47 CFR 1.1152 through 1.1156. See also Rule Changes and Attachment F for our revised fee schedule for FY 1998.

4. Finally, we have included, as Attachment H, 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 1998. In the following paragraphs, we describe in greater detail our methodology for establishing our FY 1998 regulatory fees.

**II. Background**

5. 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 specified each year by Congress, that it incurs in carrying out enforcement, policy and rulemaking,

international, and user information activities. See 47 U.S.C. 159(a). See Attachment I for a description of these activities. In our FY 1994 *Report and Order*, 59 FR 30984, June 16, 1994, we adopted the Schedule of Regulatory Fees that Congress established and we prescribed rules to govern payment of the fees, as required by Congress. See 47 U.S.C. 159(b), (f)(1). Subsequently, in our FY 1995, FY 1996, and FY 1997 *Reports and Orders*, 60 FR 34004, June 29, 1995, 61 FR 36629, July 12, 1996, and 62 FR 37408, July 11, 1997, we modified the Schedule to increase by approximately 93 percent, 9 percent, and 21 percent, respectively, the revenue generated by these fees in accordance with the amounts Congress required us to collect for each of those fiscal years. Also, in our FY 1995, FY 1996, and FY 1997 fee decisions, we amended certain rules governing our regulatory fee program based upon our experience administering the program in prior years. See 47 CFR 1.1151 *et seq.*

6. 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.

See 47 U.S.C. 159(b)(2), (b)(3). 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. See 47 U.S.C. 159(b)(2).

7. Section 9(b)(3), entitled “Permitted Amendments,” requires us to 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 required to “add, delete, or

reclassify services in the Schedule to reflect additions, deletions or changes in the nature of its services." See 47 U.S.C. 159(b)(3).

8. Section 9(i) requires us to develop an accounting system to adjust our fees to reflect changes in the costs of regulating various services and for other purposes. See 47 U.S.C. 9(i). We developed and implemented the cost accounting system in conjunction with FY 1997 fees. For FY 1998, we continue to rely on cost accounting data to identify our regulatory costs and to develop fees based upon these costs. Also, for FY 1998, we have limited the increase in the amount of the fee for any service in order to 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 costs. This methodology enables us to develop regulatory fees which more closely reflect our costs of regulation. Finally, section 9(b)(4)(B) requires that we notify Congress of any permitted amendments 90 days before those amendments go into effect. See 47 U.S.C. 159(b)(4)(B).

### III. Discussion

#### A. Cost-Based Fee Methodology

9. Congress has required us to recover \$162,523,000 in FY 1998 regulatory fees, representing the costs applicable to our enforcement, policy and rulemaking, international, and user information activities.<sup>1</sup> See 47 U.S.C. 159(a).

10. In our FY 1998 *NPRM* we developed our proposed FY 1998 fee schedule using the same general methodology as we used in developing fees for FY 1997. We estimated payment units<sup>2</sup> for FY 1998 in order to determine the aggregate amount of revenue we would collect without any revision to

our FY 1997 fees. Because the total was greater than \$162,523,000, we pro-rated the overage among all the existing fee categories reducing the revenue amounts to total \$162,523,000.

11. The *NPRM* provided notice that we would rely on the cost accounting system implemented in FY 1997 to assist us in determining our costs of regulation of those services subject to a fee for FY 1998. In response, several interested parties, including the Personal Communications Industry Association (PCIA), BellSouth Cellular Corp., BellSouth Wireless Data, L.P. (BellSouth), and PanAmSat Corporation (PanAmSat), contend that we failed to explain the accounting system sufficiently to permit interested parties to determine how the system distributes costs among our various services. PrimeCo argues that we merely disclosed the results of the cost accounting system and, therefore, interested parties cannot evaluate our cost accounting system or suggest improvements. In addition, PCIA, among others, argues that without more data concerning our assignment of costs, they cannot determine whether the costs attributed to their services are reasonable estimates of our actual costs.

12. The *NPRM* provided sufficient information describing the accounting system to afford interested parties the opportunity to comment. Our *NPRM* made it clear that our cost accounting system relied upon information derived from our personnel/payroll system and our fiscal accounting system as the basis for recording direct and indirect costs, separately and combined, for every major category of service subject to a fee. The cost accounting system was designed to identify the actual costs of regulation by category of service and this information, combined with other data, yield fees more closely reflecting the cost of our regulation. The accounting system collects cost of service information on an employee-by-employee basis.

13. The *NPRM* provided sufficient detail concerning our manner of distributing costs of personnel directly assigned to regulatory activities, and other costs included in our determination of regulatory costs. The system separately identifies direct costs, including salary and expenses for staff directly assigned to our operating Bureaus, and other costs, such as rent, utilities and contracts, directly attributable to such personnel. Also, included as indirect costs are those costs attributable to personnel assigned to overhead functions, including such functions as field and laboratory staff, on a proportional basis; i.e., spread

among all categories of service subject to a fee according to their share of direct costs. Finally, in Attachment D of the *NPRM*, we provided a precise calculation of the regulatory costs, including separate discussions of the cost accounting system's accumulation of the direct, indirect and total actual costs for each major category of service. Thus, our *NPRM*, consistent with section 9(i) of the Act, sufficiently described our cost accounting system, including how it distributes actual costs among the various categories of service, affording parties an understanding of the system sufficient for them to submit comments on how the system allocated costs among those services subject to a regulatory fee. 47 U.S.C. 159(i)

14. Our cost accounting system was developed under contract by American Management Systems, Inc. (AMS) in FY 1995. The system has been integrated with the Commission's bi-weekly payroll and fiscal accounting systems and, as such, its procedures conform to generally accepted cost accounting principles and standards as mandated by the General Accounting Office (GAO) and by the U.S. Treasury Department. Because the methodology we employed in developing FY 1998 fees is the same as the one that was used to develop the FY 1997 fees, we adopt by incorporation paragraphs 16-20 of the FY 1997 *Report and Order* which provides detailed information covering how our cost accounting system operates.

#### B. Relationship of Cost Service to Revenue Requirement

15. PCIA and other commenters contend that the fees are unlawful because allegedly there is no basis for or relationship between the fees the Commission is proposing to collect from a particular class of licenses or regulatees and the amount of regulatory work or oversight associated with those regulatees. We reject the arguments that our proposed fees are inconsistent with the statute or otherwise unlawful because they are not completely cost-based or do not reflect the benefits received by entities subject to a fee payment. Section 9(a) requires that we recover our costs "in the total amounts required in Appropriations Acts." 47 U.S.C. 159(a).

Section 9(a) does not require that we base our fees solely on benefits to regulatees or that the fees recover from an entity only its particular cost of regulation. In our FY 1995 *Report and Order*, we stated that we are not limited to setting regulatory fees only in the amount that reflects services received by regulated entities. 10 FCC Rcd at 13521,

<sup>1</sup> The impact of regulatory fees on the FCC's appropriation is substantial. For example, without regulatory fees to offset the Commission's costs, the FCC would require a Congressional appropriation of \$186.5 million for FY 1998. When offsetting regulatory fees are taken into consideration, only \$24 million must be appropriated from tax receipts to fund the Commission. Thus, taxpayers are spared the expense of funding almost 87% of the Commission's annual budget. Funds collected as application or filing fees pursuant to section 8 of the Act are deposited into the General Fund of the U.S. Treasury as reimbursement to the United States but, unlike section 9 regulatory fees, do not offset funds appropriated to the Commission. 47 U.S.C. 158(a).

<sup>2</sup> Payment units are the number of subscribers, mobile units, pagers, cellular telephones, licenses, call signs, adjusted gross revenue dollars, etc. which represent the base units for which fees are calculated.

citing *Skinner v. Mid-America Pipe Line Co.*, 490 U.S. 212, 224 (1989). Rather, once Congress, as in section 9, has made a proper delegation of authority to raise funds, "so long as the fees in question are within the scope of Congress' lawful delegation of authority in section 9, they are constitutional." *Id.* Thus, as we noted in our FY 1995 *Report and Order*, we "can collect fees from regulatees for their use of frequencies and for the potential benefits of regulatory activities, even if they do not utilize these activities." See 60 FR 34000, (June 29, 1995), citing *United States v. Sperry Corp.*, 493 U.S. 52, 63. Thus, there is no requirement that the fees we establish be designed to recover only the costs of those benefits directly received by an entity. Rather, we may adjust the fees by taking into consideration "factors that the Commission determines are in the public interest." 47 U.S.C. 159(b)(1) (A).

16. We must collect in regulatory fees the amount specified by Congress. Direct costs, such as salary and expenses for (a) staff directly assigned to our operating Bureaus and performing regulatory activities and (b) staff assigned outside the operating Bureaus to the extent that their time is spent performing regulatory activities pertinent to an operating Bureau, are only part of the costs to be recovered from each licensee. Indirect costs, which include costs of support personnel assigned to overhead functions such as field and laboratory staff and certain staff assigned to the Office of Managing Director, and support costs, including rent, utilities, equipment, and contractual costs attributable to regulatory oversight, must also be recovered.<sup>3</sup>

17. Regulatory fees also recover costs attributable to regulatees that Congress, has exempted from the fees, such as Citizen's Band Radio and most recreational ship and aircraft radio station operators, amateur radio licensees, governmental entities, licensees in the public safety radio services, and non-profit groups, as well as costs attributable to licensees which have been granted waivers of the fees. 47 U.S.C. 159(b)(d). The costs of regulating these entities is borne by those regulatees subject to a fee requirement, with no direct measurable

<sup>3</sup> One commenter questioned how the Commission's use of contractors affected its computation of Full Time Equivalency (FTE) employee numbers. While the Commission used FTE numbers in developing its FY 1995 and FY 1996 fee schedules it discontinued using FTE numbers after it adopted a cost accounting system in FY 1997. PCIA also questions the allocation of such overhead costs as office moves. As with all overhead, we allocate it to the functional area where the cost was incurred, if this is feasible.

benefit accruing to such fee payers. We recover our costs of regulation for exempt entities, and licensees who have received waivers of the fees by allocating our regulatory costs attributable to them on a proportional basis across all fee categories so as not to unduly impact any particular category of fee payers.

18. PCIA points out that our *NPRM* did not provide actual FY 1997 fee collection data, including the number of actual payment units and the actual amount of fees collected in certain fee categories. These commenters contend that such information is essential to the evaluation of the Commission's FY 1998 fee proposal and to insure that costs are properly allocated among all regulatees or licensees in a given service. We recognize that we did not provide a detailed listing of actual FY 1997 collections data in the *NPRM*. However, Attachment B, of the *NPRM*, contained a service-by-service explanation of the basis of our estimated FY 1998 payment units.

Several of these are based on actual FY 1997 payments. Others are based on estimates obtained from Commission program experts or from regulated industries. In any case, as we noted in the *NPRM*, we consider, as one factor in estimating payment units, the actual number of payment units recorded in our fees collection system for FY 1997. These payment unit estimates used "as of" dates corresponding to the beginning of the current fiscal year, or, for some fee categories, at the end of the previous calendar year. We believe that this reliance upon actual "historical" or retrospective FY 1997 data provides us a much greater confidence level than would an estimate of payment units made prospectively.<sup>4</sup> Finally, from the inception of the regulatory fee collection program, actual historical payment units and collection amounts for the various categories of services have been routinely available for inspection to interested persons upon request. In sum, we cannot find that there is a basis for concluding that these commenters could not fairly evaluate our proposed fees for FY 1998 given the information pertaining to payment units contained in the *NPRM* and detailed collections data readily available from the Commission. Additionally, we note that no interested party proposed alternative

<sup>4</sup> In this regard the Commission has been checking the payments received from broadcast licensees against the name of the licensees in the Commission's database. The Commission has written to each licensee requesting payment or evidence of payment or exempt status, in order to perfect its database and ensure that the numbers of licensees upon which fees are based is accurate.

payment units for any category of service for FY 1998.

19. Finally, PCIA and other interested parties are concerned about the amount of the proposed increase in their revenue requirements and in their fee amounts for FY 1998 compared with those established for FY 1997. They question how estimates of actual costs for FY 1997 and FY 1998 could differ so significantly from one year to the next in certain fee categories. These differences can be attributed to the increase in the amount to be collected as specified by Congress, changes in the numbers of units subject to the fees, and changes in services. For example, in reassigning services from the CMRS Mobile category to the CMRS Messaging category, we adjusted the estimated payment units of both fee categories. Moreover, as we have noted, because each service must offset a portion of our overhead costs, and subsidize costs not related to its regulation, the resulting fee will invariably exceed the payer's direct regulatory costs, not withstanding the efforts by Congress and the Commission to reduce the regulatory burden on our licensees.

20. As noted in our FY 1997 *Report and Order*, an important consideration in utilizing a revenue ceiling is the impact on other fee payers. Because the Commission is required to collect a full \$162,523,000 in FY 1998 regulatory fees, the additional revenue that would have been collected from licensees subject to a revenue ceiling had there been no ceiling, needs to be collected instead from licensees not subject to the ceiling. Revenues from current fee payers already offset costs attributable to regulatees exempt from payment of a fee or otherwise not subject to a fee pursuant to section 9(h) of the Act or the Commission's rules. For example, CB and ship radio station users, amateur radio licensees, governmental entities, licensees in the public safety radio services, and all non-profit groups are not required to pay a fee. The costs of regulating these entities is borne by those regulatees subject to a fee requirement. We believe, however, that the public interest is best served by this methodology. To do otherwise would subject payers in some fee categories to unexpected major fee increases which could severely impact the economic well being of certain licensees. Attachment E displays the step-by-step process we used to calculate adjusted revenue requirements for each fee category for FY 1998, including the reallocation of revenue requirements

resulting from the application of our revenue ceilings.<sup>5</sup>

### C. The 25% Ceiling on Fees

21. After separately projecting the revenue requirements for each service category using data generated by our cost accounting system, we established a revenue ceiling no higher than 25 percent above the revenue that regulatees would have paid if FY 1998 fees had remained at FY 1997 levels (adjusted only for changes in volume and the increase required by Congress).

22. SBC Communications (SBC) argues that the 25 percent ceiling is increasing the difference between the fees and the costs of regulation for some regulatees. Comcast Cellular Communications, Inc. (Comcast) and Small Business in Telecommunications (SBT) argue that the 25% ceiling unfairly results in the subsidization of some fee payer classes by other services.

23. Capping each fee category's revenue requirement at no more than a 25 percent increase enables us to continue the process of reducing fees for services with lower costs and increasing fees for services with higher costs in order to close the gap between actual costs and fees designed to recover these costs.<sup>6</sup> Congress in its original fee schedule, established fee amounts for each fee category that were to be used until the FCC could implement an agency-wide cost accounting system to track costs by fee category. The Congressional fee schedule inherently subsidized certain services at the expense of others. Furthermore, the Congressional mandate to collect significantly larger amounts in regulatory fees each year had made it more difficult to eliminate the imbalances first established in the statutory fee schedule. The full extent of these imbalances became clear when the

Commission moved to a cost-based system in FY 1997. Thus, for FY 1997 we adopted a ceiling on fees in order to establish a mechanism that would smooth the transition to cost based fees.

24. As noted in our FY 1997 *Report and Order*, an important consideration in utilizing a revenue ceiling is the impact on other fee payers. We are required to collect a full \$162,523,000 in FY 1998 regulatory fees. The additional revenue that would have been collected from licensees subject to a revenue ceiling had there been no ceiling, needs to be collected instead from services where increases are less than 25%. Utilization of the 25% ceiling permits us to close the gap between regulatory fees and actual costs while minimizing the potential adverse impact of substantial fee increases. In sum, we believe that the public interest is best served again by adopting the 25% ceiling.

### C. Application of Cost-Based Methodology to Determine Fee Amounts

#### i. Adjustment of Payment Units

25. As the first step in calculating individual service regulatory fees for FY 1998, we adjusted the estimated payment units for each service because payment units for many services have changed substantially since we adopted our FY 1997 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.<sup>7</sup> Attachment B provides a summary of how payment units were determined for each fee category.

#### ii. Calculation of Revenue Requirements

26. We next multiplied the revised payment units for each service by our FY 1997 fee amounts in each fee category to determine how much revenue we would collect in FY 1998 without any change to the existing Schedule of Regulatory Fees. The amount of revenue we would collect is

approximately \$171.5 million. This amount is approximately \$9 million more than the amount the Commission is required to collect in FY 1998. We therefore adjusted the revenue requirements for each fee category on a proportional basis, consistent with section 9(b)(2) of the Act, to obtain an estimate of revenue requirements for each fee category necessary to collect the \$162,523,000 amount required by Congress for FY 1998. Attachment C provides detailed calculations showing how we determined the revised revenue amount for each service.

#### iii. Calculation of Regulatory Costs

27. In order to utilize actual costs as derived from our accounting system we combined support costs and direct costs<sup>8</sup> and then adjusted the results to approximate the amount of revenue that Congress requires us to collect in FY 1998 (\$162,523,000).<sup>9</sup> In effect, we proportionally adjusted the actual cost data pertaining to regulatory fee activities recorded for the period October 1, 1996, through September 30, 1997, (FY 1997) among all the fee categories so that total costs approximated \$162,523,000. For fee categories where fees are further differentiated by sub-categories, we distributed the revenue requirements to each sub-category. The results of these calculations are shown in detail in Attachment D and represent our best estimate of actual total attributable costs relative to each fee category and sub-category for FY 1998. However, the fee schedule for AM and FM radio stations was differentiated by class of station and population served in such a manner as to further differentiate small stations from larger stations.

<sup>5</sup> For example, PCIA has requested that we establish a cost-increase benchmark at which point an explanation of the increase for any affected category must be included. A line-by-line explanation of all accounting data is not feasible, nor, do we believe, necessary in this item. Specific cost accounting data is available to interested parties upon request.

<sup>6</sup> We are not suggesting that fee increases are limited to a 25 percent increase over the FY 1997 fees. The 25 percent increase is over and above the revenue which would be required after adjusting for projected FY 1998 payment units and the proportional share of the 6.56 percent increase in the amount that Congress is requiring us to collect. Thus, FY 1998 fees may increase more than 25 percent over FY 1997 fees depending upon the number of payment units. We are also not suggesting that this methodology will always result in a continuous closing of an existing gap between costs and fees designed to recover these costs. Since actual costs for a fee category may increase or decrease in consecutive years, the gap could either close or widen depending upon whether or not actual costs go down or up and by how much.

<sup>7</sup> Certain payment unit estimates have been revised since release of the *NPRM* due to additional or updated information obtained by the Commission. This may result in changed fee amounts from those proposed in the *NPRM*. It is important to also note that Congress' required revenue increase in regulatory fee payments of approximately seven percent in FY 1998 will not fall equally on all fee 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.

<sup>8</sup> One feature of the cost accounting system is that it separately identifies direct and indirect costs. Direct costs include salary and expenses for (a) staff directly assigned to our operating Bureaus and performing regulatory activities and (b) staff assigned outside the operating Bureaus to the extent that their time is spent performing regulatory activities pertinent to an operating Bureau. These costs include rent, utilities and contractual costs attributable to such personnel. Indirect costs include support personnel assigned to overhead functions such as field and laboratory staff and certain staff assigned to the Office of Managing Director. The combining of direct and indirect costs is accomplished on a proportional basis among all fee categories as shown on Attachment D.

<sup>9</sup> Congress' estimate of costs to be recovered through regulatory fees is generally determined at least twelve months before the end of the fiscal year to which the fees actually apply. As such, year-end actual activity costs will not equal exactly the amount Congress designates for collection in a particular fiscal year.

iv. Application of 25 Percent Revenue Ceiling

28. We applied the 25% ceiling on the increase in the revenue requirement of each fee category (over and above the Congressionally mandated increase in the overall revenue requirement and the difference in unit counts) using the same methodology we described in detail in our FY 1997 *Report and Order*.

v. Recalculation of Fees

29. Once we determined the amount of fee revenue that it 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 E.

vi. Proposed Changes to Fee Schedule

30. We examined the results of our calculations made in paragraphs 25-27 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). As a result of this review, we are adopting the following changes to our Fee Schedule:

a. Commercial AM & FM Radio

31. In FY 1997 we revised the methodology for assessing radio regulatory fees, by determining each station's daytime protected field strength signal contour which was then overlaid upon U.S. Census data to estimate the population coverage for each station.<sup>10</sup> Under the FY 1997 methodology, stations with larger populations within their protected service area were assessed higher fees than stations with smaller populations within their protected service area. The FY 1997 radio regulatory fees were also based on the ratio between the differences in fees assessed for different classes of stations in the Statutory Fee Schedule. 47 U.S.C. 159(g). We will modify these procedures to assess regulatory fees by calculating the

<sup>10</sup>In FY 1997 we determined that the signal contour for AM radio stations would be based upon a calculated signal strength of 0.5 mV/m from the transmitter location. For Class B FM stations the contour was based upon a signal strength of 54 dBuV/m from the transmitter location and for Class B1 FM stations the contour was based upon a signal strength of 57 dBuV/m. For all other FM Classes, a 60 dBuV/m contour was used. Attachment J describes in detail the factors, measurements and calculations that go into determining station signal contours and associated population coverages.

populations within each station's narrower city strength service contour. We anticipate that this methodology will reduce the populations to be considered for fee purposes to the populations which most licensees consider to be within their "core" service area. We also will increase the differences between fee payments for different classes of stations with different populations, so that stations serving larger populations would pay a greater share of the regulatory fee burden.

32. We received complaints from licensees stating that the protected field strength contours used to calculate the fees, overstated actual market areas and populations served. In several instances licensees contended that rural stations whose contours intersected major metropolitan areas, were assigned populations far in excess of the populations within their primary or even their secondary market areas. See, for example, letters from KTXC, dated September 10, 1997; Music Express Broadcasting Corporation of Northeast Ohio, dated August 28, 1997; and Martin Broadcasting Company, dated August 26, 1997.

33. We also received complaints from licensees that they could not determine how the size of their regulatory fees were affected by their class of station, and that there was not a sufficient differentiation in fees between stations serving large populations and other stations. Several licensees argue that stations serving smaller populations have paid a disproportionate share of the regulatory fees. See letter from Heckler Broadcasting, Inc., received October 2, 1997; and Petition for Reduction of Regulatory Fee filed September 18, 1997 by Family Communications, Inc.

34. Comments filed by 19 State Broadcaster Associations, and by the NAB support reliance on city grade contours, a fee schedule which separated stations by class and population, and a fee schedule that increased the differentiation between the fees paid by stations serving larger markets and by stations serving smaller markets. The NAB also maintained that specifically dividing stations by class and population will provide a greater understanding to individual licensees concerning how their fees were calculated. Finally, the NAB argued that it is inequitable to base fees on the number of licensees who have paid their fees in the past and, therefore, shifting the fee payment obligation from the number of licensees that did not pay their fees. The NAB urges the

Commission to adopt a broadcast fee schedule based on the total number of operating stations, excluding only those stations that have documented non-profit status.

35. In part, as a response to these concerns and comments, the *NPRM* proposed to modify the fee schedule for FY 1998 by utilizing the same general methodology for determining regulatory fees as we did in FY 1997, but by increasing the strength of the applicable signal contours to 5 mV/m for AM radio stations and 70 dBuV/m for FM radio stations, their city strength service contours. The city strength signal contours should reduce the populations used to assess fees to the populations within each station's primary local market area.

36. The FY 1998 *NPRM* proposed alternative fee schedules. In the first schedule, we determined the population in each station's city strength service contours, and then multiplied each population served by the same ratios between the fees for individual classes and types of stations (AM or FM), as established in the original Statutory Fee Schedule to determine the weighted population for each station in the FY 1998 Fee Schedule. See 47 U.S.C. 159(g). We then proposed to combine all of the AM and FM stations into a single schedule. We developed a range of fees for the schedule by selecting a minimum fee not lower than the AM Construction Permit fee which we determined to be \$235, and a maximum fee which would not place an undue burden on any licensee. Therefore, we proposed to set the lowest radio fee at \$250, and to increase the fees in \$250 increments to \$2,500 for stations serving the largest populations. We further proposed to retain the same number of actual fee classifications (ten) as in our FY 1997 *Report and Order*.<sup>11</sup>

37. We agree with the NAB and the State Broadcaster Associations that separately listing AM and FM stations by class of station, and by increasing the burden to be paid by the stations serving larger populations, is more equitable. Although that schedule would depart from the original ratios in the statutory fee schedule, we are authorized to modify the schedule and implement the following schedule which is responsive to the concerns expressed by our licensees. 47 U.S.C. 159(b).

<sup>11</sup>The number of stations is not exactly divisible by 10, leaving group 10 with five less stations than the other groups.

## 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

38. As can be seen from the above chart, the same class stations in different size cities generally have different fees, with stations serving larger populations paying higher fees. In addition, different class stations in the same city generally have different fees, with stations which provide a higher class of service paying higher fees. The same class stations in the same city will have the same fee. Thus, the adopted fee schedule achieves the objectives of assessing fees based on class of station and populations served, thereby providing a fair and equitable means of distinguishing between stations located in metropolitan areas and in rural areas.

39. Moreover, if a licensee believes that it has been improperly placed in a particular fee classification group or that it will suffer undue financial hardship from the fee assessment, our rules provide for waiver, reduction or deferral of a fee as described in § 1.1166 of our rules. See 47 CFR 1.1166.

40. We also agree with the NAB that the fee schedule should reflect the total number of non-exempt operating stations. We have identified those licensees who have not paid their regulatory fees and have requested that they pay the fee or submit evidence establishing that they have paid their fee or are entitled to an exemption from the regulatory fee. In addition, in *Assessment and Collection of Regulatory Fees for Fiscal Year 1997*, FCC 97-384, adopted October 17, 1997, we required licensees to submit evidence of their non-profit status. For FY 1998, we have made adjustments to the number of licensees subject to fee payment based on responses received pertaining to non-profit status. Further, for FY 1999, we will consider the number of licensees who have paid their fees, as adjusted to account for licensees that have established their exempt status, and to account for responses to our letters requesting fee payments. Moreover, it is our intention to follow up on the FY 1998 fee payments to again identify and collect fees from those licensees that have not paid their

fees and to further adjust and perfect our station counts.

41. The Commission will again inform radio station licensees of their exact fee obligation. A Public Notice listing each station's call letters, location, population, and the required fee will be mailed to each licensee. The same information will also be available at our internet web site (<http://www.fcc.gov>). Interested parties may also obtain their applicable fee amount for FY 1998 by calling the FCC's National Call Center at 1-888-225-5322. We have also provided detailed payment information for each radio station as Attachment L to this *Report and Order*.

#### b. CMRS

42. In the *NPRM*, we proposed for FY 1998 fees of \$.29 per unit for the CMRS Mobile Service and \$.04 per unit for the CMRS Messaging Service. In addition, we sought comment on how best to assign the various CMRS services between the two fee categories. For FY 1997, licensees authorized for operation on broadband spectrum were subject to payment of the CMRS Mobile Service fee and licensees authorized for operation on narrowband spectrum were subject to payment of the CMRS Messaging fee without regard to the nature of the services actually offered. We invited interested parties to comment on our proposal to continue the FY 1998 fee structure, and we specifically invited comments on whether licensees in the 900 MHz Specialized Mobile Radio (SMR) Service were properly included in the CMRS Mobile fee category. Further, we tentatively proposed to include the Wireless Communications Service in the CMRS Wireless fee category.

43. Several interested parties filed comments, in particular, concerning the demarcation between the CMRS Mobile and CMRS Messaging fee categories. SBC Communications Inc. (SBC) urges us to adopt only a single CMRS fee covering all CMRS services contending that both Congress and the Commission intended in establishing SMRS to create regulatory symmetry among the CMRS

services and, thereby, avoid any competitive advantage to narrowband PCS and SMR Services over Cellular and broadband PCS.<sup>12</sup> In contrast, Paging Network, Inc. (Pagenet) supports retention of the existing fee category structure, but recommends adoption of a subcategory for non-voice networks and services within the CMRS Mobile Service fee category which would be subject to the same fee payment as licensees within the CMRS Messaging fee category.

44. Bell South, a provider of mobile wireless data, supported by American Mobile Telecommunications Association (AMTA), suggests that 900 MHz SMR licensees should be classified in the CMRS Messaging Fee category not the CMRS Mobile Services Category. BellSouth WD argues that regulatory fees should be governed by how the service bands are predominantly used. BellSouth WD states that the Commission has allocated 5 MHz of spectrum in each geographic region for 900 MHz SMR systems and that, in practice, this spectrum is licensed in 20 blocks, each consisting of 10 two-way 12.5 KHz paths, or 0.25 MHz per ten-channel block.<sup>13</sup> Further, Bell South contends that 900 MHz SMRs do not have the capacity to compete with true broadband systems, lacking the amount of spectrum of those services included in the CMRS Mobile Fee category. Thus, Bell South WD suggests that we either include any license authorization providing 25 KHz or less spectrum in the CMRS Messaging Service category or that we establish a third CMRS fee payment category for systems that operate in the 900 MHz SMR band and other services that are allocated no more than 5 MHz of spectrum. Small Business in Telecommunications (SBT), representing several SMR licensees, argues that, because we classified narrowband PCS, which operates on 50 KHz paired channels, in the CMRS

<sup>12</sup> *Id.*

<sup>13</sup> See BellSouth WD Comments at 2.

Messaging Service category,<sup>14</sup> we should clarify that all CMRS stations which are authorized with channel bandwidth not exceeding 50 KHz are within the CMRS Messaging Service category.

45. Moreover, SBT contends that we should clarify that SMR systems and Public Coast stations are within the CMRS Messaging Fees category since these stations are authorized with substantially less channel capacity than narrowband PCS stations. SBT also believes that SMR licensees, which are small businesses should receive discounts on their fees similar to the discounts given to small businesses in spectrum auctions. AMTA also supports relief for small businesses. SBC also contends that we incorrectly included the Rural Radio Service and the Basic Exchange Telecommunications Radio Service (BETRS) in the CMRS fee category.

46. We decline to adopt suggestions to base our fees on the predominant use of assigned spectrum and on a licensee by licensee basis. We are aware of no existing records or other information that would permit development of a sub-category of CMRS Mobile Services for those CMRS licensees who use broadband spectrum to deliver CMRS Messaging Services. Thus, adoption of those proposals could impose upon the licensees themselves and our staff an undue expenditure of administrative resources in the course of preparing the fee payments and processing them.

47. Furthermore, we reject SBC's contention that all CMRS licensees should pay the same regulatory fee. The statutory fee schedule makes plain that Congress in enacting the regulatory fee program contemplated that our fee levels would recognize the benefit of the spectrum authorized to licensees in the various services. 47 U.S.C. 159(g). Furthermore, interested parties should note that in the past our CMRS fee schedules have adhered to Congress' principle that our fee categories are to be based on the authorization provided to a licensee rather than the use a particular licensee makes of its authorized spectrum. Thus, we have considered the nature of the services offered only to the extent that service offered on broadband spectrum and services offered on narrowband spectrum are subject to different categories of fee payment.

48. While, at this time, we lack an adequate record to modify classifications within the CMRS fee category, we intend to adopt shortly a *Notice of Inquiry* to seek comment on

revisiting several of our regulatory fee categories, including CMRS. We encourage CMRS licensees to participate in that proceeding by submitting comments and supporting data.

49. Finally, we did not receive any comments opposing our tentative conclusion that the Wireless Communications Service (WCS) should be classified as a CMRS Mobile Service and, therefore, we will classify WCS as service within the CMRS Mobile Service fee category. Also, we agree with SBC that § 20.7(a) of the rules excludes licensees in the Rural Radio Service from CMRS. Therefore, licensees in this Service shall pay annual regulatory fees under the category, GMRS/Other Land Mobile. For FY 1998, the GMRS/Other Land Mobile fee is \$6 per license, payable in advance for the entire license term and at the time of application for a new, modification or reinstatement license. The total regulatory fee due is \$30 for a five-year license term.

#### c. Space Stations and Bearer Circuits i. Geostationary Satellites

50. For FY 1997 and prior years, we have adopted the statutory fee schedule's "per satellite" method for assessment of fees upon licensees of space stations. 47 U.S.C. 159(g). In the *NPRM*, we proposed retaining this approach. See FY 1998 *NPRM*, Attachment F. Columbia asks that we modify our methodology to take into account the difference between transponder and bandwidth capacity that exists among different satellites. Columbia states that its satellites are limited to just twelve C-band transponders, which, it contends, is only about one-third the capacity of the typical geostationary satellite. Further, it argues that satellite operators benefit from our regulation in close proportion to its capacity because a satellite's commercial capacity dictates the benefit it receives from our regulation, i.e., its ability to generate income. Thus, Columbia suggests that we base the space station fees on the transponder capacity of each satellite measured in 36 MHz equivalent circuits.

51. Both GE Americom and Lorel contend that the Commission engages in little oversight once a satellite is licensed and that application processing costs should not be included in the regulatory fee schedule. The costs attributed to the regulation of geostationary satellites are based on the Commission's cost accounting system which separates application processing costs from regulatory costs.

52. Finally, GE Americom and others contend that any costs related to the

development of new services rather than existing services should be treated as overhead and recovered proportionately from all fee payers. They also state that high regulatory fees adversely affect the U.S. satellite industry's capability to compete with foreign licensed companies. We continue to believe that it would be inappropriate to transfer costs directly attributable to one industry group to other unrelated industries or groups. Benefits need not be received or used by a particular licensee to satisfy the "reasonably related" criteria. It is enough that the benefits are available to all. The FCC, by statute, may only regulate costs of domestic licensed companies and we do not believe that our regulatory fees substantially affect American companies ability to compete with foreign entities.

53. After a careful review of the arguments, we have concluded that due to the tight collection schedule we face at this point, as a practical matter, we have no viable alternative other than adoption of the fee as proposed in the *NPRM*. Our action today is not intended to prejudge any pending waiver applications regarding these fees. Moreover, since the calculation of annual regulatory fees for geostationary satellites has been a matter of dispute for several years, we will soon issue a *Notice of Inquiry* which will entertain suggestions for alternative approaches based on different criteria and information. We will also ask the satellite industry to specify the data upon which we can base each alternative approach and the most feasible method for obtaining this information.

#### ii. Non-Geostationary Satellites

54. In the *NPRM*, we proposed to revise the fee payment requirement for non-geostationary satellite systems by requiring a fee payment "upon the commencement of operation of a system's first satellite as reported annually pursuant to §§ 25.142(c), 25.143(e) 25.145(g) or upon certification of operation of a single satellite pursuant to § 25.120(d)."<sup>15</sup> See *NPRM* at paragraph 32. In its comments, ORBCOMM contends that we should recover our non-geostationary space station regulatory costs from all non-geostationary satellite licensees rather than only those that have launched their initial satellites because all licensees benefit from our policy, enforcement and information activities and services.

55. In the past, we have not assessed fees upon licensees of LEO systems that

<sup>15</sup> Section 25.120(d) has been renumbered to § 25.121(d).

<sup>14</sup> See FY 1997 Fees Order at paragraph 61.

do not operate at least one in-orbit space station. Nevertheless, we believe that ORBCOMM's proposal to impose a fee on all licensees of LEO systems warrants consideration due to developments in satellite technology permitting the deployment of LEO systems containing large numbers of satellites. However, before further considering the proposal, we believe an opportunity for comments by the interested parties would be useful. Therefore, we adopt the fee as proposed in the *NPRM*. Nevertheless, we will include ORBCOMM's proposal in the *Notice of Inquiry* we will initiate to review various methodologies for assessing fees in various fee categories. This will provide an opportunity to fully explore this proposal with input from all affected parties.

56. Finally, we will adopt the *NPRM*'s proposal to reclassify the LEO regulatory fee category as the "Space Stations (Non-geostationary)" fee category because advances in satellite technology have made possible medium and high orbit satellite systems operating in non-geostationary orbits. See *NPRM* at paragraph 33.

### iii. Bearer Circuits

57. For FY 1997, for the first time, we applied the international bearer circuit fee to satellite non-common carriers providing international bearer circuits to end users. See FY 1997 *Report and Order* at paragraphs 66-72. Previously, we had assessed the bearer circuit fee only upon undersea cable operators and domestic and international common carriers. In the *NPRM*, we proposed to again assess the bearer circuit fee on both private and common carrier satellite providers of international bearer circuits to end users. See FY 1998 *NPRM*, Attachment F.

58. Columbia, Loral, and PanAmSat contend that assessment of the bearer circuit fee on private satellite providers of international bearer circuits is unlawful. These parties state that section 9(g) of the Communications Act specifically limits the assessment of the bearer circuit fee to "carriers". 47 U.S.C. 159(g). Because section 3(10) of the Act defines "carriers" as "common carriers", they contend that we are limited to imposing the fee only on common carriers providing international bearer circuits. 47 U.S.C. 153(10). In addition, according to Columbia, the intent of Congress in including the bearer circuit fee in its statutory fee schedule was to assure the recovery from common carriers of the cost of their Title II regulation. Because non-common carriers are not subject to Title II regulation, Columbia argues that imposition of the bearer circuit fee on

non-common carriers would result in recovery of the costs of Title II regulation from entities not subject to our Title II jurisdiction.

59. As a separate matter, PanAmSat states that our justification underlying imposition of the FY 1997 bearer fee upon non-common carrier satellite providers was flawed because we mistakenly believed that non-common carrier satellite operators would offer interconnected PSTN services in competition with common carriers following our elimination of the *de jure* prohibition on non-common carriers for the provision of these services. See FY 1997 *Report and Order* at paragraph 71. Instead, PanAmSat contends that the record in the pending *Comsat Dominance* proceeding demonstrates that the amount of PSTN traffic actually carried by non-common carrier satellites is so small as to be inconsequential from a competitive point of view. See 60-SAT-ISP-97. Thus, PanAmSat, supported by Columbia and Loral, argues that there has been no change in our regulation of non-common carriers to justify, pursuant to section 9(b)(3), subjecting non-common carrier satellites providers to a new fee. 47 U.S.C. 159(b)(3).

60. Finally, PanAmSat contends that to assess non-common carrier satellite operators the international bearer circuit fee will create a competitive disparity. PanAmSat states that under our *DISCO II* policies, foreign-licensed satellites now may be used to provide satellite service in the United States. Foreign satellite operators are not, however, required to pay regulatory fees. See 12 FCC Rcd 24094 (1997). As a result, the satellite systems against which U.S.-licensed non-common carriers actually compete will have a competitive advantage solely as a result of having used a foreign licensing administration. In sum, PanAmSat asks that we not impose the bearer circuit fee on non-common carrier satellite operators in order to avoid skewing competition in the telecommunications markets by unfairly discriminating against U.S.-licensed service providers.

61. We disagree with Columbia, Loral and PanAmSat that our assessment of the bearer circuit regulatory fee on them is unlawful. First, we disagree with their assertion that the intent of Congress in enacting section 9 of the Communications Act, under which the Commission is required to collect annual regulatory fees, including the bearer circuit fee at issue here, was to recover the costs of regulating common carriers under Title II of the Act. Section 9(a) clearly states that the purpose of the regulatory fees is to recover the costs of

the Commission's enforcement activities, policy and rulemaking activities, user information services and international activities. Section 9(a) does not mention carriers or non-carriers or impose different criteria for each. Rather, the section requires the Commission to collect fees designed to recover its costs for these four general activities and to collect those fees from all entities that either require the Commission to engage in those activities or who benefit from them. As we noted in our FY 1997 *Report and Order* the Commission's costs for Title II regulation are recovered from the application fees under section 8 of the Communications Act.

62. We further disagree with the argument of PanAmSat that our argument for recovering bearer circuit fees from non-carrier providers of such circuits is flawed. We see nothing in section 9 that would specifically exempt non-carriers from paying fees under section 9. While we agree that the Schedule of Regulatory Fees included in section 9(g) states that we should impose bearer circuit fees upon "carriers,"<sup>16</sup> and that section 3(10) of the Act defines "carriers" to mean "common carriers,"<sup>17</sup> that is not the end of the issue. Section 9(b)(3) empowers the Commission to amend the Schedule of Regulatory Fees if the Commission deems such amendment necessary in the public interest.<sup>18</sup> In our 1997 *Report and Order* we amended the schedule of regulatory fees to impose them upon non-carrier operators of international satellite systems under the terms of section 9(g)(3). The basis for this amendment was that the non-carrier system operators had sought and obtained a significant expansion of the scope of services they are permitted to offer.<sup>19</sup>

Our *DISCO II* Order also allowed them to provide unlimited domestic service,<sup>20</sup> thereby increasing their permitted service areas. Because of these changes in their operation the non-carrier operators of international satellite systems impose more burdens upon the Commission's regulatory staff and derive a greater benefit from such staff's activities, particularly its international representation functions.

<sup>16</sup> 47 U.S.C. 159(g).

<sup>17</sup> 47 U.S.C. 153(10).

<sup>18</sup> 47 U.S.C. 159(g)(3).

<sup>19</sup> See FCC 97-295 at paragraph 71, June 26, 1997.

<sup>20</sup> See 63 FR 6496 (February 9, 1998).

Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, *Report and Order* in IB Docket No. 96-111, 12 FCC Rcd 24094 (1997), 62 FR 64167 (December 4, 1997).

We concluded, therefore, that it would be appropriate to begin to collect regulatory fees from such operators.

63. The commenting parties do not directly challenge the conclusions of our FY 1997 *Report and Order*. At most, PanAmSat argues that we may have overestimated the number of circuits such entities interconnect to the public switched telephone network (PSTN) and that the number is actually "competitively inconsequential." Our decision, however, was not solely based upon the connection of circuits to the PSTN. The non-carrier international satellite operators have become substantial providers of international private-line circuits. Such circuits are international bearer circuits, whether or not they are interconnected to the PSTN. They offer substantial competition to carrier offerings of international bearer circuits. Commission staff has also spent considerable time representing non-carrier satellite operators in international forums. Therefore, we continue to believe that our regulation of these entities has sufficiently changed so that it is now appropriate for them to contribute to the recovery of Commission costs through payment of the bearer circuit fee. Finally, we find no merit in PanAmSat's argument that our imposition of bearer circuit fees on U.S.-licensed satellite systems discriminates in favor of foreign-owned systems. Congress requires the Commission to recover regulatory fees from firms who are subject to the Commission's regulatory jurisdiction. Foreign-licensed satellite systems do not fall within Commission jurisdiction. Therefore, they neither directly impose burdens on the Commission's staff nor receive benefits from Commission representation in international fora.

d. Interstate Telephone Service Providers

64. In the *NPRM*, we proposed to adopt the methodology for assessing fees upon Interstate Telephone Service Providers that we had employed in past years. Under this methodology, carriers calculate their fees based upon their proportionate share of interstate revenues using the methodology we developed for contribution to the TRS Fund. See *Telecommunications Relay Services*, 8 FCC Rcd 5300 (1993). However, in order to avoid imposing upon resellers a double fee payment, we permit carriers to remove from their gross interstate revenue payments made to underlying carriers for telecommunications facilities and services, including payments for interstate access services.

65. SBC contends that our methodology imposes an undue burden upon the LECs because we permit interexchange carriers (IXCs) to deduct payments made to underlying common carriers from their gross revenues while local exchange carriers (LECs) do not have such payments to deduct. SBC suggests that use of end user revenues—the same contribution base used for Universal Service—to develop the annual fees would alleviate that burden and be more competitively neutral.

66. We find merit to SBC's proposal and, indeed, we have previously recognized administrative advantages to using end user revenues as opposed to net revenues when assessing carrier contributions.<sup>21</sup> However, SBC is mistaken in describing end user revenues as more competitively neutral than the mechanism we have proposed. Assuming that all fees are recovered from customers, including carrier customers that purchase their service for

resale, retail customers would still pay the same rates. Further, to the extent that SBC provides services in competition with other carriers, those carriers would pay the same percentage amounts as SBC when providing the same services to the same customers. Since modifying the fee basis would not result in any material difference in the rates that consumers pay, we cannot conclude that the LEC's pay an undue share under our proposed methodology.

67. Interested parties should note that we are adopting our net revenue methodology as the fee basis for the Interstate Telephone Service Providers fee category again this year, in part, because we do not yet have adequate data to estimate total common carrier interstate end user revenue for FY 1997. While we could make such an estimate using data available for the first half of FY 1997 based on USF filings submitted on September 1, 1997, we believe that for FY 1998 we can make a better calculation of net revenues using historic data from regulatory fees as well as published gross revenue data based on TRS Fund filings. Thus, we expect to revisit SBC's proposal in the course of developing our regulatory fees for FY 1999.

E. Schedule of Regulatory Fees

68. The Commission's Schedule of Regulatory Fees for FY 1998 is contained in Attachment F of this *Report and Order*.

F. Effect of Revenue Redistributions on Major Constituencies

69. The chart below illustrates the relative percentages of the revenue requirements borne by major constituencies since inception of regulatory fees in FY 1994.

REVENUE REQUIREMENT PERCENTAGES BY CONSTITUENCIES

	FY 1994 (actual)	FY 1995 (actual)	FY 1996 (actual)	FY 1997 (actual)	FY 1998 (proposal)
Cable TV Operators (Inc. CARS Licenses) .....	41.4	24.0	33.4	21.8	18.1
Broadcast Licensees .....	23.8	13.8	14.6	14.1	15.3
Satellite Operators (Inc. Earth Stations) .....	3.3	3.6	4.0	5.0	5.0
Common Carriers .....	25.0	44.5	40.9	49.8	47.8
Wireless Licensees .....	6.5	14.1	7.1	9.3	13.8
Total .....	100.0	100.0	100.0	100.0	100.0

G. Procedures for Payment of Regulatory Fees

i. Installment Payments for Large Fees

70. Generally, we are retaining 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)

<sup>21</sup> *Federal-State Joint Board on Universal Service, Report and Order*, FCC 97-157, CC Docket No. 96-

45, 12 FCC Rcd 8776, 9206-9209 (rel. May 8, 1997) (Universal Service Order).

“standard” fees, (2) “large” fees, and (3) “small” fees.

71. We proposed in the *NPRM* that regulatees in any category of service with a liability of \$12,000 or more be eligible to make installment payments and that eligibility for installment payments be based upon the amount of either a single regulatory fee payment or combination of fee payments by the same licensee or regulatee. However, statutory constraints requiring notification to Congress prior to actual collection of the fees prevents us from allowing installment payments in FY 1998. The payment dates for each regulatory fee category will be announced by Public Notice and published in the **Federal Register** following termination of this proceeding. However, regulatees otherwise eligible to make installment payments may pay their fees on the last date that fee payments may be submitted, as established in our Public Notice.

#### ii. Annual Payments of Standard Fees

72. Standard fees 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. As in the past, all standard fees will be payable in full on the date we establish for payment of fees in their regulatory fee category. The payment dates for each regulatory fee category will be announced by Public Notice and published in the **Federal Register** following termination of this proceeding.

#### iii. Advance Payment of Small Fees

73. As we have in the past, we are proposing to treat 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 identified would be subject to advance payments in our FY 1994 *Report and Order*, and to those additional payers set forth herein.<sup>22</sup>

<sup>22</sup> 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, General Mobile Radio Service (GMRS). In addition, applicants for Amateur Radio Vanity Call Signs will be required to submit an advance payment.

Payers of small fees must 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 would be made based upon the regulatory fee applicable at the time the application is filed. The effective date of the FY 1998 small fees will be announced by Public Notice and published in the **Federal Register** following termination of this proceeding.

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

74. As noted, the time for payment of standard fees will be published in the **Federal Register**. For licensees, permittees and holders of other authorizations in the Common Carrier, Mass Media and Cable Services, fees should be submitted for any authorization held as of *October 1, 1997*. As in the past, this is the date to be used for establishing liability for payment of these fees since it is the first day of the federal government's fiscal year.

75. In the case of other regulatees whose fees are based upon a subscriber, unit or circuit count, the number of a regulatees' subscribers, units or circuits on *December 31, 1997*, will be used to calculate the fee payment.<sup>23</sup> As in the past, we have selected the last date of the calendar year because many of these entities file reports with us as of that date. Others calculate their subscriber numbers as of that date for internal purposes. Therefore, calculation of the regulatory fee as of that date will facilitate both an entity's computation of its fee payment and our verification that the correct fee payment has been submitted.

<sup>23</sup> 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 1996, rather than on a count as of December 31, 1996.

#### v. Minimum Fee Payment Liability

76. Regulatees whose total fee liability amounts to less than \$10, including all categories of fees for which payment is due by an entity, are exempted from fee payment in FY 1998.

#### IV. Ordering Clause

77. 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 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 1998, will become effective September 13, 1998, which is 90 days from the date of notification to Congress. Finally, it is ordered that this proceeding is *Terminated*.

#### V. Authority and Further Information

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

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

#### 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. Section 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 <sup>1</sup>	Address
1. Land Mobile (Above 470 MHz, Base Station & SMRS)(47 CFR, Part 90):		
(a) 800 MHz, New, Renewal, Reinstatement (FCC 600) .....	\$12.00	FCC, 800 MHz, PO Box 358235, Pittsburgh, PA 15251-5235.
(b) 900 MHz, New, Renewal, Reinstatement (FCC 600) .....	12.00	FCC, 900 MHz, PO Box 358240, Pittsburgh, PA 15251-5240.
(c) 470-512,800,900, 220 MHz, 220 MHz Nationwide Renewal (FCC 574R, FCC 405A).	12.00	FCC, 470-512, PO Box 358245, Pittsburgh, PA 15251-5245.
(d) Correspondence, Blanket Renewal, (470-512,800,900,220 MHz) (Remittance Advice, Correspondence).	12.00	FCC, Corres., PO Box 358305, Pittsburgh, PA 15251-5305.
(e) 220 MHz, New, Renewal, Reinstatement (FCC 600) .....	12.00	FCC, 220 MHz, PO Box 358360, Pittsburgh, PA 15251-5360.
(f) 470-512 MHz, New, Renewal, PO Box 358810, Reinstatement (FCC 600).	12.00	FCC, 470-512, Pittsburgh, PA 15251-5810.
(g) 220 MHz Nationwide, New, Renewal, Reinstatement (FCC 600).	12.00	FCC, Nationwide, PO Box 358820, Pittsburgh, PA 15251-5820.
2. Microwave (47 CFR Pt. 101):		
(a) Microwave, New, Renewal, Reinstatement (FCC 415) ...	12.00	FCC, Microwave, PO Box 358250, Pittsburgh, PA 15251-5250.
(b) Microwave, Renewal (FCC 402R) .....	12.00	FCC, Microwave, PO Box 358255, Pittsburgh, PA 15251-5255.
(c) Correspondence, Blanket Renewal (Microwave) (Remittance Advice, Correspondence).	12.00	FCC, Corres., PO Box 358305, Pittsburgh, PA 15251-5305.
3. Shared Use Services:		
(a) Land Transportation (LT), New, Renewal, Reinstatement (FCC 600).	6.00	FCC, Land Trans., PO Box 358215, Pittsburgh, PA 15251-5215.
(b) Business (Bus.), New, Renewal, Reinstatement (FCC 600).	6.00	FCC, Business, PO Box 358220, Pittsburgh, PA 15251-5220.
(c) Other Industrial (OI), New, Renewal, Reinstatement (FCC 600).	6.00	FCC, Other Indus., PO Box 358225 Pittsburgh, PA 15251-5225.
(d) General Mobile Radio, Service (GMRS) New, Renewal, Reinstatement (FCC 574).	6.00	FCC, GMRS, PO Box 358230, Pittsburgh, PA 15251-5230.
(e) Business, Other Industrial, Land Transportation, GMRS, Renewal (FCC 574R, FCC 405A).	6.00	FCC, Bus., OI, LT, GMRS, PO Box 358245 Pittsburgh, PA 15251-5245.
(f) Ground, New, Renewal, Reinstatement (FCC 406) .....	6.00	FCC, Ground, PO Box 358260, Pittsburgh, PA 15251-5260.
(g) Coast, New, Renewal, Reinstatement (FCC 503) .....	6.00	FCC, Coast, PO Box 358265, Pittsburgh, PA 15251-5265.
(h) Ground, Renewal (FCC 452R) .....	6.00	FCC, Ground, PO Box 358270, Pittsburgh, PA 15251-5270.
(i) Coast, FCC, Coast Renewal (FCC 452R) .....	6.00	PO Box 358270, Pittsburgh, PA 15251-5270.
(j) Ship, New, Renewal, Reinstatement (FCC 506) .....	6.00	FCC, Ship, PO Box 358275, Pittsburgh, PA 15251-5275.
(k) Aircraft, New, Renewal, Reinstatement (FCC 404) .....	6.00	FCC, Aircraft, PO Box 358280, Pittsburgh, PA 15251-5280.
(l) Ship, Renewal (FCC 405B) .....	6.00	FCC, Ship, PO Box 358290, Pittsburgh, PA 15251-5290.
(m) Aircraft, Renewal (FCC 405B) .....	6.00	FCC, Aircraft, PO Box 358290, Pittsburgh, PA 15251-5290.
(n) Correspondence, Blanket Renewal (Bus.,OI,LT,GMRS) (Remittance Advice, Correspondence).	6.00	FCC, Corres., PO Box 358305, Pittsburgh, PA 15251-5305.
(o) Correspondence, Blanket Renewal (Ground) (Remittance Advice, Correspondence).	6.00	FCC, Corres., PO Box 358305, Pittsburgh, PA 15251-5305.
(p) Correspondence, Blanket Renewal (Coast) (Remittance Advice, Correspondence).	6.00	FCC, Corres., PO Box 358305, Pittsburgh, PA 15251-5305.
(q) Correspondence, Blanket Renewal (Aircraft) (Remittance Advice, Correspondence).	6.00	FCC, Corres., PO Box 358305, Pittsburgh, PA 15251-5305.
(r) Correspondence, Blanket Renewal (Ship) (Remittance Advice, Correspondence).	6.00	FCC, Corres., PO Box 358305, Pittsburgh, PA 15251-5305.
4. Amateur Vanity Call Signs .....	1.30	FCC, Amateur Vanity, PO Box 358924, Pittsburgh, PA 15251-5924.
5. CMRS Mobile Services (per unit) .....	.29	FCC, Cellular, PO Box 358835, Pittsburgh, PA 15251-5835.
6. CMRS Messaging Services (per unit) .....	.04	FCC, Messaging, PO Box 358835, Pittsburgh, PA 15251-5835.

<sup>1</sup> 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 owned. It should be further noted that application fees may also apply as detailed in 1.1102 of this chapter.

3. Section 1.1153 is revised to read as follows:

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

Fee amount	Address
I. Radio [AM and FM] (47 CFR, Part 73):	
1. AM Class A	
(a) <=20,000 population .....	400
(b) 20,001-50,000 population .....	750
(c) 50,001-125,000 population .....	1,250
(d) 125,001-400,000 population .....	1,750
(e) 400,001-1,000,000 population .....	2,500
(f) >1,000,000 population .....	4,000
2. AM Class B	
(a) <=20,000 population .....	300
(b) 20,001-50,000 population .....	750
(c) 50,001-125,000 population .....	800
(d) 125,001-400,000 population .....	1,250

FCC, Radio, PO Box 358835, Pittsburgh, PA 15251-5835.

	Fee amount	Address
(e) 400,001–1,000,000 population .....	2,000	
(f) >1,000,000 population .....	3,250	
3. AM Class C		
(a) <=20,000 population .....	200	
(b) 20,001–50,000 population .....	300	
(c) 50,001–125,000 population .....	400	
(d) 125,001–400,000 population .....	600	
(e) 400,001–1,000,000 population .....	1,000	
(f) >1,000,000 population .....	1,500	
4. AM Class D		
(a) <=20,000 population .....	250	
(b) 20,001–50,000 population .....	400	
(c) 50,001–125,000 population .....	600	
(d) 125,001–400,000 population .....	750	
(e) 400,001–1,000,000 population .....	1,250	
(f) >1,000,000 population .....	2,000	
5. AM Construction Permit .....	235	
6. FM Classes A, B1 and C3		
(a) <=20,000 population .....	300	
(b) 20,001–50,000 population .....	600	
(c) 50,001–125,000 population .....	800	
(d) 125,001–400,000 population .....	1,250	
(e) 400,001–1,000,000 population .....	2,000	
(f) >1,000,000 population .....	3,250	
7. FM Classes B, C, C1 and C2		
(a) <=20,000 population .....	400	
(b) 20,001–50,000 population .....	750	
(c) 50,001–125,000 population .....	1,250	
(d) 125,001–400,000 population .....	1,750	
(e) 400,001–1,000,000 population .....	2,500	
(f) >,000,000 population .....	4,000	
8. FM Construction Permits .....	1,150	
II. TV (47 CFR, Part 73) VHF Commercial:		
1. Markets 1 thru 10 .....	37,575	FCC, TV Branch, PO Box 358835, Pittsburgh, PA 15251–5835.
2. Markets 11 thru 25 .....	31,275	
3. Markets 26 thru 50 .....	21,400	
4. Markets 51 thru 100 .....	11,975	
5. Remaining Markets .....	3,100	
6. Construction Permits .....	2,525	
III. TV (47 CFR, Part 73) UHF Commercial:		
1. Markets 1 thru 10 .....	14,175	FCC, UHF Commercial, PO Box 358835, Pittsburgh, PA 15251–5835.
2. Markets 11 thru 25 .....	10,725	
3. Markets 26 thru 50 .....	6,650	
4. Markets 51 thru 100 .....	3,975	
5. Remaining Markets .....	1,075	
6. Construction Permits .....	2,650	
IV. Satellite UHF/VHF Commercial:		
1. All Markets .....	1,175	FCC Satellite TV PO Box 358835, Pittsburgh, PA 15251–5835.
2. Construction Permits .....	420	
V. Low Power TV, TV/FM Translator, & TV/FM Booster (47 CFR, Part 74).	265	FCC, Low Power PO Box 358835, Pittsburgh, PA 15251–5835.
VI. Broadcast Auxiliary .....	11	FCC, Auxiliary, PO Box 358835, Pittsburgh, PA 15251–5835.
VII. Multipoint Distribution .....	260	FCC, Multipoint, PO Box 358835, Pittsburgh, PA 15251–5835.

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

	Fee amount	Address
I. Radio Facilities:		
1. Microwave (Domestic Public Fixed) .....	\$12	FCC, Common Carrier, P.O. Box 358680, Pittsburgh, PA 15251–5680.
II. Carriers:		
1. Interstate Telephone Service Providers (per dollar contributed to TRS Fund).	.0011	FCC, Carriers, P.O. Box 358835, Pittsburgh, PA 15251–5680.

5. Section 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 .....	\$50	FCC, Cable, P.O. Box 358835, Pittsburgh, PA 15251–5835.

	Fee amount	Address
2. Cable TV System (per subscriber) .....	.44	

6. Section 1.1156 is revised to read as follows:

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

	Fee amount	Address
I. Radio Facilities:		
1. International (HF) Broadcast .....	\$475	FCC, International, P.O. Box 358835, Pittsburgh, PA 15251-5835.
2. International Public Fixed .....	375	FCC, International, P.O. Box 358835, Pittsburgh, PA 15251-5835.
II. Space Stations (Geostationary Orbit) .....	119,000	FCC, Space Stations, P.O. Box 358835, Pittsburgh, PA 15251-5835.
III. Space Stations (Non-Geostationary Orbit) .....	164,800	FCC, Space Stations, P.O. Box 358835, Pittsburgh, PA 15251-5835.
IV. Earth Stations, Transmit/Receive & Transmit Only (per authorization or registration).	165	FCC, Earth Station, P.O. Box 358835, Pittsburgh, PA 15251-5835.
V. Carriers:		
1. International Bearer Circuits (per active 64KB circuit or equivalent).	6.00	FCC, International, P.O. Box 358835, Pittsburgh, PA 15251-5835.

**Attachment A—Final Regulatory Flexibility Analysis**

1. As required by the Regulatory Flexibility Act (RFA),<sup>24,25</sup> 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 1998*, 63 FR 16188 (April 2, 1998). The Commission sought written public comments on the proposals in its FY 1998 regulatory fees *NPRM*, including on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA, as amended.<sup>26</sup>

**I. Need for and Objectives of this Report and Order**

2. This rulemaking proceeding was initiated in order to collect regulatory fees in the amount of \$162,523,000, the amount that Congress has required the Commission to recover through regulatory fees in FY 1998. 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.<sup>27</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>28</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>29</sup> A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>30</sup> A small organization is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>31</sup> Nationwide, as of 1992, there were approximately 275,801 small organizations.<sup>32</sup> “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.”<sup>33</sup> As of 1992, there were approximately 85,006 such jurisdictions in the United States.<sup>34</sup> This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.<sup>35</sup> 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 proposed rules, if 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.<sup>36</sup> 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

<sup>24,25</sup> 5 U.S.C. 603.

<sup>26</sup> See 5 U.S.C. 604. The RFA, see 5 U.S.C. 601 *et seq.*, has been amended by the Contract with America Advancement Act (CWAAA), Pub. L. 104-121, 110 Stat. 847 (1996). Title II of the CWAAA is “The Small Business Regulatory Enforcement Fairness Act of 1996” (SBREFA).

<sup>27</sup> 5 U.S.C. 603(b)(3).

<sup>28</sup> *Id.* section 601(6).

<sup>29</sup> 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).

<sup>30</sup> Small Business Act, 15 U.S.C. 632 (1996).

<sup>31</sup> 5 U.S.C. 601(4).

<sup>32</sup> 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).

<sup>33</sup> 5 U.S.C. 601(5).

<sup>34</sup> U.S. Dept. of Commerce, Bureau of the Census, “1992 Census of Governments.”

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

<sup>36</sup> 13 CFR 121.201, SIC code 4841.

television services and 1,423 had less than \$11 million in revenue.<sup>37</sup>

6. The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide.<sup>38</sup> Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995.<sup>39</sup> Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators.

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."<sup>40</sup> The Commission has determined that there are 66,000,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 660,000 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.<sup>41</sup> Based on available data, we find that the number of cable operators serving 660,000 subscribers or less totals 1,450.<sup>42</sup> 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,<sup>43</sup> 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 66,000,000 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),<sup>44</sup> multipoint distribution systems (MDS),<sup>45</sup> 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 numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Telecommunications Industry Revenue* report, regarding the Telecommunications Relay Service (TRS).<sup>46</sup> According to data in the most recent report, there are 3,459 interstate carriers.<sup>47</sup> 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.<sup>48</sup> 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."<sup>49</sup>

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.<sup>50</sup> 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, personal communications services providers, covered specialized mobile radio providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small ILECs because they are not "independently owned and operated."<sup>51</sup> For example, a PCS provider that is 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

<sup>37</sup> 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).

<sup>38</sup> 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 (February 27, 1995).

<sup>39</sup> Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for December 30, 1995).

<sup>40</sup> 47 U.S.C. 543(m)(2).

<sup>41</sup> *Id.* 76.1403(b).

<sup>42</sup> Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

<sup>43</sup> 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 76.1043(d).

<sup>44</sup> Direct Broadcast Services (DBS) are discussed with the international services, *infra*.

<sup>45</sup> Multipoint Distribution Services (MDS) are discussed with the mass media services, *infra*.

<sup>46</sup> FCC, Telecommunications Industry Revenue: TRS Fund Worksheet Data, Figure 2 (Number of Carriers Paying Into the TRS Fund by Type of Carrier) (Nov. 1997) (*Telecommunications Industry Revenue*).

<sup>47</sup> *Id.*

<sup>48</sup> 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).

<sup>49</sup> See 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 (August 29, 1996), the Commission has consistently addressed in its regulatory flexibility analyses the impact of its rules on such ILECs.

<sup>50</sup> 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*).

<sup>51</sup> See generally 15 U.S.C. 632(a)(1).

ILECs that may be affected by the proposed rules, if 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.<sup>52</sup> 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.<sup>53</sup> 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 proposed rules, if 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.<sup>54</sup> According to the most recent *Telecommunications Industry Revenue* data, 1,371 carriers reported that they were engaged in the provision of local exchange services.<sup>55</sup> 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 1,371 providers of local exchange service are small entities or

small ILECs that may be affected by the proposed rules, if 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 radiotelephone (wireless) companies.<sup>56</sup> According to the most recent *Telecommunications Industry Revenue* data, 143 carriers reported that they were engaged in the provision of interexchange services.<sup>57</sup> 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 143 small entity IXCs that may be affected by the proposed rules, if 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.<sup>58</sup> According to the most recent *Telecommunications Industry Revenue* data, 109 carriers reported that they were engaged in the provision of competitive access services.<sup>59</sup> 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 109 small entity CAPs that may be affected by the proposed rules, if 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.<sup>60</sup> According to the most recent *Telecommunications Industry Revenue* data, 27 carriers reported that they were engaged in the provision of operator services.<sup>61</sup> 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 27 small entity operator service providers that may be affected by the proposed rules, if 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 definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.<sup>62</sup> According to the most recent *Telecommunications Industry Revenue* data, 441 carriers reported that they were engaged in the provision of pay telephone services.<sup>63</sup> 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 441 small entity pay telephone operators that may be affected by the proposed rules, if 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.<sup>64</sup> According to the most recent *Telecommunications Industry Revenue* data, 339 reported that they were engaged in the resale of telephone service.<sup>65</sup> We do not have data specifying the number of these carriers that are not independently owned and

<sup>60</sup> 13 CFR 121.201, SIC code 4813.

<sup>61</sup> *Telecommunications Industry Revenue*, Figure 2.

<sup>62</sup> 13 CFR 121.201, SIC code 4813.

<sup>63</sup> *Telecommunications Industry Revenue*, Figure 2.

<sup>64</sup> 13 CFR 121.201, SIC code 4813.

<sup>65</sup> *Telecommunications Industry Revenue*, Figure 2.

<sup>52</sup> 1992 Census, supra, at Firm Size 1-123.

<sup>53</sup> 13 CFR 121.201, SIC code 4813.

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

<sup>55</sup> *Telecommunications Industry Revenue*, Figure 2.

<sup>56</sup> 13 CFR 121.201, SIC code 4813.

<sup>57</sup> *Telecommunications Industry Revenue*, Figure 2.

<sup>58</sup> 13 CFR 121.201, SIC code 4813.

<sup>59</sup> *Telecommunications Industry Revenue*, Figure 2.

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 339 small entity resellers that may be affected by the proposed rules, if adopted.

20. 800 Service Subscribers.<sup>66</sup> Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to 800 service ("toll free") subscribers. The most reliable source of information regarding the number of 800 service subscribers appears to be data the Commission collects on the 800 numbers in use.<sup>67</sup> According to our most recent data, at the end of 1995, the number of 800 numbers in use was 6,987,063. Similarly, the most reliable source of information regarding the number of 888 service subscribers appears to be data the Commission collects on the 888 numbers in use.<sup>68</sup> According to our most recent data, at the end of August 1996, the number of 888 numbers that had been assigned was 2,014,059. 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 6,987,063 small entity 800 subscribers and fewer than 2,014,059 small entity 888 subscribers that may be affected by the proposed rules, if adopted.

#### 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).<sup>69</sup> This definition provides that a small entity is expressed as one with \$11.0 million or less in annual receipts.<sup>70</sup> 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.<sup>71</sup> 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. There are approximately 3000 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 3000 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 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 two licensees. We do not request nor collect annual revenue information, and thus are unable to estimate of 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 of 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 46 space station licensees. We do not request nor collect annual revenue information, and thus are unable to estimate of the number of geostationary space stations that would constitute a small business under the SBA definition.

30. Space Stations (Non-Geostationary). There are six 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 of 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."<sup>72</sup> This definition provides that a small entity is one with \$11.0 million or less in annual receipts.<sup>73</sup> 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 could 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.<sup>74</sup> The SBA

<sup>66</sup> We include all toll-free number subscribers in this category, including 888 numbers.

<sup>67</sup> FCC, CCB Industry Analysis Division, *FCC Releases, Study on Telephone Trends*, Tbl. 20 (May 16, 1996).

<sup>68</sup> FCC, CCB Industry Analysis Division, *Long Distance Carrier Code Assignments*, p. 80, Tbl. 10B (Oct. 18, 1996).

<sup>69</sup> An exception is the Direct Broadcast Satellite (DBS) Service, *infra*.

<sup>70</sup> 13 CFR 120.121, SIC code 4899.

<sup>71</sup> 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).

<sup>72</sup> 13 CFR 120.121, SIC code 4841.

<sup>73</sup> 13 CFR 120.201, SIC code 4841.

<sup>74</sup> While we tentatively believe that the SBA's definition of "small business" greatly overstates the

defines a television broadcasting station that has \$10.5 million or less in annual receipts as a small business.<sup>75</sup>

Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.<sup>76</sup> Included in this industry are commercial, religious, educational, and other television stations.<sup>77</sup> Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.<sup>78</sup> Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.<sup>79</sup> There were 1,509 television stations operating in the nation in 1992.<sup>80</sup> 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.<sup>81</sup> For 1992,<sup>82</sup> the number of

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 *Report and Order* 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 *Report and Order*, 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 (August 27, 1996), citing 5 U.S.C. 601(3).

<sup>75</sup> 13 CFR 120.201, SIC code 4833.

<sup>76</sup> 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*.

<sup>77</sup> *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.

<sup>78</sup> *1992 Census, Series UC92-S-1, at Appendix A-9*.

<sup>79</sup> *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).

<sup>80</sup> FCC News Release No. 31327 (Jan. 13, 1993); *1992 Census, Series UC92-S-1, at Appendix A-9*.

<sup>81</sup> FCC News Release, "Broadcast Station Totals as of December 31, 1997."

<sup>82</sup> 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*.

television stations that produced less than \$10.0 million in revenue was 1,155 establishments.<sup>83</sup> 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.<sup>84</sup> A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.<sup>85</sup> Included in this industry are commercial, religious, educational, and other radio stations.<sup>86</sup> Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included.<sup>87</sup> However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number.<sup>88</sup> The 1992 Census indicates that 96 percent (5,861 of 6,127) radio station establishments produced less than \$5 million in revenue in 1992.<sup>89</sup> Official Commission records indicate that 11,334 individual radio stations were operating in 1992.<sup>90</sup> As of December 31, 1997, Commission records indicate that 12,27 radio stations were operating, of which 7,465 were FM stations.<sup>91</sup> Only commercial stations are subject to regulatory fees.

34. Thus, the proposed rules, if adopted, will affect approximately 1,558 full power television stations, approximately 1,200 of which are considered small businesses.<sup>92</sup> Additionally, the proposed rules will affect some 12,156 full power radio stations, approximately 11,670 of which are small businesses.<sup>93</sup> These estimates

<sup>83</sup> 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.

<sup>84</sup> 13 CFR 120.201, SIC code 4832.

<sup>85</sup> *1992 Census, Series UC92-S-1, at Appendix A-9*.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> 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.

<sup>90</sup> FCC News Release, No. 31327 (Jan. 13, 1993).

<sup>91</sup> FCC News Releases, "Broadcast Station Totals as of December 31, 1997."

<sup>92</sup> We use the 77 percent figure of TV stations operating at less than \$10 million for 1992 and apply it to be 1997 total of 1558 TV stations to arrive at 1,200 stations categorized as small businesses.

<sup>93</sup> 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.

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).<sup>94</sup> 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.<sup>95</sup> Thus, radio or television stations with fewer than five full-time employees are exempted from certain EEO reporting and record keeping requirements.<sup>96</sup> We estimate that the total number of broadcast stations with 4 or fewer employees is approximately 4,239.<sup>97</sup>

#### 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)

<sup>94</sup> FCC News Release, No. 7033 (Mar. 6, 1997).

<sup>95</sup> The Commission's definition of a small broadcast station for purposes of applying its EEO rules was adopted prior to the requirements 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, Pub. L. 102-366, 222(b)(1), 106 Stat. 999 (1992), as further amended by the Small Business Administration Reauthorization and Amendments Act of 1994, Pub. L. 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 8925 (June 6, 1970).

<sup>96</sup> See, e.g., 47 CFR 73.3612 (Requirements to file annual employment reports on Forms 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 (December 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, 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 (March 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.

<sup>97</sup> Compilation of 1994 Broadcast Station Annual Employment Reports (FCC Form B), Equal Opportunity Employment Branch, Mass Media Bureau, FCC.

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.<sup>98</sup>

37. There are currently 2,720 FM translators and boosters, 4,952 TV translators.<sup>99</sup> 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.<sup>100</sup>

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.<sup>101</sup> 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.<sup>102</sup> This definition of a small entity in the context of MDS auctions has been approved by the SBA.<sup>103</sup> These stations were licensed prior to implementation of section 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 309(j). Licenses for new MDS facilities

are now awarded to auction winners in Basic Trading Areas (BTAs) and BTA-like areas.<sup>104</sup> 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 1,878 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.<sup>105</sup> According to the Bureau of the Census, only twelve radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.<sup>106</sup> 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, 804 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.<sup>107</sup> 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 804 small cellular service

carriers that may be affected by the proposed rules, if adopted.

40. 220 MHz Radio Services. Because the Commission has not yet defined a small business with respect to 220 MHz services, we will utilize the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.<sup>108</sup> With respect to 220 MHz services, the Commission has proposed a two-tiered definition of small business for purposes of auctions: (1) For Economic Area (EA) licensees, a firm with average annual gross revenues of not more than \$6 million for the preceding three years and (2) for regional and nationwide licensees, a firm with average annual gross revenues of not more than \$15 million for the preceding three years. Given that nearly all radiotelephone companies under the SBA definition employ no more than 1,500 employees (as noted *supra*), we will consider the approximately 1,500 incumbent licensees in this service as small businesses under the SBA definition.

41. 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.<sup>109</sup> 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, 172 carriers reported that they were engaged in the provision of either paging or "other mobile" services, which are placed together in the data.<sup>110</sup> 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

<sup>98</sup> 13 CFR 121.201, SIC code 4832.

<sup>99</sup> FCC News Release, *Broadcast Station Totals as of December 31, 1996*, No. 71831 (Jan. 21, 1997).

<sup>100</sup> 15 U.S.C. 632.

<sup>101</sup> For purposes of this item, MDC includes both the single channel Multipoint Distribution Service (MDS) and the Multichannel Multipoint Distribution Service (MMDS).

<sup>102</sup> See 47 CFR 1.2110 (a)(1).

<sup>103</sup> *Amendment of Part 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 (July 17, 1995).

<sup>104</sup> *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.

<sup>105</sup> 13 CFR 121.291, SIC code 4812.

<sup>106</sup> *1992 Census, Series UC92-S-1*, at Table 5, SIC code 4812.

<sup>107</sup> *Telecommunications Industry Revenue*, Figure 2.

<sup>108</sup> 13 CFR 121.201, SIC code 4812.

<sup>109</sup> 13 CFR 121.201, SIC code 4812.

<sup>110</sup> *Telecommunications Industry Revenue*, Figure 2.

that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 172 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.

42. 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,<sup>111</sup> and the most recent *Telecommunications Industry Revenue* data shows that 172 carriers reported that they were engaged in the provision of either paging or "other mobile" services.<sup>112</sup> Consequently, we estimate that there are fewer than 172 small mobile service carriers that may be affected by the proposed rules, if adopted.

43. 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 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.<sup>113</sup> 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.<sup>114</sup> These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA.<sup>115</sup> 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.<sup>116</sup> 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.

44. 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.

45. Rural Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.<sup>117</sup> A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).<sup>118</sup> We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.<sup>119</sup> 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.

46. Air-Ground Radiotelephone Service.<sup>120</sup> The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service. Accordingly,

we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.<sup>121</sup> 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.

47. 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.<sup>122</sup> 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.

48. 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.

49. The Commission has held auctions for geographic area licenses in the 900 MHz SMR band, and recently completed an auction for geographic area 800 MHz SMR licenses. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. In the recently concluded 800 MHz SMR auction there were 524 licenses awarded to winning bidders, of which 38 were won by small or very small entities.

50. Private Land Mobile Radio (PLMR). PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. 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.

<sup>111</sup> 13 CFR 121.201, SIC code 4812.

<sup>112</sup> *Telecommunications Industry Revenue*, Figure 2.

<sup>113</sup> 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, paragraphs 57-60 (released June 24, 1996), 61 FR 33859 (July 1, 1996); see also 47 CFR 24.720(b).

<sup>114</sup> 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, paragraph 60 (1996), 61 FR 33859 (July 1, 1996).

<sup>115</sup> 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).

<sup>116</sup> FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (released January 14, 1997).

<sup>117</sup> The service is defined in 47 CFR 22.99.

<sup>118</sup> BETRS is defined in 47 CFR 22.757, 22.759.

<sup>119</sup> 13 CFR 121.201, SIC code 4812.

<sup>120</sup> The service is defined in 47 CFR 22.99.

<sup>121</sup> 13 CFR 121.201, SIC code 4812.

<sup>122</sup> See 47 CFR 90.814(b)(1).

51. 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 PLMRs<sup>123</sup> indicates that at the end of FY 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.

52. Amateur Radio Service. We estimate that 10,000 applicants will apply for vanity call signs in FY 1998. All are presumed to be individuals. All other amateur licensees are exempt from payment of regulatory fees.

53. 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.<sup>124</sup>

54. Most applicants for recreational licensees 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 16,500 will be subject to FY 1998 regulatory fees.

55. Fixed Microwave Services. Microwave services include common carrier,<sup>125</sup> private-operational fixed,<sup>126</sup> and broadcast auxiliary radio services.<sup>127</sup> 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.<sup>128</sup> 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.

56. Public Safety Radio Services. Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.<sup>129</sup> 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 4 of this IRFA, all governmental entities with populations

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.

<sup>128</sup> 13 CFR 121.201, SIC 4812.

<sup>129</sup> 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 licenses 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, 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.

of less than 50,000 fall within the definition of a small entity.<sup>130</sup> All licensees in this category are exempt from the payment of regulatory fees.

57. 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).<sup>131</sup> 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.

58. 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.<sup>132</sup> 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.

59. 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.

<sup>130</sup> 5 U.S.C. 601(5).

<sup>131</sup> 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.

<sup>132</sup> This service is governed by subpart I of part 22 of the Commission's rules. See 47 CFR 22.1001–22.1037.

<sup>123</sup> Federal Communications Commission, *60th Annual Report, Fiscal Year 1994*, at 116.

<sup>124</sup> 13 CFR 121.201, SIC code 4812.

<sup>125</sup> 47 CFR 101 *et seq.* (formerly, Part 21 of the Commission's rules).

<sup>126</sup> 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.

<sup>127</sup> Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's rules. See

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

60. 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.<sup>133</sup> Interstate 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 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, 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. Licensees/regulatees that must pay on the basis of subscriber counts shall submit documentation which supports the number of units for which payment is submitted. Each licensee/regulatee shall provide certification by affixing their signature to the FCC Form 159 that all information submitted is true and accurate. No additional outside professional skills are required to complete the FCC Form 159, and it can be completed by the employees

<sup>133</sup> The following categories are exempt from the Commission's Schedule of Regulatory Fees: Amateur radio licensees (except applicants for vanity call signs) and operators in other non-licensed services (e.g., Personal Radio, part 15, ship and aircraft). Governments and non-profit (exempt under section 501(c) of the Internal Revenue Code) entities are exempt from payment of regulatory fees and need not submit payment. Non-commercial educational broadcast licensees are exempt from regulatory fees as are licensees of auxiliary broadcast services such as low power auxiliary stations, television auxiliary service stations, remote pickup stations and aural broadcast auxiliary stations where such licenses are used in conjunction with commonly owned non-commercial educational stations. Emergency Alert System licenses for auxiliary service facilities are also exempt as are instructional television fixed service licensees. Regulatory fees are automatically waived for the license 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.

responsible for an entity's business records.

61. 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. Although not mandatory, the latter procedure may require additional technical skills. Licensees who pay small fees in advance supply fee information as part of their application and do not need to use the FCC Form 159.

62. Licensees and regulatees are advised that failure to submit the required regulatory fee and/or the required supporting documentation in a timely manner will subject the licensee or regulatee to a late payment fee of an additional 25% in addition to the required fee.<sup>134</sup> Until payment is received, no new or pending applications will be processed, and existing authorizations may be subject to rescission.<sup>135</sup> 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 guarantees if that person or entity fails to pay a delinquent debt owed to any federal agency.<sup>136</sup> 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.<sup>137</sup>

63. The Commission's rules currently make provision 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 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.<sup>138</sup> 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

<sup>134</sup> 47 U.S.C. 1.1164(a).

<sup>135</sup> 47 U.S.C. 1.1164(c).

<sup>136</sup> Pub. L. 104-134, 110 Stat. 1321 (1996).

<sup>137</sup> 31 U.S.C. 7701(c)(2)(B).

<sup>138</sup> 47 U.S.C. 1.1166.

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

64. *The Omnibus Consolidated Appropriation Act*, Pub. L. 105-119, 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 it to collect for Fiscal Year (FY) 1998. *See* 47 U.S.C. 159(a). 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.

65. With the use 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 statute establishing regulatory fees provides for permitted amendments to be made to the schedule of fees in the public interest.<sup>139</sup> The methodology adopted 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.

66. We have developed and adopted an alternative methodology for assessing fees to recover the regulatory costs attributable to AM and FM radio stations. The radio industry has requested additional relief for small stations, and we offered two alternative proposals for comment. One would update the schedule of fees adopted in the FY 1997 *Report and Order*. The other proposal would increase the differences in the fee amount between larger and smaller stations. Both options benefitted by changing the service contours used to determine populations for determining station size. The impact of adoption of our proposal will result in lower fees for smaller, less powerful stations relative to larger, more powerful stations in the same radio market; or stations potentially serving a larger population.

67. Several categories of licensees and regulatees are exempt from payment of regulatory fees. *See, e.g.,* footnote 108, *supra*, and Attachment H of this *Report and Order, infra*.

*Report to Congress:* The Commission shall include a copy of this Final

<sup>139</sup> *See* 47 U.S.C. <nothing> 159(b)(1)(A) and (b)(3).

Regulatory Flexibility Analysis, along with this *Report and Order*, 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*.

**Attachment B—Sources of Payment Unit Estimates For FY 1998**

In order to calculate individual service fees for FY 1998, we adjusted FY 1997 payment units for each service to more accurately reflect expected FY 1998 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 1998 estimates with actual FY 1997 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 1998 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 1998 payment units are based on FY 1997 actual payment units, it does not necessarily mean that our FY 1998 projection is *exactly* the same number as FY 1997. It means that we have either rounded the FY 1998 number or adjusted it slightly to account for these variables.

Fee category	Sources of payment unit estimates
Land Mobile (All), Microwave, IVDS <sup>140</sup> , 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 1997 payment units adjusted to take into consideration industry estimates of growth between FY 1997 and FY 1998 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 1997 payment units.
UHF/VHF Television Stations .....	Based on actual FY 1997 payment units.
AM/FM/TV Construction Permits .....	Based on actual FY 1997 payment units.
LPTV, Translators and Boosters .....	Based on actual FY 1997 payment units.
Auxiliaries .....	Based on actual FY 1997 payment units.
MDS/MMDS .....	Based on actual FY 1997 payment units.
Cable Antenna Relay Service (CARS) .....	Based on actual FY 1997 payment units.
Cable Television System Subscribers .....	Based on Cable Services Bureau and industry estimates of subscribership.
Interstate Telephone Service Providers .....	Based on actual FY 1997 interstate revenues associated with contributions to the Telecommunications Relay System (TRS) Fund, adjusted to take into consideration FY 1998 revenue growth in this industry as estimated by the Common Carrier Bureau.
Earth Stations .....	Based on actual FY 1997 payment units.
Space Stations (GEOs & NGEOS) .....	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 1997 payment units.

**Attachment C—Calculation of Revenue Requirements**

Fee category	FY 1998 payment units	(times) FY 1997 Fee	(times) payment years	(equals) computed FY 1998 revenue requirement	Pro-rated revenue requirement**
LM (220 MHz, >470 MHz-Base, SMRS) .....	4,645	10	5	232,250	225,691
Private Microwave .....	3,830	10	10	383,000	372,184
Domestic Public Fixed/Comc'l Microwave .....	5,150	10	10	515,000	500,456
IVDS .....	0	0	5	0	0
Marine (Ship) .....	16,500	5	10	825,000	801,702
GMRS/Other LM .....	72,465	5	5	1,811,625	1,760,465
Aviation (Aircraft) .....	3,500	5	10	175,000	170,058
Marine (Coast) .....	1,370	5	5	34,250	33,283
Aviation (Ground) .....	1,865	5	5	46,625	45,308
Amateur Vanity Call Signs .....	10,000	5	10	500,000	485,880
AM/FM Radio .....	8,646	1,126	1	9,735,396	9,460,469
AM Construction Permits .....	62	195	1	12,090	11,749
FM Construction Permits .....	473	950	1	449,350	436,660
Satellite TV .....	105	950	1	99,750	96,933
Satellite TV Construction Permit .....	10	345	1	3,450	3,353

<sup>140</sup> The Wireless Telecommunications Bureau's staff advises that they do not anticipate receiving

any applications for IVDS in FY 1998. Therefore,

since there is no volume, there will be no regulatory fee in the IVDS category for FY 1998.

Fee category	FY 1998 payment units	(times) FY 1997 Fee	(times) payment years	(equals) computed FY 1998 revenue requirement	Pro-rated revenue requirement**
VHF Markets 1-10	42	35,025	1	1,471,050	1,429,508
VHF Markets 11-25	61	28,450	1	1,735,450	1,686,441
VHF Markets 26-50	71	18,600	1	1,320,600	1,283,306
VHF Markets 51-100	118	9,850	1	1,162,300	1,129,477
VHF Remaining Markets	207	2,725	1	564,075	548,146
VHF Construction Permits	10	4,800	1	48,000	46,644
UHF Markets 1-10	94	16,850	1	1,583,900	1,539,171
UHF Markets 11-25	96	13,475	1	1,293,600	1,257,069
UHF Markets 26-50	124	8,750	1	1,085,000	1,054,360
UHF Markets 51-100	172	4,725	1	812,700	789,749
UHF Remaining Markets	182	1,350	1	245,700	238,761
UHF Construction Permits	50	2,975	1	148,750	144,549
Auxiliaries	20,000	25	1	500,000	485,880
International HF Broadcast	4	390	1	1,560	1,516
LPTV/Translators/Boosters	2,290	220	1	503,800	489,573
CARS	1,800	65	1	117,000	113,686
Cable Systems	66,000,000	0.54	1	35,640,000	34,633,530
Interstate Telephone Service Providers	70,103,000	0.00116	1	81,319,480	79,023,026
CMRS Mobile Services (Cellular/Public Mobile)	55,540,000	0.24	1	13,329,600	12,953,173
CMRS Messaging Services	39,592,000	0.03	1	1,187,760	1,154,218
MDS/MMDS	1,878	215	1	403,770	392,368
International Circuits	325,000	5	1	1,625,000	1,579,110
International Public Fixed	3	310	1	930	904
Earth Stations	3,000	515	1	1,545,000	1,501,369
Space Stations (Geostationary)	46	97,975	1	4,506,850	4,379,577
Space Stations (Non-geostationary)	2	135,675	1	271,350	263,687
Total Estimated Revenue Collected				167,246,011	162,523,000
Total Revenue Requirement				162,523,000	162,523,000
Difference				4,723,011	0

\*\*0.971760098 factor applied.

ATTACHMENT D—CALCULATION OF REGULATORY COSTS

Fee category	Actual FY 1997 regulatory costs	Overhead and other indirect pro rated	Total costs with overhead and other indirect pro rated	Total costs pro-rated to \$162 Mil-lion**	Adjusted pro-rated costs***
LM (220 MHz, >470 MHZ-Base, SMRS)	1,952,428	98,195	2,050,623	2,113,136	2,113,136
Microwave	4,860,809	244,469	5,105,277	5,260,912	5,260,912
IVDS	2,122,499	106,749	2,229,248	2,297,206	2,297,206
Marine (Ship)	2,754,238	138,521	2,892,759	2,980,945	2,980,945
GMRS/Other LM	5,943,682	298,930	6,242,612	6,432,918	6,432,918
Aviation (Aircraft)	980,895	49,333	1,030,228	1,061,635	1,061,635
Marine (Coast)	685,608	34,482	720,090	742,041	742,041
Aviation (Ground)	562,239	28,277	590,516	608,518	608,518
Amateur Vanity Call Signs	88,615	4,457	93,072	95,909	95,909
AM/FM Radio	14,125,529	710,427	14,835,955	15,288,230	14,396,926
AM Construction Permits					103,960
FM Construction Permits					787,344
Satellite TV					138,603
Satellite TV Construction Permit					3,489
VHF Television	4,957,533	249,333	5,206,866	5,365,598	
VHF Markets 1-10					1,177,538
VHF Markets 11-25					1,423,609
VHF Markets 26-50					1,134,321
VHF Markets 51-100					1,055,080
VHF Remaining Markets					479,377
VHF Construction Permits					18,765
UHF Television	2,954,865	148,611	3,103,476	3,198,086	
UHF Markets 1-10					993,777
UHF Markets 11-25					767,939
UHF Markets 26-50					614,629
UHF Markets 51-100					510,374
UHF Remaining Markets					147,610
UHF Construction Permits					98,573

## ATTACHMENT D—CALCULATION OF REGULATORY COSTS—Continued

Fee category	Actual FY 1997 regulatory costs	Overhead and other indirect pro rated	Total costs with overhead and other indirect pro rated	Total costs pro-rated to \$162 Million **	Adjusted pro-rated costs ***
Auxiliaries .....	146,460	7,366	153,826	158,515	158,515
International HF Broadcast .....	217,931	10,961	228,891	235,869	235,869
LPTV/Translators/Boosters .....	736,547	37,044	773,590	797,173	797,173
CARS .....	61,797	3,108	64,905	66,883	66,883
Cable Systems .....	20,125,023	1,012,164	21,137,187	21,781,555	21,781,555
Interstate Telephone Service Providers .....	53,234,026	2,677,341	55,911,367	57,615,828	57,615,828
CMRS Mobile Services (Cellular/Public Mobile) .....	11,273,798	567,002	11,840,801	12,201,768	12,201,768
CMRS Messaging Services .....	6,015,701	302,552	6,318,254	6,510,866	6,510,866
MDS/MMDS .....	1,357,260	68,262	1,425,521	1,468,979	1,468,979
International Circuits .....	8,253,772	415,114	8,668,886	8,933,157	8,933,157
International Public Fixed .....	193,436	9,729	203,165	209,358	209,358
Earth Stations .....	339,999	17,100	357,099	367,985	367,985
Space Stations (Geostationary) .....	5,677,889	285,563	5,963,452	6,145,248	6,145,248
Space Stations (Non-Geostationary) .....	540,215	27,169	567,385	584,681	584,681
Overhead & Other Indirect Costs .....	7,552,257	.....	.....	.....	.....
Total .....	157,715,049	7,552,257	157,715,049	162,523,000	159,839,216
Total Revenue Requirement .....	162,523,000	.....	162,523,000	162,523,000	162,523,000
Difference .....	(4,807,951)	.....	(4,807,951)	0	(2,683,784)

\*\* 1.046987 factor applied.

\*\*\* The pro rated costs shown in the previous column needed to be adjusted to sub-allocate actual TV and radio costs.

Note: Columns may not add due to rounding.

ATTACHMENT E—CALCULATION OF FY 1998 REGULATORY FEES

Fee category	Pro-rated revenue requirement	Adjusted activity costs	Costs vs. revenue requirement difference (percent)	Pro-rated revenue requirement 25% ceiling	Round 1 target revenue	Round 1 adjustable target revenue	Round 1 pro-rated target revenue**	Round 2 target revenue	Round 2 adjustable target revenue	Round 2 pro-rated target revenue**	Computed new FY 1998 regulatory fee	Rounded new FY 1998 regulatory fee	Expected FY 1998 revenue
LM (220 MHz, >470 MHz-Base, SMRS) .....	225,691	2,113,136	836.30	282,114	282,114	282,114	282,114	282,114	282,114	282,114	12	12	278,700
Microwave .....	872,640	5,260,912	502.87	1,090,800	1,090,800	1,090,800	1,090,800	1,090,800	1,090,800	1,090,800	12	12	1,077,600
IVDS .....	0	2,297,206	.....	0	0	0	0	0	0	0	0	0	0
Marine (Ship) .....	801,702	2,980,945	271.83	1,002,128	1,002,128	1,002,128	1,002,128	1,002,128	1,002,128	1,002,128	6	6	990,000
GMRS/Other LM .....	1,760,465	6,432,918	265.41	2,200,581	2,200,581	2,200,581	2,200,581	2,200,581	2,200,581	2,200,581	6	6	2,173,950
Aviation (Aircraft) .....	170,058	1,061,635	524.28	212,573	212,573	212,573	212,573	212,573	212,573	212,573	6	6	210,000
Marine (Coast) .....	33,283	742,041	2129.49	41,604	41,604	41,604	41,604	41,604	41,604	41,604	6	6	41,100
Aviation (Ground) .....	45,308	608,518	1243.07	56,635	56,635	56,635	56,635	56,635	56,635	56,635	6	6	55,950
Amateur Vanity Call Signs .....	485,880	95,909	(90.26)	607,350	95,909	128,372	128,372	128,372	128,372	128,372	1.29	1.30	130,000
AM/FM Radio .....	9,460,469	14,396,926	52.18	11,825,586	11,825,586	11,825,586	11,825,586	11,825,586	11,825,586	11,825,586	1,368	1,375	11,888,250
FM Construction Permits .....	11,749	103,960	784.84	14,686	14,686	14,686	14,686	14,686	14,686	14,686	237	235	14,570
AM Construction Permits .....	436,660	787,344	80.31	545,825	545,825	545,825	545,825	545,825	545,825	545,825	1,154	1,150	543,950
Satellite TV .....	96,933	138,603	42.99	121,166	121,166	121,166	121,166	121,166	121,166	121,166	1,166	1,175	123,375
Satellite TV Construction Permit .....	3,353	3,489	4.06	4,191	3,489	4,670	4,191	4,191	4,191	4,191	419	420	4,200
VHF Markets 1-10 .....	1,429,508	1,177,538	(17.63)	1,786,885	1,177,538	1,576,112	1,576,112	1,576,112	1,576,112	1,576,112	37,572	37,575	1,578,150
VHF Markets 11-25 .....	1,686,441	1,423,609	(15.59)	2,108,051	1,423,609	1,905,473	1,905,473	1,905,473	1,905,473	1,905,473	31,275	31,275	1,907,775
VHF Markets 26-50 .....	1,283,306	1,134,321	(11.61)	1,604,133	1,134,321	1,518,267	1,518,267	1,518,267	1,518,267	1,518,267	21,410	21,400	1,519,400
VHF Remaining Markets .....	1,129,477	1,055,080	(6.59)	1,411,846	1,055,080	1,412,204	1,412,204	1,412,204	1,412,204	1,412,204	11,965	11,975	1,413,050
VHF Construction Permits .....	548,146	479,377	(65.59)	685,183	479,377	641,637	641,637	641,637	641,637	641,637	3,103	3,100	641,700
VHF Remaining Markets .....	46,664	18,765	(59.79)	58,350	18,765	25,117	25,117	25,117	25,117	25,117	2,515	2,525	25,250
UHF Markets 1-10 .....	1,539,171	993,777	(35.43)	1,923,964	993,777	1,330,151	1,330,151	1,330,151	1,330,151	1,330,151	14,168	14,175	1,332,450
UHF Markets 11-25 .....	1,257,069	767,939	(38.91)	1,571,336	767,939	1,027,872	1,027,872	1,027,872	1,027,872	1,027,872	10,720	10,725	1,029,600
UHF Markets 26-50 .....	1,054,360	614,629	(41.71)	1,317,950	614,629	822,669	822,669	822,669	822,669	822,669	6,642	6,650	824,600
UHF Markets 51-100 .....	789,749	510,374	(35.38)	987,186	510,374	683,126	683,126	683,126	683,126	683,126	3,976	3,975	683,700
UHF Remaining Markets .....	238,761	147,610	(38.18)	298,451	147,610	197,573	197,573	197,573	197,573	197,573	1,087	1,075	195,650
UHF Construction Permits .....	144,549	98,573	(31.81)	180,686	98,573	131,938	131,938	131,938	131,938	131,938	2,642	2,650	132,500
Auxiliaries .....	485,880	158,515	(67.36)	607,350	158,515	212,169	212,169	212,169	212,169	212,169	11	11	220,000
International HF Broadcast .....	1,516	235,869	15458.64	1,895	1,895	1,895	1,895	1,895	1,895	1,895	474	475	1,900
LPTV/Translators/Boosters .....	489,573	797,173	62.83	611,966	611,966	611,966	611,966	611,966	611,966	611,966	267	265	606,850
CARS .....	113,696	66,883	(41.17)	142,120	66,883	89,522	89,522	89,522	89,522	89,522	50	50	90,000
Cable Systems .....	34,633,530	21,781,555	(37.11)	43,291,913	21,781,555	29,154,192	29,154,192	29,154,192	29,154,192	29,154,192	0.44	0.44	29,189,360
Interstate Telephone Service Providers .....	79,023,026	57,615,828	(27.09)	98,778,783	57,615,828	77,117,676	77,117,676	77,117,676	77,117,676	77,117,676	0.0011	0.0011	77,210,702
CMRS Mobile Services (Cellular/Public Mobile) .....	12,953,173	12,201,768	(5.80)	16,191,466	12,201,768	16,331,831	16,331,831	16,191,466	16,191,466	16,191,466	0.29	0.29	16,191,466
CMRS Messaging Services .....	1,154,218	6,510,866	464.09	1,442,773	1,442,773	1,442,773	1,442,773	1,442,773	1,442,773	1,442,773	0.04	0.04	1,442,773
MDS/MMDS .....	392,368	1,468,979	274.39	490,460	490,460	490,460	490,460	490,460	490,460	490,460	261	260	488,280
International Circuits .....	1,579,110	8,933,157	465.71	1,973,888	1,973,888	1,973,888	1,973,888	1,973,888	1,973,888	1,973,888	6	6	1,950,000
International Public Fixed .....	904	209,358	23059.07	1,130	1,130	1,130	1,130	1,130	1,130	1,130	377	375	1,125
Earth Stations .....	1,501,369	367,985	(75.49)	1,876,711	367,985	492,541	492,541	492,541	492,541	492,541	164	165	495,000
Space Stations (Geostationary) .....	4,379,577	6,145,248	40.32	5,474,471	5,474,471	5,474,471	5,474,471	5,474,471	5,474,471	5,474,471	119,010	119,000	5,474,000
Space Stations (Non-Geostationary) .....	263,687	584,681	121.73	329,609	329,609	329,609	329,609	329,609	329,609	329,609	164,804	164,800	329,000
Total Estimated Revenue Collected .....	162,523,019	162,522,999	.....	203,153,774	128,433,413	100,713,524	162,523,000	117,054,406	162,381,798	162,524,243	.....	.....	162,506,526
Total Revenue Requirement .....	162,523,000	162,523,000	.....	162,523,000	162,523,000	162,523,000	162,523,000	162,523,000	162,523,000	162,523,000	.....	.....	162,523,000
Difference .....	19	(1)	.....	40,630,774	(34,089,587)	0	0	(141,202)	1,243	.....	.....	.....	(16,474)

\*\*\*1.33782803 factor applied.  
\*\*\*\*1.003487295 factor applied.

ATTACHMENT F—FY 1998 SCHEDULE OF REGULATORY FEES

Fee category	Annual regulatory fee
PMRS (per license) (Formerly Land Mobile—Exclusive Use at 220–222 MHz, above 470 MHz, Base Station and SMRS) (47 CFR Part 90)	12
Microwave (per license) (47 CFR Part 101)	12
Interactive Video Data Service (per license) (47 CFR Part 95)	1
Marine (Ship) (per station) (47 CFR Part 80)	6
Marine (Coast) (per license) (47 CFR Part 80)	6
General Mobile Radio Service (per license) (47 CFR Part 95)	6
Land Mobile (per license) (all stations not covered by PMRS and CMRS)	6
Aviation (Aircraft) (per station) (47 CFR Part 87)	6
Aviation (Ground) (per license) (47 CFR Part 87)	6
Amateur Vanity Call Signs (per call sign) (47 CFR Part 97)	1.30
CMRS Mobile Services (per unit) (47 CFR Parts 20, 22, 24, 80 and 90)	.29
CMRS Messaging Services (per unit) (47 CFR Parts 20, 22 and 90)	.04
Multipoint Distribution Services (per call sign) (47 CFR Part 21)	260
TV (47 CFR Part 73) VHF Commercial:	
Markets 1–10	37,575
Markets 11–25	31,275
Markets 26–50	21,400
Markets 51–100	11,975
Remaining Markets	3,100
Construction Permits	2,525
TV (47 CFR Part 73) UHF Commercial:	
Markets 1–10	14,175
Markets 11–25	10,725
Markets 26–50	6,650
Markets 51–100	3,975
Remaining Markets	1,075
Construction Permits	2,650
Satellite Television Stations (All Markets)	1,175
Construction Permits—Satellite Television Stations	420
Low Power TV, TV/FM Translators & Boosters (47 CFR Part 74)	265
Broadcast Auxiliary (47 CFR Part 74)	11
Cable Antenna Relay Service (47 CFR Part 78)	50
Cable Television Systems (per subscriber) (47 CFR Part 76)	.44
Interstate Telephone Service Providers (per revenue dollar)	.0011
Earth Stations (47 CFR Part 25)	165
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
Space Stations (per operational system in non-geostationary orbit) (47 CFR Part 25)	164,800
International Bearer Circuits (per active 64KB circuit)	6
International Public Fixed (per call sign) (47 CFR Part 23)	375
International (HF) Broadcast (47 CFR Part 73)	475

<sup>1</sup> No fee.

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

ATTACHMENT G—COMPARISON BETWEEN FY 1997 AND FY 1998 PROPOSED AND FINAL REGULATORY FEES

Fee category	Annual regulatory fee FY 1997	NPRM proposed fee FY 1998	Annual regulatory fee FY 1998
PMRS (per license) (Formerly Land Mobile-Exclusive Use at 220–222 Mhz, above 470 Mhz, Base Station and SMRS) (47 CFR Part 90)	10	12	12
Microwave (per license) (47 CFR Part 101)	10	12	12
Interactive Video Data Service (per license) (47 CFR Part 95)	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )
Marine (Ship) (per station) (47 CFR Part 80)	5	6	6
Marine (Coast) (per license) (47 CFR Part 80)	5	6	6
General Mobile Radio Service (per license) (47 CFR Part 95)	5	6	6

ATTACHMENT G—COMPARISON BETWEEN FY 1997 AND FY 1998 PROPOSED AND FINAL REGULATORY FEES—Continued

Fee category	Annual regulatory fee FY 1997	NPRM proposed fee FY 1998	Annual regulatory fee FY 1998
Land Mobile (per license) (all stations not covered by PMRS and CMRS) .....	5	6	6
Aviation (Aircraft) (per station) (47 CFR Part 87) .....	5	6	6
Aviation (Ground) (per license) (47 CFR Part 87) .....	5	6	6
Amateur Vanity Call Signs (per call sign) (47 CFR Part 97) .....	5	1.29	1.30
CMRS Mobile Services (per unit) (47 CFR Parts 20, 22, 24, 80 and 90) .....	.24	.29	.29
CMRS Messaging Services [formerly One Way Paging] (per unit) (47 CFR Parts 20, 22, and 90) .....	.03	.04	.04
Multipoint Distribution Services (per call sign) (47 CFR Part 21) .....	215	260	260
AM/FM Radio (47 CFR Part 73):			
Group 1 .....	2,000	2,500	(2)
Group 2 .....	1,800	2,250	(2)
Group 3 .....	1,600	2,000	(2)
Group 4 .....	1,400	1,750	(2)
Group 5 .....	1,200	1,500	(2)
Group 6 .....	1,000	1,250	(2)
Group 7 .....	800	1,000	(2)
Group 8 .....	600	750	(2)
Group 9 .....	400	500	(2)
Group 10 .....	200	250	(2)
AM Construction Permits .....	195	235	235
FM Construction Permits .....	950	1,150	1,150
TV (47 CFR Part 73) VHF Commercial:			
Markets 1–10 .....	35,025	41,275	37,575
Markets 11–25 .....	28,450	24,850	31,275
Markets 26–50 .....	18,600	22,600	21,400
Markets 51–100 .....	9,850	11,375	11,975
Remaining Markets .....	2,725	3,250	3,100
Construction Permits .....	4,800	4,100	2,525
TV (47 CFR Part 73) UHF Commercial:			
Markets 1–10 .....	16,850	14,625	14,175
Markets 11–25 .....	13,575	10,575	10,725
Markets 26–50 .....	8,750	5,750	6,650
Markets 51–100 .....	4,725	3,775	3,975
Remaining Markets .....	1,350	1,500	1,075
Construction Permits .....	2,975	3,625	2,650
Satellite Television Stations (All Markets) .....	950	900	1,175
Construction Permits—Satellite Television Stations .....	345	420	420
Low Power TV, TV/FM Translators & Boosters (47 CFR Part 74) .....	220	265	265
Broadcast Auxiliary (47 CFR Part 74) .....	25	11	11
Cable Antenna Relay Service (47 CFR Part 78) .....	65	50	50
Earth Stations (47 CFR Part 25) .....	515	165	165
Cable Television Systems (per subscriber) (47 CFR Part 76) .....	.54	.44	.44
Interstate Telephone Service Providers (per revenue dollar) .....	.00116	.0011	.0011
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) ....	97,975	119,000	119,000
Space Stations (per operational system in non-geostationary orbit) (47 CFR Part 25) .....	135,675	164,800	164,800
International Bearer Circuits (per active 64KB circuit) .....	5	6	6
International Public Fixed (per call sign) (47 CFR Part 23) .....	310	375	375
International (HF) Broadcast (47 CFR Part 73) .....	390	475	475

<sup>1</sup> No fee.  
<sup>2</sup> See radio.

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

## Attachment H—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, 47 U.S.C. 159(g) 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, our own experience in establishing and regulating the Schedule of Regulatory Fees for Fiscal Years (FY) 1994, 1995, 1996, and 1997 and the services subject to the fee schedule, and the comments of the parties in our proceeding to adopt fees for FY 1998. 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. See 47 U.S.C. 159(b) (2), (3).

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. See 47 U.S.C. 159(b)(1)(A). 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.

### a. Exclusive Use Services

4. *Private Mobile Radio Services (PMRS) (Formerly Land Mobile Services):* 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).<sup>141</sup> For FY 1998, PMRS licensees will pay a \$12 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.<sup>142</sup> The total regulatory fee due is either \$60 for a license with a five year term or \$120 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 1998, Microwave licensees will pay a \$12 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

<sup>141</sup> 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.

<sup>142</sup> Although this fee category includes licenses with ten-year terms, the estimated volume of ten-year license applications in FY 1997 is less than one-tenth of one percent and, therefore, is statistically insignificant.

regulatory fee due is \$120 for the ten year license term.

6. *Interactive Video Data Service (IVDS):* The IVDS 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 IVDS provides information, products, and services, and also the capability to obtain responses from subscribers in a specific service area. The IVDS is offered on a private carrier basis. The Commission does not anticipate receiving any applications in the IVDS during FY 1998. Therefore, for FY 1998, there is no regulatory fee for IVDS licensees.

### 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, 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. 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 1998, parties required to be licensed and those choosing to be licensed for Marine (Ship) Stations will pay a \$6 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 \$60 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 1998, licensees of Marine (Coast) Stations will pay a \$6 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 \$30 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 1998, licensees of services in this category will pay a \$6 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 \$30 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. 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 1998, parties required to be licensed and those choosing to be licensed for Aviation (Aircraft) Stations will pay a \$6 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 \$60 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 1998, licensees of Aviation (Ground) Stations will pay a \$6 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 \$30 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 1998, GMRS licensees will pay a \$6 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 \$30 per license for the five-year license term.

#### c. Amateur Radio Vanity Call Signs

13. *Amateur Vanity Call Signs*: This fee covers voluntary requests for specific call signs in the Amateur Radio Service authorized under part 97 of the Commission's rules. For FY 1998, applicants for Amateur Vanity Call-Signs will pay a \$1.30 annual regulatory fee per call sign, payable for an entire ten-year license term at the time of application for a vanity call sign. The total regulatory fee due would be \$13 per license for the ten-year license term.<sup>143</sup>

#### 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, 80 and 90, general rules for CMRS are contained in part 20. CMRS Mobile Services will include: Specialized Mobile Radio Services (part 90);<sup>144</sup> 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). Each licensee in this group will pay an annual regulatory fee for each mobile or

cellular unit (mobile or cellular call sign or telephone number), assigned to its customers, including resellers of its services. For FY 1998, the regulatory fee is \$.29 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, qualifying interconnected Business Radio Services, and 220-222 MHz Land Mobile Systems), licensees formerly licensed as part of the Common Carrier Radio Services (e.g., Public Mobile One-Way Paging), and licensees of Personal Communications Service (PCS) one-way and two-way paging. 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. We have replaced the CMRS One-Way Paging regulatory fee category with a CMRS Messaging Services category for regulatory fee collection purposes. 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 1998, 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 provision of a CMRS service from a licensee of a CMRS system or a reseller of a CMRS service. The responsible payer is the CMRS licensee. For example, John Doe purchases a pager and contractually obtains paging services from Pagen Licensee X. Pagen Licensee X is responsible for paying the applicable regulatory fee for this unit. Likewise, Cellular Licensee Y donates cellular

<sup>143</sup>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.

<sup>144</sup>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.

telephones to a high school and the high school either pays for or obtains free service from the Cellular Licensee Y. In this situation, Cellular Licensee Y is responsible for paying the applicable regulatory fee 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.<sup>145</sup> In response to numerous requests, we have combined class of station and grade B 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 or FY 1998 are as follows:

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

19. Licensees may determine the appropriate fee payment by referring to the list provided at Attachment L to this Report and Order. 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 will be included in the Public Notices mailed to each licensee.

b. Construction Permits—Commercial AM Radio

20. This category includes holders of permits to construct new Commercial AM Stations. For FY 1998, permittees will pay a fee of \$235 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 class of the station.

c. Construction Permits—Commercial FM Radio

21. This category includes holders of permits to construct new Commercial FM Stations. For FY 1998, permittees will pay a fee of \$1,150 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 class of the station.

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. 66, 1998 Edition, Warren Publishing, Inc. The fees for each category of station are as follows:

VHF Markets 1-10	\$37,575
VHF Markets 11-25	31,275
VHF Markets 26-50	21,400
VHF Markets 51-100	11,975
VHF Remaining Markets	3,100
UHF Markets 1-10	\$14,175
UHF Markets 11-25	10,725
UHF Markets 26-50	6,650
UHF Markets 51-100	3,975
UHF Remaining Markets	1,075

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 \$1,175 annually. Those stations designated as

Television Satellite Stations in the 1998 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 1998, VHF permittees will pay an annual regulatory fee of \$2,525. 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 1998, UHF Television permittees will pay an annual regulatory fee of \$2,650. 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.

<sup>145</sup> 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. Stations for FY 1998 are as follows:

#### h. Construction Permits—Satellite Television Stations

26. The fee for UHF and VHF Television Satellite Station construction permits for FY 1998 is \$420. 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 19978 licensees in low power television, FM translator and booster, and TV translator and booster category will pay a regulatory fee of \$265 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 1998, licensees of Commercial Auxiliary Stations will pay an \$11 annual regulatory fee on a per call sign basis.

#### k. Multipoint Distribution Service

29. This category includes Multipoint Distribution Service (MDS), 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 1998, MDS and MMDS stations will pay an annual regulatory fee of \$260 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 1998, Cable Systems will pay a regulatory fee of \$.44 per subscriber.<sup>146</sup> Payments for Cable Systems are to be made on a per subscriber basis as of December 31, 1997. 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 1998, licensees will pay an annual regulatory fee of \$50 per CARS license.

<sup>146</sup> 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.

#### 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 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. See *Telecommunications Relay Services*, 8 FCC Rcd 5300 (1993), 58 FR 39671 (July 26, 1993). 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 1998, 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 0.0011 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 .....	.....	0.0011
(6) Fee due (4)times(5) .....	.....	.....

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.<sup>147</sup> *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 1998, licensees of VSATs, Mobile Satellite Earth Stations, and Fixed-Satellite Transmit/Receive and Transmit-Only Earth Stations will pay a fee of \$165 per authorization or registration *as well as a separate fee of \$165 for each associated Hub Station*.

35. *Receive-only earth stations*. For FY 1998, there is no regulatory fee for receive-only earth stations.

<sup>147</sup> 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 1997.

b. Space Stations (Geostationary)

36. Geostationary 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 1998, entities authorized to operate geostationary space stations (including DBS satellites) will be assessed an annual regulatory fee of \$97,975 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)

37. Non-geostationary Orbit (NGSO) Systems (such as Low Earth Orbit Satellite Systems) are space stations that orbit the earth in non-geostationary orbit. They 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. For FY 1998, entities authorized to operate NGSOs will be assessed an annual regulatory fee of \$164,800 per operational system in orbit. Payment is required for any NGSO System that has one or more 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 certification of operation of a single satellite pursuant to section 25.120(d) subsequently renumbered as § 25.121(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 § 25.121(d) has significant implications beyond regulatory fees (such as whether the entire planned cluster is operational in 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 §§ 25.142(c), 25.143(e), 25.145(g), or upon certification of operation of a single satellite pursuant to § 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 1998, the regulatory fee is \$6.00 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 1998, International Public Fixed Radio Service licensees will pay a \$375 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 1998, International HF Broadcast Stations will pay an annual regulatory fee of \$475 per station license.

**Attachment I—Description of FCC Activities**

*I. Activities That Are Not Included in Regulatory Fees*

1. 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. Although Authorization of Service is described in this attachment, 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).

*II. Activities That are Included in Regulatory Fees*

2. 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.

3. 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.

4. 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.

**Attachment J—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 § 73.150 and 73.152 of the Commission's rules. See 47 U.S.C. 73.150 and 73.152. 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 § 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. See 47 U.S.C. 73.313. 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.

**Attachment K—Parties Filing Comments and Reply Comments**

*Parties Filing Comments on the Notice of Proposed Rule Making*

- Named State Broadcasters Associations
- National Association of Broadcasters
- SBC Communications, Inc.
- Columbia Communications Corp.
- GE American Communications, Inc.

Loral Space & Communications Ltd.  
Orbital Communications Corp.  
PanAmSat Corp.  
Satellite Industry Association  
BellSouth Wireless Data  
Paging Network, Inc.  
Personal Communications Industry  
Association  
Small business In Telecommunications  
American Radio Relay League

*Parties Filing Reply Comments on the  
Notice of Proposed Rule Making*  
GE American Communications, Inc.  
PanAmSat Corp.  
BellSouth Cellular Corp. & Wireless  
Data, L.P.  
Paging Network, Inc.  
PrimeCo Personal Communications  
American Mobile Telecommunications  
Association, Inc.

Comcast Cellular Communications, Inc.

**Attachment L—AM and FM Radio  
Regulatory Fees**

(List will be filed in the Docket file for  
this proceeding to avoid publication  
costs.)

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