Copies of the request and the EPA's analysis are available electronically at RME or in hard copy at the above address. Please telephone Matt Rau at (312) 886–6524 before visiting the Region 5 Office.

Dated: February 10, 2005.

Norman Niedergang,

Acting Regional Administrator, Region 5.

[FR Doc. 05–3676 Filed 2–25–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 05–59; FCC 05–35]

Assessment and Collection of Regulatory Fees for Fiscal Year 2005

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission will revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress has required it to collect for fiscal year 2005. Section 9 of the Communications Act of 1934, as amended, provides for the annual assessment and collection of regulatory fees under sections 9(b)(2) and 9(b)(3), respectively, for annual ''Mandatory Adjustments'' and ''Permitted Amendments'' to the Schedule of Regulatory Fees.

DATES: Comments are due March 8, 2005, and reply comments are due March 18, 2005. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before April 29, 2005.

ADDRESSES: In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Judith-B.Herman@fcc.gov*, and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503, via the Internet to *Kristy_L. LaLonde@omb.eop.gov*, or via fax at 202–395–5167.

FOR FURTHER INFORMATION CONTACT: Roland Helvajian, Office of Managing Director at (202) 418–0444 or Rob Fream. Office of Managing Director at (202) 418–0408. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Judith B. Herman at 202–418–0214, or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: *Initial Paperwork Reduction Act of 1995 Analysis:* This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due April 29, 2005. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–1064.

Title: Regulatory Fee Assessment True-Ups.

Form No.: Not applicable.

Type of Review: Revision of currently approved collection.

Respondents: Businesses or other for-profit entities.

Estimated Number of Respondents: 1,650.

Estimated Time Per Response: .25 hours.

Frequency of Response: Annually.

Estimated Total Annual Burden: 413 hours.

Estimated Total Annual Costs: $0.

Privacy Act Impact Assessment: This information collection does not affect individuals or households; thus, there is no impact under the Privacy Act.

Needs and Uses: The Commission collects Congressionally-mandated regulatory fees from its regulatees based upon a schedule of fees that it establishes each year in an annual rulemaking proceeding. As part of our modernization efforts, we are able to provide regulatory fee assessments to select categories of regulatees: (1) Cable television operators, (2) media services licensees and (3) commercial mobile radio service (CMRS) licensees. Along with the fee assessment notices that we intend to send to these three categories of regulatees, we will provide them with a ''true-up'' opportunity to correct, update or otherwise rectify their assessed fee amounts well before the actual due date for payment of regulatory fees. This ''true-up'' collection of information is necessary because it enables regulatees to confirm for themselves what their regulatory fee payment obligations will be, well before their fees are due. The ''true-up'' opportunity also serves to provide the Commission with a higher degree of certainty in its regulatory fee payment expectations for the fiscal year.

Adopted: February 11, 2005; Released: February 15, 2005.

By the Commission:

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I. Introduction

1. In this *Notice of Proposed Rulemaking (NPRM),* we propose to collect $280,098,000 in regulatory fees for Fiscal Year (FY) 2005. These fees are mandated by Congress and are collected to recover the regulatory costs associated with the Commission's enforcement, policy and rulemaking, user information, and international activities.[1]

II. Discussion

A. Development of FY2005 Fees

1. Calculation of Revenue and Fee Requirements

2. Each fiscal year, the Commission proportionally allocates the total amount that must be collected via regulatory fees (Attachment C).[2] For FY 2005, this allocation was done using FY 2004 revenues as a base. From this base, a revenue amount for each fee category was calculated. Each fee category was then adjusted upward by 2.6 percent to reflect the increase in regulatory fees from FY 2004 to FY 2005. These FY 2005 amounts were then divided by the number of payment units in each fee category to determine the unit fee.[3] In instances of small fees, such as licenses that are renewed over a multiyear term, the resulting unit fee was also divided by the term of the license. These unit fees were then rounded in accordance with 47 U.S.C. 159(b)(2).

2. Additional Adjustments to Payment Units

3. In calculating the FY 2005 regulatory fees proposed in Attachment D, we further adjusted the FY2004 list of payment units (Attachment B) based upon licensee databases and industry and trade group projections. Whenever possible, we verified these estimates from multiple sources to ensure the accuracy of these estimates. In some instances, Commission licensee databases were used, while in other instances, actual prior year payment records and/or industry and trade association projections were used in determining the payment unit counts.[4] Where appropriate, we adjusted and/or rounded our final estimates to take into consideration variables that may impact the number of payment units, such as waivers and/or exemptions that may be filed in FY 2005, and fluctuations in the number of licensees or station operators due to economic, technical or other reasons. Therefore, when we note that our estimated FY 2005 payment units are based on FY 2004 actual payment units, we may have rounded the number for FY 2005 or adjusted it slightly to account for these variables.

4. Additional factors are considered in determining regulatory fees for AM and FM radio stations. These factors are facility attributes and the population served by the radio station. The calculation of the population served is determined by coupling current U.S. Census Bureau data with technical and engineering data, as detailed in Attachment E. Consequently, the population served, as well as the class and type of service (AM or FM), determines the regulatory fee amount to be paid.

B. Commercial Mobile Radio Service (CMRS) Messaging Service

5. In our FY 2003 *Report & Order* (68 FR 48445, August 13, 2003), we noted that in recent years there has been a significant decline in the number of CMRS Messaging units—from 40.8 million in FY 1997 to 19.7 million in FY 2003—a decline of 51.7 percent.[5] This trend is continuing. For example, in the FY 2004 regulatory fee cycle, the number of CMRS Messaging units for which regulatory fees were paid declined to 13.5 million. This is consistent with our *Ninth Annual CMRS Competition Report,* which estimates the number of paging-only subscribers at the end of 2003 to be 11.2 million units.[6] We also note that in recent years there have been no significant changes in the level of regulatory oversight for this fee category. For these reasons, we propose to continue our policy of maintaining the CMRS Messaging subscriber regulatory fee at the rate calculated in FY 2003 and FY 2004 to avoid further contributing to the financial hardships associated with a declining subscriber base.

C. Local Multipoint Distribution Service (LMDS)

6. In the *FY 2004 NPRM,*[7] we again sought comment on the appropriate fee classification for LMDS.[8] Commenters urged the Commission to classify LMDS as a microwave service, arguing that LMDS is operationally, functionally, and legally similar to 24 and 39 GHz services in the microwave fee category. We rejected this argument because

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

[2] It is important to note that the required increase in regulatory fee payments of approximately 2.6 percent in FY 2005 is reflected in the revenue that is expected to be collected from each service category. Because this expected revenue is adjusted each year by the number of estimated payment units in a service category, the actual fee itself is sometimes increased by a number other than 2.6 percent. For example, in industries where the number of units is declining and the expected revenue is increasing, the impact of the fee increase may be greater.

[3] In most instances, the fee amount is a flat fee per licensee or regulatee. However, in some instances the fee amount represents a unit subscriber fee (such as for Cable, Commercial Mobile Radio Service (CMRS) Cellular/Mobile and CMRS Messaging), a per unit fee (such as for International Bearer Circuits), or a fee factor per revenue dollar (Interstate Telecommunications Service Provider fee). The payment unit is the measure upon which the fee is based, such as a licensee, regulatee, subscriber fee, etc.

[4] The databases we consulted include, but are not limited to, the Commission's Universal Licensing System (ULS), International Bureau Filing System (IBFS), and Consolidated Database System (CDBS). We also consulted industry sources including but not limited to *Television & Cable Factbook* by Warren Publishing, Inc. and the *Broadcasting and Cable Yearbook* by Reed Elsevier, Inc., as well as reports generated within the Commission such as the Wireline Competition Bureau's *Trends in Telephone Service* and the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast* and *Annual CMRS Competition Report.* For additional information on source material, see Attachment B.

[5] *See* Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Report and Order*, 18 FCC Rcd 15985, 15992, at paragraph 21 (2003) (*FY 2003 Report and Order*).

[6] Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Ninth Report,* FCC 04–216, released Sept. 28, 2004, at paragraph 177 (*Ninth Annual CMRS Competition Report*).

[7] *See* Assessment and Collection of Regulatory Fees for Fiscal Year 2004, *Notice of Proposed Rulemaking*, 19 FCC Rcd 5795, 5797–8, at paragraph 5 (2004) (*FY 2004 NPRM*).

[8] In the *FY 2003 NPRM,* we sought comment on the appropriate fee classification of the Local Multipoint Distribution Service (LMDS). Some commenters urged that LMDS be classified in the microwave fee category. We declined to do so because technological developments and emerging commercial applications suggested that usage of LMDS could evolve differently than services in the microwave fee category. We recognized, however, that ''substantive distinctions did exist between MDS and LMDS, and that they should not be placed in the same fee category.'' Therefore, we created a separate LMDS fee category and stated that we would ''initiate a specific proceeding that addresses the policies and fee structure governing LMDS and other wireless services.'' *See FY 2003 Report and Order*, 18 FCC Rcd 15985, 15988–9, at paragraphs 6–10 (2003).

LMDS licenses are, as a factual matter, quite different than other Part 101 fixed microwave services in the upper frequency bands (above 15 GHz). While these three services are licensed on a geographic basis allowing licensees to place multiple stations within the authorized service areas, most microwave stations are currently licensed on a site-by-site basis thereby requiring, depending on the frequency band, multiple individual licenses to serve a particular geographic area or multiple points therein.[9] Even when the fees for LMDS licensees are compared with the fees for licensees in the 24 and 39 GHz bands, we did not find current fee assessments to impose a disproportionate burden on LMDS licensees.

7. However, we did identify an anomaly in FY 2004 between LMDS Block A and LMDS Block B licenses. Block A licenses are authorized for 1150 MHz of spectrum, more than seven times the amount of spectrum authorized for Block B licenses (150 MHz). Currently, LMDS regulatory fees are assessed on a per-license basis. Using the authorized bandwidth for each license as the basis for comparison, we noted that the LMDS fee for Block A licenses in FY2004 was significantly lower on a per megahertz basis than the fee for Block B licenses. For example, on a per MHz basis, Block B licenses, which are authorized for 150 MHz in the 31,000–31,075/31,225–31,300 MHz bands, paid $1.80 per MHz in FY2004, whereas Block A licenses authorized for 1150 MHz of spectrum paid $0.24 per MHz. Because this anomaly appears to create a disproportionate fee obligation on LMDS Block B licenses, on our own motion we propose in FY 2005 to exercise our authority pursuant to section 9(b)(3) and amend the fee schedule to assess LMDS regulatory fees on a per megahertz basis. This proposed action would thereby place fee assessments on Block A and Block B licenses more in line with the benefits received under the respective licenses in terms of their authorized bandwidth, which varies substantially, as noted above.

8. Following auctions 17 and 23, half of all of the licenses were Block A licenses and half were Block B licenses. Since then, some of the original licenses have been divided among other licensees pursuant to the Commission's license disaggregation and partitioning policies and procedures and others have been surrendered back to the FCC. Based on the FY 2005 revenue amount to be collected from the LMDS fee category ($94,050),[10] the per megahertz per unit fee is $0.44, which is based on a total authorized bandwidth of 1,300 MHz and estimated units of 165 Block A units and 165 Block B units.[11] This methodology of calculating LMDS regulatory fees incorporates the differences in bandwidth use between Block A and Block B licenses, as well as differences in the number of units between Block A and Block B licenses. Using the per MHz per unit fee of $0.44, the regulatory fee for LMDS Block A licenses is calculated to be $505 per license, and the regulatory fee for LMDS Block B licenses is calculated to be $65 per license.[12]

9. We seek comment on our proposal to use the above methodology for calculating regulatory fees for LMDS. We are aware of the dramatic one-year increase in regulatory fees that would result for Block A licensees if we were to adopt the above per-MHz methodology. Therefore, so as to minimize the impact of the fee increase, we seek comment on whether we should graduate the increase in increments over a brief period of years.

10. Additionally, we seek general comment on applying the per-MHz methodology to LMDS Block A and Block B licenses that have been partitioned and disaggregated. We also seek comment on whether to continue to use a fee calculation process that does not distinguish between LMDS Block A and LMDS Block B licenses. A fee calculation process that does not distinguish between Block A and Block B licenses would result in a regulatory fee of $285 per LMDS license.[13] Finally, we seek comment on other proposals to address the assessment of regulatory fees for LMDS.

D. International Bearer Circuits

11. The Commission currently assesses regulatory fees on international carriers based on the number of active international bearer circuits the carrier had the previous year.[14] In response to our *FY 2004 NPRM*, several commenters requested that the Commission change the regulatory fee regime for international carriers.[15] In the *FY 2004 Report and Order* we found that we needed a more complete record on these issues and stated that we would seek comment on them in our 2005 regulatory fees proceeding.

12. In this proceeding we seek comment on possible changes to the regulatory fees assessed on international carriers. Specifically we seek comment on possible bases, other than active circuits, for assessing regulatory fees on international carriers.[16]

13. Several carriers raised concerns with the use of international bearer circuits as the basis for assessing regulatory fees in the 2004 regulatory fee proceeding. They argued that basing fees on the number of active circuits an international carrier has favors older, lower-capacity systems to the detriment of newer, higher-capacity systems. Specifically the commenters argued that (1) the Commission's present methodology does not take into account the reduced regulation of non-common carrier (also known as ''private'') submarine cable operators, and (2) imposing fees based on a company's ''lit and sold'' (also known as ''active'') bearer circuit capacity is at odds with how non-common carrier submarine cable operators actually sell capacity, thereby requiring operators to spend

[9] *Id.*

[10] *See* Attachment C.

[11] The per megahertz per unit fee is calculated as follows:

165 Block A units times 1,150 MHz used = 189,750 (total MHz used by Block A licensees).

165 Block B units times 150 MHz used = *24,750* (total MHz used by Block B licensees).

Total = 214,500 (total MHz used by Block A & B licensees).

Per MHz Per Unit Fee = $94,050 divided by 214,500 = $0.44.

[12] LMDS Block A Licenses: $0.44 per MHz per unit times 1,150 MHz bandwidth = $506, rounded to $505. LMDS Block B Licenses: $0.44 per MHz per unit times 150 MHz bandwidth = $66, rounded to $65.

[13] A regulatory fee that does not distinguish between Block A and Block B LMDS licenses is calculated as follows: $94,050 (total expected FY 2005 revenue) divided by 330 (estimated units) = $285 per license.

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

[15] *See* Assessment and Collection of Regulatory Fees for Fiscal Year 2004, Report and Order, 19 FCC Rcd 11662, 11671–72, at paragraphs 26–30 (2004) (*FY 2004 Report and Order*).

[16] Because of the complexity of this issue, we will review the comments and reply comments, but we will not implement any action in FY 2005.

time determining if regulatory fees are applicable based on the Commission's definition of ''active.''

14. Tyco proposed the following changes be made to the regulatory regime: (1) Separate the non-common carrier submarine cable operator subcategory from the existing international bearer circuit fee category by creating a new non-common carrier submarine cable operator category; (2) allocate the current revenue requirement for the bearer circuit fee category between two new fee categories based on the regulatory burden of each new category; and (3) adopt a flat, per-cable-landing-license fee for non-common carrier submarine cable operators. Several commenters supported Tyco's position. Several commenters also noted that satellite operators provide international bearer circuits on a non-common carrier basis, and that circuit fees should include both non-common carriers as well as private submarine cable providers.

15. The Commission concluded in the *FY 2004 Report and Order* that these arguments warranted further consideration, and that a fee system based on cable landing licenses and international section 214 authorizations, rather than international bearer circuits, would be administratively simpler for both the Commission and carriers.[17] The Commission also noted that a fee system based on licenses/authorizations could provide an incentive for carriers to initiate new services and to use new facilities more efficiently.[18]

16. The assessment of regulatory fees on international carriers based on active international circuits is set out in the fee schedule in section 9 of the Communications Act.[19] The statute provides the Commission with the authority to amend the fee schedule. 47 U.S.C. 159(b)(3). Section 9(b)(3) requires the Commission to amend the schedule if the Commission determines that amendment is necessary to comply with the general fee authority set forth in section 9(b)(1)(A) of the Communications Act. Section 9(b)(3) also grants the Commission authority to ''add, delete, or reclassify service in the Schedule to reflect additions, deletions, or changes in the nature of its services as a consequence of Commission rulemaking proceedings or changes in the law.'' [20] We seek comment on whether a change to the computation of fees for the international bearer circuit category or a reclassification of the category is warranted in light of the Commission's authority to amend the fee schedule.[21] If a reclassification of the category is proposed, commenters should specifically address the Commission rulemakings or changes in law that justify the reclassification.

17. Commenters should address possible alternative methods of assessing regulatory fees on international carriers, for example whether regulatory fees should be assessed based on the holding of an international section 214 authorization or a cable landing license. As noted above, Tyco proposed to separate the non-common carrier submarine cable operator subcategory from the existing international bearer circuit fee category, thereby creating a new non-common carrier submarine cable operator category. We seek comment on the Tyco proposal. Commenters should address how to allocate the current international bearer circuit revenue requirement between non-common carrier submarine cable operators and the remaining circuit fee category.

E. Multichannel Video Distribution and Data Service (MVDDS)

18. In 2002 the Commission established the Multichannel Video Distribution and Data Service (MVDDS) in the 12.2–12.7 GHz band (12 GHz band),[22] totaling 500 megahertz of contiguous spectrum that is licensed by 214 service areas (''MVDs''). MVDDS spectrum is used to facilitate the delivery of new video and broadband communications services, such as local television programming and high-speed Internet access.[23] The technical rules reflect a carefully crafted balance in which the Commission affords protection to the Direct Broadcast Satellite (DBS) service and the non-geostationary satellite orbit (NGSO) fixed-satellite service (FSS) while allowing the entrance of MVDDS.[24]

19. The Commission established MVDDS because it had concluded that a fourth provider in the MVPD marketplace would generate significant public interest benefits, such as lower prices, improved service quality, increased innovation, and increased service to unserved or underserved rural areas.[25] However, the Commission found that ''open eligibility for in-region cable operators [would] pose a significant likelihood of substantial competitive harm'' because ''cable operators have a strong incentive to prevent entry by new MVPD providers.''[26] Therefore, cable operators and entities holding attributable interests in cable operators must divest these interests within ninety days of being granted an MVDDS license whose geographic service area significantly overlaps the cable operator's service area.[27]

20. On January 27, 2004, the Commission completed the auction of the 214 MVDDS licenses (''Auction No. 53''), raising (in net bids) a total of $118,721,835. In this auction, ten winning bidders won a total of 192 MVDDS licenses, which the Commission issued later in 2004.[28]

[17] *FY 2004 Report and Order* at paragraph 29.

[18] *Id.*

[19] 47 U.S.C. 159(g).

[20] 47 U.S.C. 159(b)(3).

[21] On December 15, 2004, counsel for Tyco Telecommunications (US) Inc. submitted a letter addressing the Commission's legal authority to amend the schedule of regulatory fees pursuant to section 9(b)(3), 47 U.S.C. 159(b)(3). Letter from Kent D. Bressie, Harris, Wiltshire & Grannis, to David Krech, FCC, dated December 15, 2004. A copy of the letter has been placed in the record for this proceeding. We seek comment on the analysis presented in the letter.

[22] Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2–12.7 GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. to Provide a Fixed Service in the 12.2–12.7 GHz Band, ET Docket No. 98–206, *Memorandum Opinion and Order and Second Report and Order,* 17 FCC Rcd 9614, 9680 (2002) (*MVDDS Second R&O*).

[23] MVDDS licensees may use the 12.2–12.7 GHz band for any digital fixed non-broadcast service (broadcast services are intended for reception of the general public and not on a subscribership basis) including one-way direct-to-home/office wireless service. *See* 47 CFR 101.1407 (Permissible operations for MVDDS).

[24] *See generally* subpart P of 47 CFR Part 101.

[25] 25 *MVDDS Second R&O,* 17 FCC Rcd at 9680.

[26] 26 *Id.*

[27] 47 CFR 101.1412(a). ''Cable operator'' means a company that is franchised to provide cable service, as defined in 47 CFR 76.1000(e), in all or part of the MVDDS license area, id. § 101.1412(b). ''Significant overlap'' occurs when a cable operator's subscribers in the MVDDS license area make up 35 percent or more of the households in that MVDDS license area which subscribe to one or more Multichannel Video Program Distributors (MVPDs), as defined in 47 CFR 76.1000(e). *See* 47 CFR 101.1412(c) and (e). The winning bidder for the MVDDS license of the New York service area (MVD001), *inter alia,* requested and received a 270-day extension of the 90-day divestiture deadline, *see* 47 CFR 101.1412(g)(4), of the Commission's MVDDS/cable cross-ownership rule. *See* DTV Norwich, LLC, Application for Multichannel Video Distribution and Data Service License, MVD001–New York, Request for Waiver of Section 101.1412(g)(4) of the Commission's Rules, *Order,* File No. 0001618606–MVD001, DA 04–3044 (released September 23, 2004) (*DTV Norwich Waiver Order*).

[28] *See* Wireless Telecommunications Bureau Grants Multichannel Video Distribution and Data Service Licenses, *Public Notice,* DA 04–2331 (released July 27, 2004) (granting 154 licenses); Wireless Telecommunications Bureau Grants Multichannel Video Distribution and Data Service Licenses to South.Com LLC, DA 04–2547, *Public Notice,* (released August 18, 2004) (granting 37 licenses); and *DTV Norwich Waiver Order* (granting license for MVD001). All of the grants are subject to conditions.

MVDDS licenses are issued for a ten-year term beginning on the date the initial authorization is granted.[29] Licensees must provide ''substantial service'' within five years of the grant, which must be documented at license renewal time.[30] As of the third quarter 2004, MVDDS equipment was still under development. Because MVDDS spectrum can be used to provide non-video, *i.e.*, broadband data services,[31] the Commission concluded that MVDDS does not fall within the Cable Television and DBS Subscribers regulatory fee category, which raises the question of whether MVDDS should be established as a new regulatory fee category.

21. Since MVDDS equipment is still under development, we propose to not establish regulatory fees for MVDDS as a new regulatory fee category in FY 2005. We seek comment on this proposal. In the alternative, if the Commission were to establish regulatory fees for MVDDS in FY 2005, we seek comment on equitable ways to assess fees for MVDDS based on the nature of this service, such as whether the fee should be flat or be set on a per-MHz basis. We also seek comment on whether the Commission should collect the fee on an annual basis, or whether we should collect it in advance to cover the term of the license fee when the application for license is filed.

F. Broadband Radio Service (BRS)/ Educational Broadband Service (EBS), (Formerly MDS/MMDS and ITFS)

22. On June 10, 2004, we adopted a *Report & Order and Further Notice of Proposed Rulemaking (R&O and FNPRM),* 69 FR 72048 (December 10, 2004), and also referred to as the BRS/ EBS proceeding) [32] that takes important steps to transform our rules and policies governing the licensing of the Instructional Television Fixed Service (ITFS), the Multipoint Distribution Service (MDS), and the Multichannel Multipoint Distribution Service (MMDS) in the 2500–2690 MHz band.[33] The actions taken in this proceeding initiated a fundamental restructuring of the band that will provide both existing ITFS and MDS licensees and potential new entrants with greatly enhanced flexibility in order to encourage the highest and best use of spectrum domestically and internationally, and the growth and rapid deployment of innovative and efficient communications technologies and services.[34] The R&O renamed the MDS service as the ''Broadband Radio Service'' (BRS). This new designation connotes a more accurate description of the services we anticipate will develop in the band.The *R&O* also renamed the ITFS service as the Educational Broadband Service'' (EBS), which more accurately describes the kinds of the services that we anticipate will develop in the band.[35] The *R&O,* among other things, implemented geographic area licensing for all licensees in the band, which gives licensees increased flexibility while greatly reducing administrative burdens on both licensees and the Commission. We note that geographic area licensing will reduce the total number of BRS licenses because, in most cases, separate licenses will no longer be necessary for each transmitter a licensee places in service.

23. In the *FNPRM,* we sought comment on issues relating to regulatory fees.[36] We note that, other than renaming our MDS/MMDS regulatory fee category to BRS and adjusting its estimated number of payment units, any other changes to the regulatory fee rules we adopt in the BRS/EBS proceeding will not be adopted in time to take effect in FY 2005. If new regulatory fee rules are adopted in the BRS/EBS proceeding, the Commission will make appropriate adjustments in the appropriate regulatory fee cycle, which will presumably be the cycle for FY 2006 or beyond.

G. Regulatory Fees for AM and FM Construction Permits

24. At the inception of our regulatory fee program in FY 1994, the regulatory fee amount for construction permits was set at an amount that, when compared to licensed stations, was commensurate to the limited nature of station operations under the terms of a construction permit. Each year since FY 1994, the unit fee for AM, FM, and full-service VHF and UHF television construction permits was calculated by determining the proportion of the amount to be collected by each respective fee category, divided by the number of estimated units, as illustrated in Attachment C. However, since the inception of the program in FY 1994, the amount of fees that we have been directed to collect each year has steadily increased, while the number of estimated payment units for these construction permits has steadily decreased. This combination of increasing expected revenue and decreasing payment units for these construction permits has resulted in a regulatory unit fee that is higher than that of some licensed stations.

25. To rectify this situation, we propose beginning in FY 2005 to set the AM, FM, VHF, and UHF construction permit fee to be no higher than the regulatory fee associated with the lowest licensed station for that fee category. Because there are unit and revenue variables in assessing the per-unit regulatory fee, thereby causing the fee to change each fiscal year, it may be necessary to make revenue adjustments each fiscal year to keep the per unit regulatory fee for construction permits at the level of the lowest licensed fee for AM, FM, VHF, and UHF stations. We seek comment on whether construction permit fees should be held at the level of the lowest licensed fee for their respective fee categories (*e.g.* AM, FM, VHF, and UHF stations), and whether any adjustments that have to be made to hold the construction permit fee at the level of the lowest respective licensed fee should be spread across only a narrow group of fee categories, such as AM, FM, VHF, and UHF stations, or across all fee categories.

H. Clarification of Policies and Procedures

1. Ad Hoc Issues Concerning Our Regulatory Fee Exemption Policies

26. Pursuant to 47 CFR 1.1162, the Commission does not establish regulatory fees for applicants, permittees and licensees who qualify as government entities or non-profit entities. Despite the language of 47 CFR

[29] 47 CFR 101.1413(a).

[30] 30 47 CFR 101.1413(b) and (c).

[31] MVDDS licensees may use this spectrum for any digital fixed non-broadcast Service (broadcast services are intended for reception of the general public and not on a subscribership basis) including one-way direct-to-home/office wireless service. Licensees are permitted to provide one-way video programming and data services on a non-common carrier and/or on a common carrier basis. Mobile and aeronautical services are not authorized. Two-way services may be provided by using other spectrum or media for the return or upstream path. *See* 47 CFR 101.1407.

[32] *See* Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands et al, *Report & Order and Further Notice of Proposed Rulemaking,* 19 FCC Rcd 14165 (2004) (*R&O and FNPRM*).

[33] The terms MDS and MMDS are often used interchangeably. The Commission coined the term ''MDS'' at a time when it was making only two channels available for the service, at 2150–2162 MHz. The Commission began using the term ''MMDS'' when formulating rules making additional channels for the service available in the 2500–2690 MHz band. In discussing this *Report & Order and Further Notice of Proposed Rulemaking,* we will use the term ''MDS'' to signify both services.

[34] Federal Communications Commission, Strategic Plan FY 2003–FY 2008 at 5 (2002) (*Strategic Plan*).

[35] Federal Communications Commission, Strategic Plan FY 2003–FY 2008 at 5 (2002) (*Strategic Plan*).

[36] *See* R&O and FNPRM, 19 FCC Rcd at 14293–97 paragraphs 351–359.

1.1162, we still encounter frequent uncertainty and comments from parties with respect to our fee exemption policies. Therefore, we believe it would be helpful for us to provide clarification of these policies.[37]

27. *Determination of Fee Code for a Facility:* The fee code is determined by the operational status of the facility as of October 1 of each year. This involves factors such as whether the facility is in construction permit status or licensed status and a variety of other factors. Every facility has a fee code. There is no prorating of regulatory fees. For example, if a facility is in construction permit status as of the close of business October 1, but a license is granted on or after October 2, that facility is considered to be in construction permit status for the entire year. Other facility changes during the course of the year, such as technical changes, are treated in the same manner.

28. *Establishment of Exempt Status:* State, local, and federal government agencies and IRS-certified not-for-profit entities are generally exempt from payment of regulatory fees. The Commission requires that each exempt entity have on file a valid IRS Determination Letter or certification from a government authority documenting its exempt status. In instances where there is a question regarding the exempt status of an entity, the FCC may request, at any time, for the entity to submit an IRS Determination Letter or certification from a government authority that documents its exempt status.

29. *Subsidiaries of Exempt Entities:* The licensee of a facility may be distinct from the ultimate owner. Exempt entities may hold one or more licenses for media facilities directly and/or through subsidiaries. Facilities licensed directly to an exempt entity and its exempt subsidiaries are excused from the regulatory fee obligation. However, licensees that are for-profit subsidiaries of exempt entities are subject to regulatory fees regardless of the exempt status of the ultimate owner.

Examples: A University owns a commercial facility whose profits are used to support the University and/or its programs. If the facility is licensed to the University directly, or to an exempt subsidiary of the University, it is exempt from regulatory fees. If, however, the license is held by a for-profit subsidiary, regulatory fees are owed, even though the University is an exempt entity.

A state pension fund is the majority owner of a for-profit commercial broadcasting firm. The facilities licensed to the for-profit broadcasting firm would be subject to regulatory fees, even though it is owned by an exempt agency.

30. *Responsible Party, and the Effects of Transfers of Control:* The entity holding the license for a facility as of the Fee Due Date is responsible for the regulatory fee for that facility. Eligibility for a regulatory fee exemption is determined by the status of the licensee as of the Fee Due Date, regardless of the status of any previous licensee(s).

2. Regulatory Fee Obligations for Digital Broadcasters

31. Our current schedule of regulatory fees does not include service categories for digital broadcasters. Licensees in the broadcast industry pay regulatory fees based on their analog facilities. For licensees that broadcast in both the analog and digital formats, the only regulatory fee obligation at present is for their analog facility. Moreover, a licensee that has fully transitioned to digital broadcasting and has surrendered its analog spectrum would have no regulatory fee obligation.

32. At this time, we regard it as premature to establish regulatory fee obligations for digital broadcasters. However, recognizing the Commission's initiatives to transition analog broadcasters to digital spectrum, we wish to begin to address these issues from a regulatory fee perspective, so that both the Commission and licensees can prepare for fee policy changes that may need to occur.

33. Therefore we seek comment on whether and when we should establish regulatory fee service categories for digital broadcasters. In particular, we seek comment on ways that we could most efficiently and seamlessly adjust our schedule of regulatory fees to account for the collection of fee revenue from digital broadcasters without harming early transitioners to digital spectrum or late transitioners from analog spectrum.

3. Regulatory Fee Obligations for AM Expanded Band Broadcasters

34. *AM Expanded Band Radio Station:* We are aware of uncertainty among licensees as to whether or not regulatory fees are owed for AM Expanded Band radio stations. The concept of the AM Expanded Band has its basis in the Commission's rules regarding experimental stations.[38] The AM Expanded Band was created to reduce interference in the upper standard band portion of the AM spectrum band by allowing stations to voluntarily move their broadcasts from the standard band to a point above 1605 kHz.[39]

35. Uncertainty about the fee status of AM Expanded Band stations may exist because AM Expanded Band radio service is not among our categories for general exemptions from regulatory fees, as defined in 47 CFR 1.1162. While not fitting a general exemption, we clarify here that, at this time, licensees of AM Expanded Band radio stations—stations authorized for broadcast in the 1605–1705 kHz range—are not required to pay regulatory fees for such stations. Licensees that operate a standard band AM station (540–1600 kHz) that is linked to an AM Expanded Band station are subject to regulatory fees for their standard band station only.

36. We also note that our decision not to require regulatory fee payments for AM Expanded Band stations is not synonymous with giving AM Expanded Band radio service a general exemption from regulatory fees. Because the movement to the expanded band is voluntary and helps to reduce interference in the standard bandwidth, we wish to continue our policy of not subjecting this relatively small group of stations to regulatory fees. However, at some future point when the migration of standard band broadcasters to the Expanded Band has advanced, we will consider establishing regulatory fee requirements for AM Expanded Band stations.

4. Effective Date of Payment of Multi-Year Wireless Fees

37. The first eleven fee categories in our Attachment D, Schedule of Regulatory Fees, constitute a general fee category known as multi-year wireless fees. Regulatory fees for this category are generally paid in advance, and for the amount of the entire 5-year or 10-year term of the license. Because payment of these regulatory fees is linked to the date of license renewal (or at the time of a new application), these fees can be paid at any time during the fiscal year. As a result, there has been some confusion as to the regulatory fee rate that should apply at the time of license renewal. Current fiscal year regulatory

[37] In the ensuing discussion, ''facility'' includes ''station'' and ''licensee'' includes ''permittee.'' ''October 1'' means the close of business on October 1, the first day of the government fiscal year. ''Fee Due Date'' means the close of business on the day determined to be the final date by which regulatory fees must be paid. The Fee Due Date usually occurs in August or September. An ''Exempt Entity'' is a legal entity that is relieved of the burden of paying annual regulatory fees.

[38] Definitions regarding AM Expanded Band stations are listed in many places in the Commission rules, including 47 CFR 73.14, 73.21, 73.30, and 73.37.

[39] *See* 47 CFR 73.14, 73.21, 73.30, and 73.37 of the Commission' rules for information regarding AM Expanded Band stations.

fees generally become effective 30 or 60 days after publication of the fees Report & Order in the **Federal Register**, or in some instances, 90 days after delivery of the Report & Order to Congress. Because current fiscal year regulatory fees have an effective date, only licensees (including new licensees) whose license renewal dates fall on or after this effective date pay regulatory fees at the new rate. Licensees whose license renewal dates fall before the current year effective date pay regulatory fees at the prior year rate, which, in other words, is the rate currently in effect before the new rate becomes effective.

I. Proposals for Notification, Assessment and Collection of Regulatory Fees

38. Each year, we generate public notices and fact sheets that notify regulatees of the fee payment due date and provide additional information regarding regulatory fee payment procedures. In prior years, we disseminated these notices and fact sheets to regulatees through surface mail. We discontinued this practice two years ago, informing regulatees that with the widespread use of the Internet, sending public notices by surface mail was not an efficient use of our time and resources. We stated that we can better serve the public by providing these general notices on our website, while exploring ways to disseminate specific regulatory fee bills or assessments through surface mail.

39. Accordingly, in FY 2005 we will provide our public notices, fact sheets and all other relevant materials on our web site at *http://www.fcc.gov/fees/regfees.html,* just as we have done for the past several years. As a general practice, we will not send such information through surface mail. However, in the event that regulatees do not have access to the Internet, we will mail public notices and other relevant materials upon request. Regulatees and the general public may request such information by contacting the FCC CORES Help Desk at (877) 480–3201, Option 4.

40. Although last year we did not send public notices and fact sheets to regulatees en masse, we did send specific regulatory fee assessments or bills by surface mail to a select group of fee categories. Here, we believe that it is important to clarify the distinction between an assessment and a bill. An assessment is a proposed statement of the amount of regulatory fees owed by an entity to the Commission (or proposed subscriber count to be ascribed for purposes of setting the entity's regulatory fee) but it is not entered into the Commission's accounts receivable system as a current debt. A bill is distinct from an assessment in that it is automatically entered into our financial records as a debt owed to the Commission. Bills reflect the amount owed and have a due date of the last day of the fee payment window. Consequently, if a bill is not paid by the due date, it becomes delinquent and is subject to our debt collection procedures.[40]

41. We are pursuing our billing initiatives as part of our effort to modernize our financial practices. Eventually, we intend to expand our billing initiatives to include all regulatory fee service categories. For now, based on the results of our assessment and billing initiatives from last year, and the resources currently available to us, we propose to proceed with our various FY 2005 initiatives as follows.

1. Interstate Telecommunications Service Providers (ITSPs)

42. In FY 2001, we began sending pre-completed FCC Form 159–W assessments to carriers in an effort to assist them in paying the Interstate Telecommunications Service Provider (ITSP) regulatory fee.[41] The fee amount on FCC Form 159–W was calculated from the FCC Form 499–A report, which carriers are required to submit by April 1st of each year. Throughout FY 2002 and FY 2003, we refined the FCC Form 159–W to simplify the regulatory fee payment process.[42] In FY 2004, we generated and mailed the same pre-completed FCC Form 159–W's to carriers under the same dissemination procedures, but we informed them that we will be treating the amount due on Form 159–W as a bill, rather than as an assessment. Other than the manner in which Form 159–W payments were entered into our financial system, carriers experienced no procedural changes regarding the use of the FCC Form 159–W when submitting payment of their FY 2004 ITSP regulatory fees.

43. For FY 2005, we propose to continue our Form 159–W billing initiative for ITSPs. We seek comment on this proposal and on ways that we could improve our billing initiative for ITSPs.

2. Satellite Space Station Licensees

44. Last year, for the first time, we mailed regulatory fee bills through surface mail to all licensees in our two satellite space station service categories. Specifically, geostationary orbit space station (''GSO'') licensees received bills requesting regulatory fee payment for satellites that (1) were licensed by the Commission and operational on or before October 1, 2003; and (2) were not co-located with and technically identical to another operational satellite on October 1, 2003 (*i.e.*, were not functioning as a spare satellite). Non-geostationary orbit space station (''NGSO'') licensees received bills requesting regulatory fee payment for systems that were licensed by the Commission and operational on or before October 1, 2003.

45. For FY 2005, we propose to continue our billing initiative for our two satellite space station categories: GSOs and NGSOs.

46. Finally, we emphasize that the bills that we propose to generate for our GSO and NGSO licensees will be only for the satellite or system aspects of their respective operations. GSO and NGSO licensees typically have regulatory fee obligations in other service categories (such as earth stations, broadcast facilities, etc.), and we expect satellite operators to meet their full fee payment obligations for their entire portfolio of FCC licenses. We seek comment on our proposal to generate regulatory fee bills for our two satellite space station service categories.

3. Media Services Licensees

47. In FY 2003 and FY 2004, we mailed fee assessment postcards to media services entities on a per-facility basis. The postcards served to notify licensees of the date when fee payments are due, the assessed fee amount for the facility, as well as other data attributes that we used in determining the fee amount.[43] We propose to continue our assessment initiative for media services licensees this year in a similar fashion.

48. As was the case last year, we propose to mail a single round of postcards to licensees and their other known points of contact listed in CDBS (Consolidated Database System) and in CORES (Commission Registration System), the Commission's two official

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

[41] *See FY 2001 Report and Order,* 16 FCC Rcd 13590 (2001) at paragraph 67. *See also* FCC Public Notice—Common Carrier Regulatory Fees (August 3, 2001) at 4.

[42] Beginning in FY2002, Form 159–W included a payment section at the bottom of the form that allowed carriers the opportunity to send in Form 159–W in lieu of completing Form 159 Remittance Advice Form.

[43] Fee assessments were issued for AM and FM Radio Stations, AM and FM Construction Permits, FM Translators/Boosters, VHF and UHF Television Stations, VHF and UHF Television Construction Permits, Satellite Television Stations, Low Power Television (LPTV) Stations, and LPTV Translators/Boosters. Fee assessments were not issued for broadcast auxiliary stations, nor will they be issued for them in FY 2005.

databases for media services. By doing so, licensees and their other points of contact will all be furnished with the same information for each facility in question so that they can designate among themselves the payer of this year's fee. Mailing postcards to all interested parties at different addresses on file for each facility also encourages all parties to visit our Commission-authorized web site to update or correct information regarding the station, or to certify their fee-exempt status, if appropriate. The web site will be available again on-line throughout this summer.[44] In addition to using the postcards to direct parties to our authorized web site for updates and corrections, the postcards will also direct licensees to the telephone number of our FCC CORES Help Desk at (877) 480–3201, Option 4, where licensees can call to obtain clarification on procedures. We seek comment on our proposal to generate fee assessment postcards for media services entities.

49. Under our proposal, media services licensees would still be required to submit a completed Form 159 with their fee payments, despite having received an assessment postcard. We cannot guarantee that your regulatory fees will be posted accurately against your account if a Form 159 is not returned with your fee payment. We emphasize that the assessment postcards that we propose to mail to media services licensees are not to be used as a substitute to completing Form 159. Rather, we hope licensees will use the postcards as a tool to help them complete their Form 159.

50. We also emphasize that the most important data element that media services licensees need to include on their Form 159 is their station's facility ID. The facility ID is a unique identifier that never changes over the course of a station's existence. Despite the fact that we prominently display a station's facility ID on the station's assessment postcard, and Form 159 filing instructions call for each station's facility ID and call sign to be provided, we typically receive many incomplete Form 159s that do not provide the facility ID of the station whose fee is being paid.

4. Commercial Mobile Radio Service (CMRS) Cellular and Mobile Services

51. In our *FY2004 NPRM,* we proposed to mail assessments to Commercial Mobile Radio Services (CMRS) cellular and mobile service providers using information from the Numbering Resource Utilization Forecast (NRUF) form.[45] We proposed that subscriber data from the NRUF form and the Local Number Portability (LNP) database be used to compute and assess a regulatory fee obligation. Upon the suggestion of some of our commenters to our *NPRM,* we decided to provide entities who filed an NRUF form an opportunity to revise their subscriber counts before making a regulatory fee payment.[46] We propose to continue our procedure of giving entities an opportunity to revise their subscriber counts again this year by sending two rounds of assessment letters, an initial assessment and a final assessment letter. If this exercise again proves to be successful, we will be sending these letters next year as ''bills'', which will have Debt Collection Improvement Act (DCIA) implications if the assessment fee based on these subscriber counts is not paid by the due date of next year's regulatory fees.

52. As in FY 2004, we again propose to send an assessment letter that is based on NRUF data[47] that includes a list of the carrier's Operating Company Numbers (OCNs) upon which the assessment is based. The letters will not include assigned number counts by OCNs, but rather an aggregate of assigned numbers for each carrier. If the number of subscribers on the initial assessment letter differs from the subscriber count they provided on the NRUF form, CMRS cellular and mobile service providers can amend their initial assessment letter to correctly identify their subscriber count as of December 31, 2004. Assessment letters that are amended should indicate the specific reason for the change, such as the purchase or the sale of a subsidiary, the date of the transaction, and any other information that will help to justify a reason for the change. If we receive no response to our initial assessment letter, we will assume that the initial assessment is correct and will expect the fee payment to be based on the number of subscribers listed on the initial assessment. We will review all responses and determine whether a change in the number of subscribers is warranted. As in previous years, operators will certify their subscriber counts in Block 30 of the FCC Form 159 Remittance Advice when making their regulatory fee payments.

53. Although two assessment letters will be mailed to carriers that have filed an NRUF form, it is conceivable that some carriers will not be sent any letters of assessment because they did not file the NRUF form. For these carriers, we again propose to use the methodology[48] that is currently in place for CMRS Wireless services. They should use their subscriber count as of December 31, 2004 and submit payment accordingly on FCC Form 159. However, whether a carrier receives a letter of assessment or computes the subscriber count itself, the Commission reserves the right, under the Communications Act, to audit the number of subscribers upon which regulatory fees are paid. In the event that the Commission determines that the number of subscribers is inaccurate or that an insufficient reason is given for making a correction on the initial assessment letter, we again propose that we reserve the right to assess the carrier for the difference between what was paid and what should have been paid.

54. After having the benefit of using NRUF data last year, we will clarify some of the issues raised last year. First, we propose to derive the subscriber count from NRUF data based on ''assigned'' number counts that have been adjusted for porting to net Type 0 ports (''in'' and ''out''), which should reflect a more accurate subscriber count. Second, as a result of number pooling, many wireless carriers receive their new numbers as thousand-number blocks and that, within each block, up to 100 numbers can be retained by the donating carrier. Because retained numbers are reported on the NRUF form as ''assigned'' to the holder of the thousand block, a concern was raised last year that this anomaly would result in a lower count for the donating carrier and a higher count for the recipient carrier. Although we are unable to correct this anomaly at this time, we believe our proposal to give carriers an opportunity to revise their subscriber count should alleviate any potential harm resulting from this phenomenon. And finally, because we are requiring carriers to confirm their subscriber counts on an aggregate basis, a carrier should be able to identify its subscriber count accurately as of December 31, 2004, regardless of whether the carrier uses data in the NRUF report, a Securities and Exchange (SEC) filing, the 477 report, or some other certified financial statement. Because we have

[44] The Commission-authorized web site is *http://www.fccfees.com.*

[45] *See* Assessment and Collection of Regulatory Fees for Fiscal Year 2004, *Notice of Proposed Rulemaking,* 19 FCC Rcd 5795, 5801, at paragraph 20 (2004) *(FY 2004 NPRM).*

[46] *See FY 2004 Report and Order,* 19 FCC Rcd 11662, 11676–11677, at paragraphs 48–49 (2004).

[47] Our proposal to continue to use NRUF data is subject to action taken in response to a Petition for Reconsideration of the FY 2004 Fee Order filed by Cingular Wireless LLC filed on August 6, 2004.

[48] Federal Communications Commission, Regulatory Fees Fact Sheet, ''What You Owe—Commercial Wireless Services, July 2004, page 1.

found subscriber counts reported by carriers on the NRUF form to be very accurate, we propose to continue to use the NRUF report [49] as the basis for our CMRS cellular/mobile provider assessments.

5. Cable Television Subscribers

55. Last year, we generated regulatory fee assessment letters for that segment of the cable television industry that was listed in selected publicly available data sources. The data sources that we selected for reference were the *Broadcasting and Cable Yearbook 2003–2004 (''Yearbook'')* [50] and industry statistics published by the National Cable and Telecommunications Association (''NCTA'').[51] We also permitted cable operators for the first time, regardless of whether or not they were listed in the selected data sources, to make regulatory fee payments based on their companies' aggregate subscriber counts, rather than requiring them to sub-report subscriber counts on a per community unit identifier (''CUID'') basis.

56. We generated assessment letters for each of the cable operators listed in the *Yearbook,* as well as the 25 largest multiple-system operators (''MSOs''), as listed on NCTA's web page. The cable operators that received assessment letters were given the opportunity to respond to the Commission to rectify their subscriber counts before making their fee payments. The remainder of the cable television industry did not receive assessment letters. Regardless of whether or not a company was listed in the *Yearbook* or on NCTA's web page, all cable operators were instructed to base their fee obligations on their basic subscriber counts as of December 31, 2003, with the understanding that we would corroborate the counts with other publicly available data sources.

57. This year, we propose to conduct a similar assessment initiative, but with different procedures. Specifically, we will generate fee assessment letters for the cable operators who are on file as having paid regulatory fees last year for their basic cable subscribers. Under our proposal, our letter to each operator would announce the due date for payment of FY 2005 regulatory fees; reflect the subscriber count for which the operator paid FY 2004 regulatory fees; and request that the operator access a Commission-authorized web site to provide its aggregate count of basic cable subscribers as of December 31, 2004—the date that the Commission requires operators to use as the basis for determining their regulatory fee obligations for basic cable subscribers. If the number of subscribers as of December 31, 2004 differs from the amount paid for last year, operators would be required to provide a brief explanation for the differing subscriber counts and indicate when the difference occurred. Cable operators who do not have access to the Internet would be able to contact the FCC CORES Help Desk at (877) 480–3201, Option 4, to provide their subscriber count as of December 31, 2004. We seek comment on our proposed assessment initiative.

58. Some cable operators may not have made regulatory fee payments last year. For example, a new company may have become operational after the first day of the fiscal year and therefore they did not have a regulatory fee obligation in FY 2004; or an existing company did not make a payment because it filed a petition for waiver of regulatory fees for FY 2004 based on financial hardship. Regardless of the circumstance, we emphasize that not receiving a regulatory fee assessment letter in FY 2005 would not excuse an operator from the obligation to pay FY 2005 regulatory fees. We expect payment from all non-exempt cable operators, not just those that made FY2004 payments and/or received assessment letters for FY2005 fees.

59. Actual payment procedures for cable operators would be the same as they were in previous years. Operators would continue to complete the FCC Form 159 Remittance Advice when making their payment, and would continue to certify their December 31, 2004 subscriber count in Block 30 of the Form 159.

60. Finally, we seek comment on a proposal to require the cable industry to annually report their basic subscriber counts to the Commission prior to paying regulatory fees for the fiscal year in question. For example, by June 1st of a given fiscal year, we would require that operators report the number of subscribers on December 31st of the preceding year. The Commission would then use the subscriber counts received on June 1st to audit regulatory fee payments that are collected later in the fiscal year.

61. Currently, subscriber counts are self-reported and certified by cable operators when they make their regulatory fee payments to the Commission at the end of each fiscal year. Self-reporting and certifying subscriber counts does not furnish us with data that we can use to audit regulatory fee payments. Therefore, we believe that a cable industry reporting requirement specific to regulatory fees may be necessary and we are therefore seeking comment on the proposal. We do not intend to implement any such reporting requirement for the collection of FY 2005 regulatory fees.

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

62. We continue to welcome comments on a broad range of options concerning our commitment to reviewing, streamlining and modernizing our statutorily required fee-assessment and collection procedures. Our areas of particular interest included: (1) The process for notifying licensees about changes in the annual regulatory fee schedule and how it can be improved; (2) the most effective way to disseminate regulatory fee assessments and bills, *i.e.* through surface mail, e-mail, or some other mechanism; (3) the fee payment process, including how the agency's electronic payment system can be improved; and (4) the timing of fee payments, including whether we should alter the existing fee payment ''window'' in any way.

III. Procedural Matters

A. Payment of Regulatory Fees

1. *De Minimis* Fee Payment Liability

63. As in the past, regulatees whose total FY 2005 regulatory fee liability, including all categories of fees for which payment is due by an entity, amounts to less than $10 will be exempted from payment of FY 2005 regulatory fees.

2. Standard Fee Calculations and Payment Dates

64. Licensees are reminded that, under our current rules, the responsibility for payment of fees by service category is as follows:

(a) *Media Services:* The responsibility for the payment of regulatory fees rests with the holder of the permit or license as of October 1, 2004. However, in instances where a license or permit is transferred or assigned after October 1, 2004, responsibility for payment rests with the holder of the license or permit at the time payment is due.

(b) *Wireline (Common Carrier) Services:* Fees must be paid for any authorization issued on or before October 1, 2004. However, where a license or permit is transferred or

[49] Our proposal to continue to use NRUF data is subject to action taken in response to a Petition for Reconsideration of the FY 2004 Fee Order filed by Cingular Wireless LLC filed on August 6, 2004.

[50] *Broadcasting and Cable Yearbook 2003–2004,* by Reed Elsevier, Inc., Newton, MA, 2003. Subscriber counts reported in Section C, ''Multiple System Operators, Independent Owners and Cable Systems,'' page C–3.

[51] NCTA maintains an updated list of the 25 largest multiple-system operators at its web site located at *http://www.ncta.com.*

assigned after October 1, 2004, responsibility for payment rests with the holder of the license or permit at the time payment is due.

(c) *Wireless Services:* Commercial Mobile Radio Service (CMRS) cellular, mobile, and messaging services (fees based upon a subscriber, unit or circuit count): Fees must be paid for any authorization issued on or before October 1, 2004. The number of subscribers, units or circuits on December 31, 2004 will be used as the basis from which to calculate the fee payment. For small multi-year wireless services, the regulatory fee will be due at the time of authorization or renewal of the license, which is generally for a period of five or ten years and paid throughout the year.

(d) *Multichannel Video Programming Distributor Services (basic cable television subscribers and CARS licenses):* The number of subscribers on December 31, 2004 will be used as the basis from which to calculate the fee payment.[52] For CARS licensees, fees must be paid for any authorization issued on or before October 1, 2004. The responsibility for the payment of regulatory fees for CARS licenses rests with the holder of the permit or license on October 1, 2004. However, in instances where a CARS license or permit is transferred or assigned after October 1, 2004, responsibility for payment rests with the holder of the license or permit at the time payment is due.

(e) *International Services:* For earth stations and geostationary orbit space stations, payment is calculated on a per operational station basis. For non-geostationary orbit satellite systems, payment is calculated on a per operational system basis. The responsibility for the payment of regulatory fees rests with the holder of the permit or license on October 1, 2004. However, in instances where a license or permit is transferred or assigned after October 1, 2004, responsibility for payment rests with the holder of the license or permit at the time payment is due. For international bearer circuits, payment is calculated on a per active circuit basis as of December 31, 2004.

[52] Cable television system operators should compute their basic subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Operators may base their count on ''a typical day in the last full week'' of December 2004, rather than on a count as of December 31, 2004.

65. The Commission strongly recommends that entities submitting more than twenty-five (25) Form 159–C's use the electronic Fee Filer program when sending their regulatory fee payment. The Commission will, for the convenience of payers, accept fee payments made in advance of the normal formal window for the payment of regulatory fees.

B. Enforcement

66. As a reminder to all licensees, section 159(c) of the Communications Act requires us to impose an additional charge as a penalty for late payment of any regulatory fee. As in years past, a late payment penalty of 25 percent of the amount of the required regulatory fee will be assessed on the first day following the deadline date for filing of these fees. Regulatory fee payment must be received and stamped at the lockbox bank by the last day of the regulatory fee filing window, and not merely postmarked by the last day of the window. Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including the provisions set forth in the Debt Collection Improvement Act of 1996 (''DCIA''). We also assess administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the related debt pursuant to the DCIA and § 1.1940(d) of the Commission's rules. These administrative processing charges will be assessed on any delinquent regulatory fee, in addition to the 25 percent late charge penalty. Partial underpayments of regulatory fees are treated in the following manner. The licensee will be given credit for the amount paid, but if it is later determined that the fee paid is incorrect or was submitted after the deadline date, the 25 percent late charge penalty will be assessed on the portion that is submitted after the filing window.

67. Furthermore, we recently amended our regulatory fee rules effective November 1, 2004, to provide that we will withhold action on any applications or other requests for benefits filed by anyone who is delinquent in any non-tax debts owed to the Commission (including regulatory fees) and will ultimately dismiss those applications or other requests if payment of the delinquent debt or other satisfactory arrangement for payment is not made. See 47 CFR 1.1161(c), 1.1164(f)(5), and 1.1910. Failure to pay regulatory fees can also result in the initiation of a proceeding to revoke any and all authorizations held by the delinquent payer.

C. Comment Period and Procedures

68. Pursuant to 47 CFR 1.415, 1.419, interested parties may file comments on or before March 8, 2005, and reply comments on or before March 18, 2005. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.[53]

69. Comments filed through the ECFS are sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must submit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form <your e-mail address.>'' A sample form and directions will be sent in reply.

70. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be hand delivered or by messenger delivery, sent by commercial overnight courier, or mailed by first-class mail through the U.S. Postal Service (please note that the Commission continues to experience delays in receiving U.S. Postal Service mail). The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express

[53] *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998), available at <*http://www.fcc.gov/Bureaus/OGC/Orders/1998/fcc98056.pdf*>.

Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

71. Parties who choose to file by paper must also submit their comments on diskette. Two copies of the diskettes must be submitted. One copy is to be sent to Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The other copy is to be sent to Office of Managing Director, Federal Communications Commission, 445 12th Street, SW., 1–C848, Washington, DC 20554. These submissions must be in a Microsoft Windows™-compatible format on a 3.5″ floppy diskette. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number MD Docket No. 04–73), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file.

72. The public may view the documents filed in this proceeding during regular business hours in the FCC Reference Center, Federal Communications Commission, Room CY–A257, 445 12th Street, SW., Washington, DC 20554, and through the Commission's Electronic Comment Filing System (ECFS) *http://www.gullfoss2.fcc.gov/prod/ecfs/comsrch_v2.cgi*. Those seeking materials in alternative formats (computer diskette, large print, audio recording, and Braille) should contact Brian Millin at (202) 418–7426 voice, (202) 418–7365 TTY, or *bmillin@fcc.gov.*

D. Ex Parte Rules

73. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex Parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's rules.[54]

E. Paperwork Reduction Act Analysis

74. This document contains proposed modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due April 29, 2005. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

F. Initial Regulatory Flexibility Analysis

75. As required by the Regulatory Flexibility Act,[55] we have prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible impact on small entities of the proposals suggested in this document. The IRFA is set forth as Attachment A. Written public comments are requested with respect to the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the rest of the NPRM, and must have a separate and distinct heading, designating the comments as responses to the IRFA. The Consumer Information Bureau, Reference Information Center, shall send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

G. Authority and Further Information

76. Authority for this proceeding is contained in sections 4(i) and (j), 8, 9, and 303(r) of the Communications Act of 1934, as amended. It is ordered that this NPRM is adopted.[56] It is further ordered that the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Attachment A—Initial Regulatory Flexibility Analysis

77. As required by the Regulatory Flexibility Act (RFA),[57] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules in the present *Notice of Proposed Rulemaking, In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2004.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided in paragraph 75. The Commission will send a copy of the *NPRM,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[58] In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.[59]

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

78. This rulemaking proceeding is initiated to obtain comments concerning the Commission's proposed amendment of its Schedule of Regulatory Fees in the amount of $280,098,000, the amount that Congress has required the Commission to recover. The Commission seeks to collect the necessary amount through its proposed Schedule of Regulatory Fees in the most efficient manner possible and without undue public burden.

II. Legal Basis

79. This action, including publication of proposed rules, is authorized under sections (4)(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended.[60]

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

80. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if

[54] 47 CFR 1.1203 and 1.1206(b).

[55] *See* 5 U.S.C. 603.

[56] 47 U.S.C. 154(i)– (P28P1.XXX)(j), 159, & 303(r).

[57] 5 U.S.C. 603. The RFA, 5 U.S.C. 601–612 has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[58] 5 U.S.C. 603(a).

[59] *Id.*

[60] 47 U.S.C. 154(i) and (j), 159, and 303(r).

adopted.[61] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''[62] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[63] A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[64]

81. *Small Businesses.* Nationwide, there are a total of 22.4 million small businesses, according to SBA data.[65]

82. *Small Organizations.* Nationwide, there are approximately 1.6 million small organizations.[66]

83. *Small Governmental Jurisdictions.* The term ''small governmental jurisdiction'' is defined as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.''[67] As of 1997, there were approximately 87,453 governmental jurisdictions in the United States.[68] This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

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

85. *Incumbent Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[71] According to Commission data,[72] 1,337 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,337 carriers, an estimated 1,032 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our proposed action.

86. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.''* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[73] According to Commission data,[74] 609 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 609 carriers, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees. In addition, 16 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 16 are estimated to have 1.500 or fewer employees. In addition, 35 carriers have reported that they are ''Other Local Service Providers.'' Of the 35, an estimated 34 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities that may be affected by our proposed action.

87. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[75] According to Commission data,[76] 133 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 127 have 1,500 or fewer employees and six have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by our proposed action.

88. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[77] According to Commission data,[78] 625 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 590 have 1,500 or fewer employees and 35 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our proposed action.

89. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such

[61] 5 U.S.C. 603(b)(3).

[62] 5 U.S.C. 601(6).

[63] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small-business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[64] 15 U.S.C. 632.

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

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

[67] 5 U.S.C. 601(5).

[68] U.S. Census Bureau, Statistical Abstract of the United States: 2000, Section 9, pages 299–300, Tables 490 and 492.

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

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

[71] 13 CFR 121.201, North American Industry Classification System (NAICS) code 517110 (changed from 513310 in October 2002).

[72] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, ''Trends in Telephone Service'' at Table 5.3, Page 5–5 (Aug. 2003) (hereinafter ''Trends in Telephone Service''). This source uses data that are current as of December 31, 2001.

[73] 13 CFR 121.201, NAICS code 517110 (changed from 513310 in October 2002).

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

[75] 13 CFR 121.201, NAICS code 517310 (changed from 513330 in October 2002).

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

[77] 13 CFR 121.201, NAICS code 517310 (changed to 513330 in October 2002).

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

a business is small if it has 1,500 or fewer employees.[79] According to Commission data,[80] 761 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 757 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our proposed action.

90. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[81] According to Commission data,[82] 261 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 223 have 1,500 or fewer employees and 38 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our proposed action.

91. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[83] According to Commission data,[84] 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 22 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed action.

92. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[85] According to Commission data,[86] 37 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated 36 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by our proposed action.

93. *800 and 800-Like Service Subscribers.*[87] Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (''toll free'') subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[88] The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, and 877 numbers in use.[89] According to our data, at the end of January, 1999, the number of 800 numbers assigned was 7,692,955; the number of 888 numbers assigned was 7,706,393; and the number of 877 numbers assigned was 1,946,538. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,692,955 or fewer small entity 800 subscribers; 7,706,393 or fewer small entity 888 subscribers; and 1,946,538 or fewer small entity 877 subscribers.

94. *International Service Providers.* The Commission has not developed a small business size standard specifically for providers of international service. The appropriate size standards under SBA rules are for the two broad categories of Satellite Telecommunications and Other Telecommunications. Under both categories, such a business is small if it has $12.5 million or less in average annual receipts.[90] For the first category of Satellite Telecommunications, Census Bureau data for 1997 show that there were a total of 324 firms that operated for the entire year.[91] Of this total, 273 firms had annual receipts of under $10 million, and an additional 24 firms had receipts of $10 million to $24,999,999. Thus, the majority of Satellite Telecommunications firms can be considered small.

95. The second category—Other Telecommunications—includes ''establishments primarily engaged in * * * providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.'' [92] According to Census Bureau data for 1997, there were 439 firms in this category that operated for the entire year.[93] Of this total, 424 firms had annual receipts of $5 million to $9,999,999 and an additional six firms had annual receipts of $10 million to $24,999,990. Thus, under this second size standard, the majority of firms can be considered small.

96. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of ''Paging'' [94] and ''Cellular and Other Wireless Telecommunications.''[95] Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year.[96] Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or

[79] 3 CFR 121.201, NAICS code 517110 (changed from 513310 in October 2002).

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

[81] 13 CFR 121.201, NAICS code 517110 (changed from 513310 in October 2002).

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

[83] 13 CFR 121.201, NAICS code 517110 (changed from 513310 in October 2002).

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

[85] 13 CFR 121.201, NAICS code 517310 (changed from 513330 in October 2002).

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

[87] We include all toll-free number subscribers in this category, including those for 888 numbers.

[88] 13 CFR 121.201, NAICS code 517310 (changed from 513330 in October 2002).

[89] FCC, Common Carrier Bureau, Industry Analysis Division, Study on Telephone Trends, Tables 21.2, 21.3, and 21.4 (Feb. 19, 1999).

[90] 13 CFR.121.201, NAICS codes 517410 and 517910 (changed from 513340 and 513390 in October 2002).

[91] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 4, NAICS code 513340 (issued October 2000).

[92] Office of Management and Budget, North American Industry Classification System, page 513 (1997) (NAICS code 513390, changed to 517910 in October 2002).

[93] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 4, NAICS code 513390 (issued October 2000).

[94] 13 CFR 121.201, NAICS code 513321 (changed to 517211 in October 2002).

[95] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[96] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000).

more.[97] Thus, under this category and associated small business size standard, the great majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year.[98] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[99] Thus, under this second category and size standard, the great majority of firms can, again, be considered small.

97. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers. This category comprises establishments ''primarily engaged in providing direct access through telecommunications networks to computer-held information compiled or published by others.'' [100] Under the SBA size standard, such a business is small if it has average annual receipts of $21 million or less.[101] According to Census Bureau data for 1997, there were 2,751 firms in this category that operated for the entire year.[102] Of these, 2,659 firms had annual receipts of under $10 million, and an additional 67 firms had receipts of between $10 million and $24,999,999.[103] Thus, under this size standard, the great majority of firms can be considered small entities.

98. *Cellular Licensees.* The SBA has developed a small business size standard for wireless firms within the broad economic census category ''Cellular and Other Wireless Telecommunications.'' [104] Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category Cellular and Other Wireless Telecommunications firms, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year.[105] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[106] Thus, under this category and size standard, the great majority of firms can be considered small. According to the most recent Trends in Telephone Service data, 719 carriers reported that they were engaged in the provision of cellular service, personal communications service, or specialized mobile radio telephony services, which are placed together in the data.[107] We have estimated that 294 of these are small, under the SBA small business size standard.[108]

99. *Common Carrier Paging.* The SBA has developed a small business size standard for wireless firms within the broad economic census categories of ''Cellular and Other Wireless Telecommunications.'' [109] Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year.[110] Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more.[111] Thus, under this category and associated small business size standard, the great majority of firms can be considered small.

100. In the Paging Second Report and Order, the Commission adopted a size standard for ''small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[112] A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[113] The SBA has approved this definition.[114] An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold.[115] Fifty-seven companies claiming small business status won 440 licenses.[116] An auction of MEA and Economic Area (EA) licenses commenced on October 30, 2001, and closed on December 5, 2001. Of the 15,514 licenses auctioned, 5,323 were sold.[117] One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs commenced on May 13, 2003, and closed on May 28, 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.[118]

[97] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1000 employees or more.''

[98] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000).

[99] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1000 employees or more.''

[100] Office of Management and Budget, North American Industry Classification System, page 515 (1997). NAICS code 514191, ''On-Line Information Services'' (changed to current name and to code 518111 in October 2002).

[101] 13 CFR 121.201, NAICS code 518111.

[102] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 4, Receipts Size of Firms Subject to Federal Income Tax: 1997, NAICS code 514191 (issued October 2000).

[103] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 4, Receipts Size of Firms Subject to Federal Income Tax: 1997, NAICS code 514191 (issued October 2000).

[104] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[105] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000).

[106] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1000 employees or more.''

[107] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, ''Trends in Telephone Service'' at Table 5.3, page 5–5 (August 2003). This source uses data that are current as of December 31, 2001.

[108] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, ''Trends in Telephone Service'' at Table 5.3, page 5–5 (August 2003). This source uses data that are current as of December 31, 2001.

[109] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[110] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000).

[111] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1000 employees or more.''

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

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

[114] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

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

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

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

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

Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent Trends in Telephone Service, 608 private and common carriers reported that they were engaged in the provision of either paging or ''other mobile'' services.[119] Of these, we estimate that 589 are small, under the SBA-approved small business size standard.[120] We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

101. *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.[121] The SBA has approved these definitions.[122] The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity. An auction for one license in the 1670–1674 MHz band commenced on April 30, 2003 and closed the same day. One license was awarded. The winning bidder was not a small entity.

102. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The SBA has developed a small business size standard for ''Cellular and Other Wireless Telecommunications'' services.[123] Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.[124] According to the most recent *Trends in Telephone Service* data, 719 carriers reported that they were engaged in wireless telephony.[125] We have estimated that 294 of these are small under the SBA small business size standard.

103. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[126] For Block F, an additional small business size standard for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[127] These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.[128] No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 ''small'' and ''very small'' business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.[129] On March 23, 1999, the Commission reauctioned 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.[130]

104. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses.[131] Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

105. *Narrowband Personal Communications Services.* The Commission held an auction for Narrowband PCS licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second auction commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less.[132] Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses.[133] To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order.[134] A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million.[135] A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million.[136] The SBA has approved these small business size standards.[137] A third auction

[119] *See* Trends in Telephone Service, Industry Analysis Division, Wireline Competition Bureau, Table 5.3 (Number of Telecommunications Service Providers that are Small Businesses) (May 2002).

[120] 13 CFR 121.201, NAICS code 517211.

[121] 121 Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS), Report and Order, 12 FCC Rcd 10785, 10879, paragraph 194 (1997).

[122] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

[123] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[124] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[125] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, ''Trends in Telephone Service'' at Table 5.3, page 5–5 (August 2003). This source uses data that are current as of December 31, 2001.

[126] *See* Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, 11 FCC Rcd 7824, 7850–7852, paragraphs 57–60 (1996); *see also* 47 CFR 24.720(b).

[127] *See* Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, 11 FCC Rcd 7824, 7852, paragraph 60.

[128] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

[129] FCC News, ''Broadband PCS, D, E and F Block Auction Closes,'' No. 71744 (released January 14, 1997).

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

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

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

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

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

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

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

[137] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless

Continued

commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses.[138] Three of these claimed status as a small or very small entity and won 311 licenses.

106. *Lower 700 MHz Band Licenses.* We adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.[139] We have defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[140] A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[141] Additionally, the lower 700 MHz Service has a third category of small business status that may be claimed for Metropolitan/Rural Service Area (MSA/RSA) licenses. The third category is ''entrepreneur,'' which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.[142] The SBA has approved these small size standards.[143] An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.[144] A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses.[145] Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.[146]

107. *Upper 700 MHz Band Licenses.* The Commission released a Report and Order, authorizing service in the upper 700 MHz band.[147] This auction, previously scheduled for January 13, 2003, has been postponed.[148]

108. *700 MHz Guard Band Licenses.* In the 700 MHz Guard Band Order, we adopted size standards for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[149] A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[150] Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[151] SBA approval of these definitions is not required.[152] An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.[153] Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.[154]

109. *Specialized Mobile Radio.* The Commission awards ''small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years.[155] The Commission awards ''very small entity'' bidding credits to firms that had revenues of no more than $3 million in each of the three previous calendar years.[156] The SBA has approved these small business size standards for the 900 MHz Service.[157] The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.[158] A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder

Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

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

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

[140] *See* Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59), *Report and Order*, 17 FCC Rcd 1022, 1087–88, paragraph 172 (2002).

[141] *See* Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59), *Report and Order,* 17 FCC Rcd 1022, 1087–88, paragraph 172 (2002).

[142] *See* Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59), *Report and Order,* 17 FCC Rcd 1022, 1088, paragraph 173 (2002).

[143] *See* Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999.

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

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

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

[147] Service Rules for the 746–764 and 776–794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Memorandum Opinion and Order,* 16 FCC Rcd 1239 (2001).

[148] *See* ''Auction of Licenses for 747–762 and 777–792 MHz Bands (Auction No. 31) Is Rescheduled,'' *Public Notice,* 16 FCC Rcd 13079 (WTB 2003).

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

[150] *See* Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Report and Order,* 15 FCC Rcd 5299, 5343, paragraph 108 (2000).

[151] *See* Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Report and Order,* 15 FCC Rcd 5299, 5343, paragraph 108 (2000).

[152] *See* Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Report and Order,* 15 FCC Rcd 5299, 5343, paragraph 108 n.246 (for the 746–764 MHz and 776–794 MHz bands, the Commission is exempt from 15 U.S.C. section 632, which requires Federal agencies to obtain SBA approval before adopting small business size standards).

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

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

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

[156] 47 CFR 90.814(b)(1).

[157] *See* Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999. We note that, although a request was also sent to the SBA requesting approval for the small business size standard for 800 MHz, approval is still pending.

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

claiming small business status won five licenses.[159]

110. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard.[160] In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold.[161] Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

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

112. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to ''Cellular and Other Wireless Telecommunications'' companies. This category provides that a small business is a wireless company employing no more than 1,500 persons.[162] According to the Census Bureau data for 1997, only twelve firms out of a total of 1,238 such firms that operated for the entire year in 1997, had 1,000 or more employees.[163] If this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's small business standard.

113. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions.

In the 220 MHz Third Report and Order, we adopted a small business size standard for defining ''small'' and ''very small'' businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[164] This small business standard indicates that a ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[165] A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years.[166] The SBA has approved these small size standards.[167] Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.[168] In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold.[169] Thirty-nine small businesses won 373 licenses in the first 220 MHz auction. A second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.[170] A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses.[171]

114. *Private Land Mobile Radio (PLMR).* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we could use the definition for ''Cellular and Other Wireless Telecommunications.'' This definition provides that a small entity is any such entity employing no more than 1,500 persons.[172] The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. Moreover, because PMLR licensees generally are not in the business of providing cellular or other wireless telecommunications services but instead use the licensed facilities in support of other business activities, we are not certain that the Cellular and Other Wireless Telecommunications category is appropriate for determining how many PLMR licensees are small entities for this analysis. Rather, it may be more appropriate to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.[173]

115. The Commission's 1994 Annual Report on PLMRs[174] indicates that at the end of fiscal year 1994, there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the revised rules in this context could

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

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

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

[162] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[163] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 5, NAICS code 513322 (October 2000).

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

[165] *Id.* at 11068, paragraph 291.

[166] *Id.*

[167] *See* Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated January 6, 1998.

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

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

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

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

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

[173] *See generally* 13 CFR 121.201.

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

potentially impact every small business in the United States.

116. *Fixed Microwave Services.* Fixed microwave services include common carrier,[175] private operational-fixed,[176] and broadcast auxiliary radio services.[177] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees.[178] The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies proposed herein. We noted, however, that the common carrier microwave fixed licensee category includes some large entities.

117. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years.[179] An additional size standard for ''very small business'' is: An entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[180] The SBA has approved these small business size standards.[181] The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and polices proposed herein.

118. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.[182] The auction of the 986 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[183] An additional small business size standard for ''very small business'' was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[184] The SBA has approved these small business size standards in the context of LMDS auctions.[185] There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small business winning that won 119 licenses.

119. *218–219 MHz Service.* The first auction of 218–219 MHz (previously referred to as the Interactive and Video Data Service or IVDS) spectrum resulted in 178 entities winning licenses for 594 Metropolitan Statistical Areas (MSAs).[186] Of the 594 licenses, 567 were won by 167 entities qualifying as a small business. For that auction, we defined a small business as an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years.[187] In the 218–219 MHz Report and Order and Memorandum Opinion and Order, we defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not exceeding $15 million for the preceding three years.[188] A very small business is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not exceeding $3 million for the preceding three years.[189] The SBA has approved of these definitions.[190] At this time, we cannot estimate the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future

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

[176] 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.

[177] Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. *See* 47 CFR Part 74. This service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile television pickups, which relay signals from a remote location back to the studio.

[178] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[179] *See* Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands, ET Docket No. 95–183, *Report and Order,* 12 FCC Rcd 18600 (1997), 63 Fed.Reg. 6079 (Feb. 6, 1998).

[180] *Id.*

[181] *See* Letter to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Feb. 4, 1998) (VoIP); See Letter to Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Hector Barreto, Administrator, Small Business Administration, dated January 18, 2002 (WTB).

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

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

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

[185] *See* Letter to Dan Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Jan. 6, 1998).

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

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

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

[189] *Id.*

[190] *See* Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated January 6, 1998.

auctions of 218–219 MHz spectrum. Given the success of small businesses in the previous auction, and the prevalence of small businesses in the subscription television services and message communications industries, we assume for purposes of this analysis that in future auctions, many, and perhaps all, of the licenses may be awarded to small businesses.

120. *Location and Monitoring Service (LMS).* Multilateration LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For purposes of auctioning LMS licenses, the Commission has defined ''small business'' as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $15 million.[191] A ''very small business'' is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $3 million.[192] These definitions have been approved by the SBA.[193] An auction for LMS licenses commenced on February 23, 1999, and closed on March 5, 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses. We cannot accurately predict the number of remaining licenses that could be awarded to small entities in future LMS auctions.

121. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.[194] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS).[195] The Commission uses the SBA's small business size standard applicable to ''Cellular and Other Wireless Telecommunications,'' *i.e.*, an entity employing no more than 1,500 persons.[196] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

122. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service.[197] We will use SBA's small business size standard applicable to ''Cellular and Other Wireless Telecommunications,'' *i.e.*, an entity employing no more than 1,500 persons.[198] 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 small business size standard.

123. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees.[199] Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars.[200] In addition, a ''very small'' business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the above special small business size standards.

124. *Offshore Radiotelephone Service.* This service operates on several ultra high frequencies (UHF) television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.[201] There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for ''Cellular and Other Wireless Telecommunications'' services.[202] Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.[203]

125. *Multiple Address Systems (MAS).* Entities using MAS spectrum, in general, fall into two categories: (1) Those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses. With respect to the first category, the Commission defines ''small entity'' for MAS licenses as an entity that has average gross revenues of less than $15 million in the three previous calendar years.[204] ''Very small business'' is defined as an entity that, together with its affiliates, has average gross revenues of not more than $3 million for the preceding three calendar years.[205] The SBA has approved of these definitions.[206] The majority of these entities will most likely be licensed in bands where the Commission has implemented a geographic area licensing approach that would require the use of competitive bidding procedures to resolve mutually exclusive applications. The

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

[192] Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Second Report and Order,* 13 FCC Rcd at 15192, paragraph 20; *See also* 47 CFR 90.1103.

[193] *See* Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated February 22, 1999.

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

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

[196] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

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

[198] 13 CFR 121.201, NAICS codes 513322 (changed to 517212 in October 2002).

[199] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[200] Amendment of the Commission's Rules Concerning Maritime Communications, PR Docket No. 92–257, *Third Report and Order and Memorandum Opinion and Order,* 13 FCC Rcd 19853 (1998).

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

[202] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[203] *Id.*

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

[205] *Id.*

[206] *See* Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated June 4, 1999.

Commission's licensing database indicates that, as of January 20, 1999, there were a total of 8,670 MAS station authorizations. Of these, 260 authorizations were associated with common carrier service. In addition, an auction for 5,104 MAS licenses in 176 EAs began November 14, 2001, and closed on November 27, 2001.[207] Seven winning bidders claimed status as small or very small businesses and won 611 licenses.

126. With respect to the second category, which consists of entities that use, or seek to use, MAS spectrum to accommodate internal communications needs, we note that MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. For the majority of private internal users, the definitions developed by the SBA would be more appropriate. The applicable definition of small entity in this instance appears to be the ''Cellular and Other Wireless Telecommunications'' definition under the SBA rules. This definition provides that a small entity is any entity employing no more than 1,500 persons.[208] The Commission's licensing database indicates that, as of January 20, 1999, of the 8,670 total MAS station authorizations, 8,410 authorizations were for private radio service, and of these, 1,433 were for private land mobile radio service.

127. *Incumbent 24 GHz Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of ''Cellular and Other Wireless Telecommunications'' companies. This category provides that such a company is small if it employs no more than 1,500 persons.[209] According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year.[210] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[211] Thus, under this size standard, the great majority of firms can be considered small. These broader census data notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent[212] and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

128. *Future 24 GHz Licensees.* With respect to new applicants in the 24 GHz band, we have defined ''small business'' as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding $15 million.[213] ''Very small business'' in the 24 GHz band is defined as an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years.[214] The SBA has approved these definitions.[215] The Commission will not know how many licensees will be small or very small businesses until the auction, if required, is held.

129. *Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and Instructional Television Fixed Service.* Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as ''wireless cable,'' transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS).[216] In connection with the 1996 MDS auction, the Commission defined ''small business'' as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years.[217] The SBA has approved of this standard.[218] The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs).[219] Of the 67 auction winners, 61 claimed status as a small business. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than $40 million and are thus considered small entities.[220]

130. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution,[221] which includes all such companies generating $12.5 million or less in annual receipts.[222] According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year.[223] Of this total, 1,180 firms had annual receipts of under $10 million, and an additional 52 firms had receipts of $10 million or more but less than $25 million.[224] Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the proposed rules and policies.

131. Finally, while SBA approval for a Commission-defined small business size standard applicable to ITFS is

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

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

[209] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[210] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Employment Size of Firms Subject to Federal Income Tax: 1997,'' Table 5, NAICS code 513322 (issued October 2000).

[211] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1,000 employees or more.''

[212] Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

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

[214] 24 GHz *Report and Order,* 15 FCC Rcd at 16967, paragraph 77; *See also* 47 CFR 101.538(a)(1).

[215] *See* Letter to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Gary M. Jackson, Assistant Administrator, Small Business Administration, dated July 28, 2000.

[216] Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act & Competitive Bidding, *Report and Order,* 10 FCC Rcd 9589, 9593, paragraph 7 (1995) (MDS Auction R&O).

[217] 47 CFR 21.961(b)(1).

[218] *See* Letter to Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Bureau, from Gary Jackson, Assistant Administrator for Size Standards, Small Business Administration, dated March 20, 2003 (noting approval of $40 million size standard for MDS auction).

[219] Basic Trading Areas (BTAs) were designed by Rand McNally and are the geographic areas by which MDS was auctioned and authorized. *See* MDS Auction R&O, 10 FCC Rcd at 9608, paragraph 34.

[220] 47 U.S.C. 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard for ''other telecommunications'' (annual receipts of $12.5 million or less). *See* 13 CFR 121.201, NAICS code 517910.

[221] 13 CFR 121.201, NAICS code 517510.

[222] *Id.*

[223] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 4 (issued October 2000).

[224] *Id.*

pending, educational institutions are included in this analysis as small entities.[225] There are currently 2,032 ITFS licensees, and all but 100 of these licenses are held by educational institutions. Thus, we tentatively conclude that at least 1,932 ITFS licensees are small businesses.

132. *Cable and Other Program Distribution.* This category includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. The SBA has developed small business size standard for this census category, which includes all such companies generating $12.5 million or less in revenue annually.[226] According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year.[227] Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, the Commission estimates that the majority of providers in this service category are small businesses that may be affected by the rules and policies proposed herein.

133. *Cable System Operators (Rate Regulation Standard).* The Commission has developed its own small business size standard for cable system operators, for purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide.[228] The most recent estimates indicate that there were 1,439 cable operators who qualified as small cable system operators at the end of 1995.[229] 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, the Commission estimates that there are now fewer than 1,439 small entity cable system operators that may be affected by the rules and policies proposed herein.

134. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' [230] The Commission has determined that there are 67,700,000 subscribers in the United States.[231] Therefore, an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[232] Based on available data, the Commission estimates that the number of cable operators serving 677,000 subscribers or fewer, totals 1,450.[233] The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million,[234] and therefore are unable, at this time, to estimate more accurately the number of cable system operators that would qualify as small cable operators under the size standard contained in the Communications Act of 1934.

135. *Open Video Services.* Open Video Service (OVS) systems provide subscription services.[235] The SBA has created a small business size standard for Cable and Other Program Distribution.[236] This standard provides that a small entity is one with $12.5 million or less in annual receipts. The Commission has certified approximately 25 OVS operators to serve 75 areas, and some of these are currently providing service.[237] Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, DC, and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 24 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies proposed herein.

136. *Cable Television Relay Service.* This service includes transmitters generally used to relay cable programming within cable television system distribution systems. The SBA has defined a small business size standard for Cable and other Program Distribution, consisting of all such companies having annual receipts of no more than $12.5 million.[238] According to Census Bureau data for 1997, there were 1,311 firms in the industry category Cable and Other Program Distribution, total, that operated for the entire year.[239] Of this total, 1,180 firms had annual receipts of $10 million or less, and an additional 52 firms had receipts of $10 million or more but less than $25 million.[240] Thus, under this standard, we estimate that the majority of providers in this service category are small businesses that may be affected by the proposed rules and policies.

137. *Multichannel Video Distribution and Data Service.* MVDDS is a terrestrial fixed microwave service operating in the 12.2–12.7 GHz band. No auction has yet been held in this service, although an action has been scheduled for January 14, 2004.[241] Accordingly, there are no licensees in this service.

138. *Amateur Radio Service.* These licensees are believed to be individuals, and therefore are not small entities.

139. *Aviation and Marine Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or

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

[226] 13 CFR 121.201, NAICS code 513220 (changed to 517510 in October 2002).

[227] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization)'', Table 4, NAICS code 513220 (issued October 2000).

[228] 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).

[229] Paul Kagan Associates, Inc., Cable TV Investor, February 29, 1996 (based on figures for December 30, 1995).

[230] 47 U.S.C. 543(m)(2).

[231] *See* FCC Announces New Subscriber Count for the Definition of Small Cable Operator, *Public Notice,* DA–01–158 (January 24, 2001).

[232] 47 CFR 76.901(f).

[233] *See* FCC Announces New Subscriber Count for the Definition of Small Cable Operators, Public Notice, DA–01–0158 (released January 24, 2001).

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

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

[236] 13 CFR 121.201, NAICS code 513220 (changed to 517510 in October 2002).

[237] *See http://www.fcc.gov/csb/ovs/csovscer.html* (current as of March 2002).

[238] 13 CFR 121.201, NAICS code 517510.

[239] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 4 (issued October 2000).

[240] *Id.*

[241] ''Auctions of Licenses in the Multichannel Video Distribution and Data Service Rescheduled for January 14, 2004,'' *Public Notice*, DA 03–2354 (August 28, 2003).

radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees.[242] Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a ''very small'' business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars.[243] There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the above special small business size standards.

140. *Personal Radio Services.* Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The Personal Radio Services include spectrum licensed under Part 95 of our rules.[244] These services include Citizen Band Radio Service (CB), General Mobile Radio Service (GMRS), Radio Control Radio Service (R/C), Family Radio Service (FRS), Wireless Medical Telemetry Service (WMTS), Medical Implant Communications Service (MICS), Low Power Radio Service (LPRS), and Multi-Use Radio Service (MURS).[245] There are a variety of methods used to license the spectrum in these rule parts, from licensing by rule, to conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. Under the RFA, the Commission is required to make a determination of which small entities are directly affected by the rules being proposed. Since all such entities are wireless, we apply the definition of cellular and other wireless telecommunications, pursuant to which a small entity is defined as employing 1,500 or fewer persons.[246] Many of the licensees in these services are individuals, and thus are not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base an estimation of the number of small entities under an SBA definition that might be directly affected by the proposed rules.

141. *Public Safety Radio Services.* Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.[247] There are a total of approximately 127,540 licensees in these services. Governmental entities[248] as well as private businesses comprise the licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small entity.[249]

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

142. 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.[250] Interstate telephone service providers must compute their annual regulatory fee based on their interstate and international end-user revenue using information they already supply to the Commission in compliance with the Form 499–A, Telecommunications Reporting Worksheet, and they must complete and submit the FCC Form 159. Compliance with the fee schedule will require some licensees to tabulate the number of units (*e.g.*, cellular telephones, pagers, cable TV subscribers) they have in service, and

[242] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

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

[244] 47 CFR Part 90.

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

[246] 13 CFR 121.201, NAICS Code 517212.

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

[248] 47 CFR 1.1162.

[249] 5 U.S.C. 601(5).

[250] 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 licensee of any translator station that: (1) Is not licensed to, in whole or in part, and does not have common ownership with, the licensee of a commercial broadcast station; (2) does not derive income from advertising; and (3) is dependent on subscriptions or contributions from members of the community served for support. Receive only earth station permittees are exempt from payment of regulatory fees. A regulatee will be relieved of its fee payment requirement if its total fee due, including all categories of fees for which payment is due by the entity, amounts to less than $10.

complete and submit an FCC Form 159. Licensees ordinarily will keep a list of the number of units they have in service as part of their normal business practices. No additional outside professional skills are required to complete the FCC Form 159, and it can be completed by the employees responsible for an entity's business records.

143. Each licensee must submit the FCC Form 159 to the Commission's lockbox bank after computing the number of units subject to the fee. Licensees may also file electronically to minimize the burden of submitting multiple copies of the FCC Form 159. Applicants who pay small fees in advance and provide fee information as part of their application must use FCC Form 159.

144. Licensees and regulatees are advised that failure to submit the required regulatory fee in a timely manner will subject the licensee or regulatee to a late payment penalty of 25 percent in addition to the required fee.[251] If payment is not received, new or pending applications may be dismissed, and existing authorizations may be subject to rescission.[252] Further, in accordance with the Debt Collection Improvement Act of 1996, federal agencies may bar a person or entity from obtaining a federal loan or loan insurance guarantee if that person or entity fails to pay a delinquent debt owed to any federal agency.[253] Nonpayment of regulatory fees is a debt owed the United States pursuant to 31 U.S.C. 3711 *et seq.*, and the *Debt Collection Improvement Act of 1996*, Public Law 194–134. Appropriate enforcement measures as well as administrative and judicial remedies, may be exercised by the Commission. Debts owed to the Commission may result in a person or entity being denied a federal loan or loan guarantee pending before another federal agency until such obligations are paid.[254]

145. The Commission's rules currently provide for relief in exceptional circumstances. Persons or entities may request a waiver, reduction or deferment of payment of the regulatory fee.[255] However, timely submission of the required regulatory fee must accompany requests for waivers or reductions. This will avoid any late payment penalty if the request is denied. The fee will be refunded if the request is granted. In exceptional and compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in reduction of service to a community or other financial hardship to the licensee), the Commission will defer payment in response to a request filed with the appropriate supporting documentation.

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

146. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. As described in Section III of this IRFA, *supra,* we have created procedures in which all fee-filing licensees and regulatees use a single form, FCC Form 159, and have described in plain language the general filing requirements. We have sought comment on other alternatives that might simplify our fee procedures or otherwise benefit small entities, while remaining consistent with our statutory responsibilities in this proceeding.

147. *The Omnibus Appropriations Act for FY 2005,* Public Law 108–447, requires the Commission to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress, pursuant to Section 9(a) of the Communications Act, as amended, has required the Commission to collect for Fiscal Year (FY) 2005.[256] As noted, we seek comment on the proposed methodology for implementing these statutory requirements and any other potential impact of these proposals on small entities.

148. We have previously used cost accounting data for computation of regulatory fees, but found that some fees which were very small in previous years would have increased dramatically and would have a disproportionate impact on smaller entities. The methodology we are proposing in this *Notice of Proposed Rulemaking* minimizes this impact by limiting the amount of increase and shifting costs to other services which, for the most part, are larger entities.

149. Several categories of licensees and regulatees are exempt from payment of regulatory fees. *See, e.g.,* footnote 250, *supra.*

VI. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

150. None.

Attachment B—Sources of Payment Unit Estimates For FY 2005

In order to calculate individual service fees for FY 2005, we adjusted FY 2004 payment units for each service to more accurately reflect expected FY 2005 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections when available. The databases we consulted include the Commission's Universal Licensing System (ULS), International Bureau Filing System (IBFS), and Consolidated Database System (CDBS). The industry sources we consulted include, but are not limited to, *Television & Cable Factbook* by Warren Publishing, Inc. and the *Broadcasting and Cable Yearbook* by Reed Elsevier, Inc, as well as reports generated within the Commission such as the Wireline Competition Bureau's *Trends in Telephone Service* and the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast.*

We tried to obtain verification for these estimates from multiple sources and, in all cases; we compared FY 2005 estimates with actual FY 2004 payment units to ensure that our revised estimates were reasonable. Where appropriate, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated exactly. These include an unknown number of waivers and/or exemptions that may occur in FY 2005 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 2005 payment units are based on FY 2004 actual payment units, it does not necessarily mean that our FY 2005 projection is exactly the same number as FY 2004. It means that we have either rounded the FY 2005 number or adjusted it slightly to account for these variables.

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[251] 47 CFR 1.1164.

[252] 47 CFR 1.1164(c).

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

[254] 31 U.S.C. 7701(c)(2)(B).

[255] 47 CFR 1.1166.

[256] 47 U.S.C. 159(a).

FEE CATEGORY	SOURCES OF PAYMENT UNIT ESTIMATES
Land Mobile (All), Microwave, 218-219 MHz, Marine (Ship & Coast), Aviation (Aircraft & Ground), GMRS, Amateur Vanity Call Signs, Domestic Public Fixed	Based on Wireless Telecommunications Bureau (WTB) projections of new applications and renewals taking into consideration existing Commission licensee data bases. Aviation (Aircraft) and Marine (Ship) estimates have been adjusted to take into consideration the licensing of portions of these services on a voluntary basis.
CMRS Mobile Services	Based on Wireless Telecommunications Bureau estimates.
CMRS Messaging Services	Based on Wireless Telecommunications Bureau Competition Report estimates.
AM/FM Radio Stations	Based on estimates from Media Services Bureau estimates, adjusted for exemptions, and actual FY 2004 payment units.
UHF/VHF Television Stations	Based on Media Services Bureau estimates and actual FY 2004 payment units.
AM/FM/TV Construction Permits	Based on Media Services Bureau estimates and actual FY 2004 payment units.
LPTV, Translators and Boosters	Based on actual FY 2004 payment units.
Broadcast Auxiliaries	Based on actual FY 2004 payment units.
BRS (formerly MDS/MMDS)	Based on Wireless Telecommunications Bureau estimates and actual FY 2004 payment units.
Cable Television Relay Service (CARS) Stations	Based on actual FY 2004 payment units.
Cable Television System Subscribers	Based on Media Services Bureau industry estimates of subscribership, and actual FY 2004 payment units.
Interstate Telecommunication Service Providers	Based on actual FY 2004 interstate revenues reported on Telecommunications Reporting Worksheet, adjusted for FY 2005 revenue growth/decline for industry, and projections by the Wireline Competition Bureau.
Earth Stations	Based on actual FY 2004 payment estimates and projected FY 2005 units.
Space Stations (GSOs & NGSOs)	Based on International Bureau licensee data base estimates.
International Bearer Circuits	Based on FY 2004 actual units.
International HF Broadcast Stations, International Public Fixed Radio Service	Based on International Bureau estimates.

Attachment C—Calculation of FY 2005 Revenue Requirements and Pro–Rata Fees

Regulatory fees for the first ten fee categories below are collected by the Commisison in advance to cover the term of the license and are submitted along with the application at the time the application is filed.

Fee Category	FY 2005 Payment Units	Years	FY 2004 Revenue Estimate	Pro-Rated FY 2005 Revenue Require-ment*	Computed New FY 2005 Regulatory Fee	Rounded New FY 2005 Regula-tory Fee	Expected FY 2005 Revenue
PLMRS (Exclusive Use)	3,400	10	340,000	349,068	10	10	340,000
PLMRS (Shared use)	46,000	10	2,300,000	2,361,342	5	5	2,300,000
Microwave	3,000	10	1,500,000	1,540,006	51	50	1,500,000
218-219 MHz (Formerly IVDS)	3	10	1,500	1,540	51	50	1,500
Marine (Ship)	3,900	10	585,000	600,602	15	15	585,000
GMRS	18,000	5	375,000	385,001	4	5	450,000
Aviation (Aircraft)	3,100	10	155,000	159,134	5	5	155,000
Marine (Coast)	962	10	96,200	98,766	10	10	96,200
Aviation (Ground)	1,600	5	120,000	123,200	15	15	120,000
Amateur Vanity Call Signs	8,000	10	162,119	166,443	2.08	2.08	166,443
AM Class A	66	1	198,375	203,666	3,086	3,075	202,950
AM Class B	1,592	1	2,421,075	2,485,646	1,561	1,550	2,467,600
AM Class C	956	1	841,500	863,943	904	900	860,400
AM Class D	1,769	1	2,784,800	2,859,072	1,616	1,625	2,874,625
FM Classes A, B1 & C3	3,045	1	5,715,500	5,980,390	1,964	1,975	6,013,875
FM Classes B, C, C0, C1 & C2	2,963	1	7,026,150	7,321,585	2,471	2,475	7,333,425
AM Construction Permits	113	1	33,945	34,850	308	310	35,030
FM Construction Permits[1]	98	1	267,300	53,929	550	550	53,900
Satellite TV	123	1	128,100	131,516	1,069	1,075	132,225
Satellite TV Construction Permit	3	1	1,560	1,602	534	535	1,605

Fee Category	FY 2005 Payment Units	Years	FY 2004 Revenue Estimate	Pro-Rated FY 2005 Revenue Require-ment*	Computed New FY 2005 Regulatory Fee	Rounded New FY 2005 Regula-tory Fee	Expected FY 2005 Revenue
VHF Markets 1-10	43	1	2,596,125	2,665,365	61,985	61,975	2,664,925
VHF Markets 11-25	61	1	2,654,400	2,725,194	44,675	44,675	2,725,175
VHF Markets 26-50	72	1	2,246,475	2,306,389	32,033	32,025	2,305,800
VHF Markets 51-100	118	1	2,161,725	2,219,379	18,808	18,800	2,218,400
VHF Remaining Markets	211	1	951,750	977,134	4,631	4,625	975,875
VHF Construction Permits	9	1	27,900	28,644	3,183	3,175	28,575
UHF Markets 1-10	84	1	1,599,750	1,682,187	20,026	20,025	1,682,100
UHF Markets 11-25	79	1	1,310,175	1,384,889	17,530	17,525	1,384,475
UHF Markets 26-50	115	1	1,088,100	1,156,891	10,060	10,050	1,155,750
UHF Markets 51-100	162	1	943,500	993,971	6,136	6,125	992,250
UHF Remaining Markets	181	1	301,950	310,003	1,713	1,725	312,225
UHF Construction Permits[1]	31	1	192,950	53,475	1,725	1,725	53,475
Broadcast Auxiliaries	25,000	1	250,000	256,668	10	10	250,000
LPTV/Trans-lators/Boosters	2,900	1	1,116,500	1,146,277	395	395	1,145,500
CARS Stations	900	1	135,000	138,601	154	155	139,500
Cable TV Systems	65,000,000	1	45,500,000	46,713,502	0.718	0.72	46,800,000
Interstate Tele-communication Service Providers	54,000,000,000	1	127,530,000	130,931,273	0.0024247	0.00243	131,220,000
CMRS Mobile Services (Cellular/Public Mobile)	166,000,000	1	38,250,000	39,565,080	0.238	0.24	39,840,000
CMRS Messaging	11,200,000	1	1,160,000	896,000	0.08	0.08	896,000

Fee Category	FY 2005 Payment Units	Years	FY 2004 Revenue Estimate	Pro-Rated FY 2005 Revenue Require-ment*	Computed New FY 2005 Regulatory Fee	Rounded New FY 2005 Regula-tory Fee	Expected FY 2005 Revenue
Services							
BRS[2]	1,800	1	432,000	443,522	246	245	441,000
LMDS A[3]	165	1	81,210	83,490	506	505	83,325
LMDS B[3]	165	1	10,590	10,890	66	65	10,725
International Bearer Circuits	3,600,000	1	7,056,000	7,244,186	2.01	2.01	7,236,000
International Public Fixed	1	1	1,750	1,797	1,797	1,800	1,800
Earth Stations	3,400	1	680,000	698,136	205	205	697,000
International HF Broadcast	5	1	3,725	3,824	765	765	3,825
Space Stations (Geostationary)	79	1	8,829,975	9,065,474	114,753	114,750	9,065,250
Space Stations (Non-Geostationary	5	1	657,000	674,522	134,904	134,900	674,500
****** Total Estimated Revenue to be Collected			272,821,674	280,098,062			280,693,228
****** Total Revenue Requirement			272,958,000	280,098,000			280,098,000
Difference			(136,326)	62			595,228

* 1.02615787 factor applied based on the amount Congress designated for recovery through regulatory fees (Public Law 108-7 and 47 U.S.C. 159(a)(2)).

[1] The FM Construction Permit and UHF Construction Permit revenues were adjusted to reflect our proposal of setting the construction permit fee to the level of the lowest licensed fee for that class of service.

[2] MDS/MMDS category was renamed Broadband Radio Service (BRS), 19 FCC Rcd 14165 (FCC 04-135).

[3] The "FY 2004 Revenue Estimate" column for LMDS was adjusted to reflect the totals for LMDS Block A and LMDS Block B had this distinction been made in FY 2004.

Attachment D—FY 2005 Schedule of Regulatory Fees

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

Fee Category	Annual Regulatory Fee (U.S. $'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	10
Microwave (per license) (47 CFR part 101)	50
218-219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	50
Marine (Ship) (per station) (47 CFR part 80)	15
Marine (Coast) (per license) (47 CFR part 80)	10
General Mobile Radio Service (per license) (47 CFR part 95)	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	5
PLMRS (Shared Use) (per license) (47 CFR part 90)	5
Aviation (Aircraft) (per station) (47 CFR part 87)	5
Aviation (Ground) (per license) (47 CFR part 87)	15
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	2.08
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.24
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08
Broadband Radio Service (formerly MMDS/ MDS) (per license) (47 CFR part 21)	245
Local Multipoint Distribution Service–Block A (per call sign) (47 CFR, part 101)	505
Local Multipoint Distribution Service-Block B (per call sign) (47 CFR, part 101)	65
AM Radio Construction Permits	310
FM Radio Construction Permits	550
TV (47 CFR part 73) VHF Commercial	
Markets 1-10	61,975
Markets 11-25	44,675
Markets 26-50	32,025
Markets 51-100	18,800
Remaining Markets	4,625

Fee Category	Annual Regulatory Fee (U.S. $'s)
Construction Permits	3,175
TV (47 CFR part 73) UHF Commercial	
Markets 1-10	20,025
Markets 11-25	17,525
Markets 26-50	10,050
Markets 51-100	6,125
Remaining Markets	1,725
Construction Permits	1,725
Satellite Television Stations (All Markets)	1,075
Construction Permits – Satellite Television Stations	535
Low Power TV, TV/FM Translators & Boosters (47 CFR part 74)	395
Broadcast Auxiliaries (47 CFR part 74)	10
CARS (47 CFR part 78)	155
Cable Television Systems (per subscriber) (47 CFR part 76)	.72
Interstate Telecommunication Service Providers (per revenue dollar)	.00243
Earth Stations (47 CFR part 25)	205
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100)	114,750
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	134,900
International Bearer Circuits (per active 64KB circuit)	2.01
International Public Fixed (per call sign) (47 CFR part 23)	1,800
International (HF) Broadcast (47 CFR part 73)	765

FY 2005 RADIO STATION REGULATORY FEES						
Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C0, C1 & C2
<=25,000	625	475	375	450	550	725
25,001 – 75,000	1,225	925	550	675	1,125	1,250
75,001 – 150,000	1,825	1,150	750	1,125	1,550	2,300
150,001 – 500,000	2,750	1,950	1,125	1,350	2,375	3,000
500,001 – 1,200,000	3,950	2,975	1,875	2,250	3,750	4,400
1,200,001 – 3,000,00	6,075	4,575	2,825	3,600	6,100	7,025
>3,000,000	7,275	5,475	3,575	4,500	7,750	9,125

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

AM Stations

For stations with nondirectional daytime antennas, the theoretical radiation was used at all azimuths. For stations with directional daytime antennas, specific information on each day tower, including field ratio, phasing, spacing and orientation was retrieved, as well as the theoretical pattern root-mean-square of the radiation in all directions in the horizontal plane (RMS) figure milliVolt per meter (mV/m) @ 1 km) for the antenna system. The standard, or modified standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in §§ 73.150 and 73.152 of the Commission's rules.[257] Radiation values were calculated for each of 360 radials around the transmitter site. Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure R3.[258] 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 360 radials. The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 block centroids were contained in the polygon. (A block centroid is the center point of a small area containing population as computed by the U.S. Census Bureau.) The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

FM Stations

The greater of the horizontal or vertical effective radiated power (ERP) (kW) and respective height above average terrain (HAAT) (m) combination was used. Where the antenna height above mean sea level (HAMSL) was available, it was used in lieu of the average HAAT figure to calculate specific HAAT figures for each of 360 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the Field Strength (50–50) propagation curves specified in 47 CFR 73.313 of the Commission's rules to predict the distance to the city grade (70 dBu (decibel above 1 microVolt per meter) or 3.17 mV/m) contour for each of the 360 radials.[259] The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

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Attachment F—FY 2004 Schedule of Regulatory Fees

[257] 47 CFR 73.150 and 73.152.

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

[259] 47 CFR 73.313.

Fee Category	Annual Regulatory Fee (U.S. $'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	10
Microwave (per license) (47 CFR part 101)	50
218-219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	50
Marine (Ship) (per station) (47 CFR part 80)	15
Marine (Coast) (per license) (47 CFR part 80)	10
General Mobile Radio Service (per license) (47 CFR part 95)	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	5
PLMRS (Shared Use) (per license) (47 CFR part 90)	5
Aviation (Aircraft) (per station) (47 CFR part 87)	5
Aviation (Ground) (per license) (47 CFR part 87)	15
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	2.08
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.25
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08
Multipoint Distribution Services (MMDS/ MDS) (per call sign) (47 CFR part 21)	270
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	270
AM Radio Construction Permits	465
FM Radio Construction Permits	1,650
TV (47 CFR part 73) VHF Commercial	
Markets 1-10	60,375
Markets 11-25	41,475
Markets 26-50	29,175
Markets 51-100	17,575
Remaining Markets	4,050
Construction Permits	4,650
TV (47 CFR part 73) UHF Commercial	
Markets 1-10	17,775

Fee Category	Annual Regulatory Fee (U.S. $'s)
Markets 11-25	16,175
Markets 26-50	9,300
Markets 51-100	5,550
Remaining Markets	1,650
Construction Permits	5,675
Satellite Television Stations (All Markets)	1,050
Construction Permits – Satellite Television Stations	520
Low Power TV, TV/FM Translators & Boosters (47 CFR part 74)	385
Broadcast Auxiliary (47 CFR part 74)	10
CARS (47 CFR part 78)	135
Cable Television Systems (per subscriber) (47 CFR part 76)	.70
Interstate Telecommunication Service Providers (per revenue dollar)	.00218
Earth Stations (47 CFR part 25)	200
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)	114,675
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	131,400
International Bearer Circuits (per active 64KB circuit)	2.52
International Public Fixed (per call sign) (47 CFR part 23)	1,750
International (HF) Broadcast (47 CFR part 73)	745

FY 2004 RADIO STATION REGULATORY FEES						
Population Served	**AM Class A**	**AM Class B**	**AM Class C**	**AM Class D**	**FM Classes A, B1 & C3**	**FM Classes B, C, C0, C1 & C2**
<=25,000	600	450	350	425	525	675
25,001 – 75,000	1,200	900	525	625	1,050	1,175
75,001 – 150,000	1,800	1,125	700	1,075	1,450	2,200
150,001 – 500,000	2,700	1,925	1,050	1,275	2,225	2,875
500,001 – 1,200,000	3,900	2,925	1,750	2,125	3,550	4,225
1,200,001 – 3,000,00	6,000	4,500	2,625	3,400	5,775	6,750
>3,000,000	7,200	5,400	3,325	4,250	7,350	8,775

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