(1) The rates of this schedule are for unlimited use for a period of three years from the date of the first use of the work under this schedule. Succeeding use periods will require the following additional payment: Additional one-year period—25 percent of the initial three-year fee; second three-year period—50 percent of the initial three-year fee; each three-year period thereafter—25 percent of the initial three-year fee; provided that a 100 percent additional payment prior to the expiration of the first three-year period will cover use during all subsequent use periods without limitation. Such succeeding uses which are subsequent to December 31, 2007, shall be subject to the rates established in this schedule.

* * * * *

9. In § 253.10, the first sentence in paragraph (a) is revised to read:

§ 253.10 Cost of living adjustment.

(a) On December 1, 2003, the Librarian of Congress shall publish in the **Federal Register** a notice of the change in the cost of living as determined by the Consumer Price Index (all consumers, all items) during the period from the most recent Index published prior to December 1, 2002, to the most recent Index published prior to December 1, 2003. * * *

* * * * *

Dated: December 3, 2002.

Marybeth Peters,

Register of Copyrights.

James H. Billington,

The Librarian of Congress.

[FR Doc. 02–31620 Filed 12–16–02; 8:45 am]

BILLING CODE 1410–31–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 01–76; FCC 02–320]

Assessment and Collection of Regulatory Fees for Fiscal Year 2001

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial of petition for reconsideration.

SUMMARY: In this document, the Commission denies the petition for reconsideration of Bennet & Bennet, PLLC, on behalf of its local multipoint distribution service (LMDS) clients, filed August 10, 2001.

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

SUPPLEMENTARY INFORMATION: Adopted: November 21, 2002; Released December 4, 2002.

I. Introduction

1. By this order we deny the petition for reconsideration of Bennet & Bennet, PLLC, on behalf of its LMDS clients, filed August 10, 2001.[1] Bennet seeks reconsideration of *Assessment of Regulatory Fees for Fiscal Year 2001*, 16 FCC Rcd 13525 (2001), 66 FR 36177, July 11, 2001, (2001 Fee Order), to the extent that order reaffirmed the classification of the LMDS within the category of MDS services for purposes of assessing regulatory fees for FY 2001. As a result of this determination, LMDS facilities are subject to an annual fee of $450 per call sign. Bennet asserts that LMDS should be classified as a microwave service, which would subject it to a $5 annual fee payable for an entire ten year license term at the time of renewal (total payment $50). Bennet also argues that the FY 2001 MDS fee is excessive.

II. Background

2. In the 2001 Fee Order, the Commission rejected the arguments of Winstar Communications, Inc. that LMDS should be reclassified as a microwave service. Fee Order, 16 FCC Rcd 13532 paragraph 22. Winstar justified its proposal by arguing that there had been increased administrative activity associated with part 21 MDS this year, whereas there had been little activity associated with LMDS. It also noted generally that it could think of no similarity between LMDS and MDS and no reason why LMDS should be treated differently than other part 101 fixed Microwave services. Sprint opposed the proposal, noting that the LMDS administrative burden had been higher in the year 2000 and had been supported by fee contributions by MDS users. Further, Sprint argued that there were many similarities between the services, including that they both provided the same high speed voice and data services, although LMDS focused on large business users and MMDS focused on residential consumers. The Commission held that although LMDS and microwave services may utilize the same equipment, LMDS is operationally similar to MDS. The Commission concluded that this functional classification had proven adequate for more than 2 years and there was no reason to change it. Additionally, the Commission rejected the arguments of Worldcom, Inc. that the increase in the MDS fee from $275 in FY 2000 to $450 was excessive. Fee Order, 16 FCC Rcd at 13531–32 paragraphs 18–20. The Commission found that the $450 figure reflected the best accounting methods and the most accurate data available.

III. Bennet's Petition for Reconsideration

3. Bennet, who did not file comments earlier in this proceeding, now seeks reconsideration of the Commission's decision to continue to include LMDS in the MDS category for assessing regulatory fees. Bennet contends that LMDS should be included in the microwave category for purposes of assessing fees. In support of its contention, Bennet posits that significant differences exist between the LMDS and MDS services. According to Bennet, these differences include: That MDS uses site based licenses and individually licensed station hub sites, while LMDS uses geographically based licenses and generally does not use individually licensed hubs; that MDS is primarily a one-way video service, while LMDS is primarily a two-way service; and that LMDS and MDS use different equipment and network configurations and have different propagation characteristics, with LMDS and microwave services having more propagation limitations. It further states that the services serve different markets. In this regard, it notes that LMDS and other part 101 microwave services compete against each other in the same target markets and that the Commission's regulatory fee scheme unjustifiably places LMDS at a competitive disadvantage because the other part 101 services pay only a nominal regulatory fee. It also notes that licensing and rulemaking actions for MDS require more administrative resources than the resources required for LMDS. As to the size of the MDS fee, Bennet maintains that the increase from $275 to $450 is burdensome and not supported by any corresponding increase in regulatory costs.

4. Sprint responds that MDS and LMDS are operationally, competitively, and legally similar, both providing high speed wireless voice and data services, but noting that MDS serves primarily residential users and LMDS primarily serves large business users. Sprint contends that differences in the cost of licensing LMDS and MDS are irrelevant since the cost of licensing is not included in calculating annual fees. Fee Order, 16 FCC Rcd at 13595. In Sprint's view, reclassifying LMDS would

[1] Sprint Corp. filed an opposition on August 27, 2001.

unfairly increase the fees for other MDS operators.

IV. Discussion

5. Based on our review of the record in this proceeding, we find that Bennet's petition fails to provide sufficient grounds for us to depart summarily from the Commission's previous analysis regarding this matter. The Commission's decision to subject LMDS and MDS to identical regulatory fees stemmed largely from the fact that LMDS was operationally similar to MDS and MMDS.[2] In this regard, we note, for example, that we have previously noted that LMDS is competitive with MMDS.[3] Moreover, as the Commission has permitted licensees increasing flexibility in the use of their spectrum, the pattern has been for distinctions between LMDS and MMDS to erode.[4] While Bennet attempts to illustrate that LMDS more closely parallels certain microwave services, it does not dispute the similarities which we have previously noted between LMDS and MMDS. We also concur with Sprint's argument that licensing costs, which are covered by application fees assessed under section 8 of the Act, 47 U.S.C. 158, are not recovered through section 9 regulatory fees of the Act, 47 U.S.C. 159, and, therefore, have no bearing on our decision. We note, moreover, that, pending changes to the statutory schedule of fees in section 8, LMDS services have not been assessed any section 8 application fees. Consequently, we continue to believe, based on the record before us, that LMDS should be included in the MDS category for regulatory fees for FY 2001. As to the increase in the MDS fee, we believe that we have thoroughly explained this matter in the 2001 Fee Order. No further discussion of this point is warranted. Moreover, the public interest would not be served by disrupting the current fee process, which has been completed by numerous entities, pending resolution of this matter, particularly given that many of Bennet's arguments were raised for the first time on reconsideration.

6. While an insufficient record exists to lead us to modify our decision with respect to LMDS services in FY 2001, we plan to develop a more complete record on these issues in the next regulatory fee proceeding. In addition, in light of continuing technological convergence, innovation, and evolving service offerings in the marketplace, we will provide parties in an upcoming wireless bureau proceeding the opportunity to address our existing fixed wireless regulatory fee assessments and their application to similarly situated service providers. The development of a comprehensive record on these issues will enable us to review our existing classifications for certain services and identify the need, if any, for modifications in the regulatory fee amounts assessed for particular service categories.

7. *Accordingly, it is ordered,* that the petition for reconsideration of Bennet & Bennet, PLLC on behalf of its LMDS clients, filed August 10, 2001, is denied.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–31711 Filed 12–16–02; 8:45 am]

BILLING CODE 6712–01–P

[2] *Assessment of Regulatory Fees for Fiscal Year 2001,* 16 FCC Rcd 13525, 13532 para. 22 (2001).

[3] *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, to Reallocate the 29.5–30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services,* 15 FCC Rcd 11857, 11868 para. 25 (2000).

[4] For example, the Commission has authorized MMDS providers, like LMDS licensees, to offer two-way communications. *Amendments of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions,* MM Docket No. 97–217, 13 FCC Rcd 19112 (1998), *recon.* 14 FCC Rcd 12764 (1999), *further recon.,* 15 FCC Rcd 14566 (2000). Moreover, as a result of the Commission's reorganization, MMDS matters, like LMDS matters, now are handled by the Wireless Telecommunications Bureau. *Wireless Bureau to Assume All Regulatory Duties Associated with ITFS and MDS/MMDS Services,* Public Notice (Mar. 18, 2002).

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 11

[EB Docket No. 01–66]

Emergency Alert System

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations which were published in the **Federal Register** of Tuesday, April 16, 2002 (67 FR 18502). The regulations related to the technical and operational requirements for the Emergency Alert System (EAS) contained in part 11 of the rules.

DATES: Effective December 17, 2002.

FOR FURTHER INFORMATION CONTACT: Kathy Berthot, Enforcement Bureau, Technical and Public Safety Division, at (202) 418–7454.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections revised the technical and operational requirements for the EAS. The revisions were intended to enhance the capabilities and performance of the EAS during state and local emergencies, thereby promoting public safety.

Need for Correction

As published, the final regulations inadvertently omitted the existing State and Territory FIPS number codes used in transmitting EAS messages.

List of Subjects in 47 CFR Part 11

Radio, Television

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Accordingly, 47 CFR part 11 is corrected by making the following corrective amendments:

PART 11—EMERGENCY ALERT SYSTEM (EAS)

1. The authority citation for part 11 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i) and (o), 303(r), 544(g) and 606.

2. Section 11.31 is amended by revising paragraph (f) as follows:

§ 11.31 EAS Protocol.

* * * * *

(f) The State, Territory and Offshore (Marine Area) FIPS number codes (SS) are as follows. County FIPS numbers (CCC) are contained in the State EAS Mapbook.

	FIPS#
State:	
AL	01
AK	02
AZ	04
AR	05
CA	06
CO	08
CT	09
DE	10
DC	11
FL	12
GA	13
HI	15
ID	16
IL	17
IN	18
IA	19
KS	20
KY	21
LA	22
ME	23
MD	24
MA	25
MI	26
MN	27
MS	28