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

In the Matter of)
Implementation of Section 9)
of the Communications Act)
Assessment and Collection of)
Regulatory Fees for the 1994)
Fiscal Year)

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NOTICE OF PROPOSED RULEMAKING

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APPENDICES

I. Introduction

1. By this Notice of Proposed Rulemaking the Commission begins implementation of section 9 of the Communications Act of 1934, which was added by section 6003(a) of the Omnibus Budget Reconciliation Act of 1993 (hereinafter "1993 Budget Act").¹ Section 9(a) authorizes the Commission to assess and collect annual regulatory fees to recover costs incurred in carrying out its enforcement activities, policy and rulemaking activities, user information services, and international activities. Section 9(f)(1) provides that "[t]he Commission shall prescribe appropriate rules and regulations to carry out the provisions of

¹Pub. L. No. 103-66, Title VI, § 6002(a), 107 Stat. 397 (approved August 10, 1993). The new Section 9 of the Communications Act is codified at 47 U.S.C. § 159.

the section." The purpose of this Notice is to set forth proposed rules as provided for in section 9(f)(1).²

2. In the performance of its authorization and licensing functions, the Commission assesses and collects fees for applications and other filings pursuant to authority under section 8 of the Communications Act, as amended.³ As discussed below, we propose in this Notice to utilize similar procedures for collecting regulatory fees under section 9. Further, as with our application fee collection program, our goals in this proceeding are to ensure that the fee collection process does not have an adverse impact on our regulatory activities; that fees are collected and deposited in the most cost effective manner possible; and that fees impose little or no additional paperwork burden on the public.⁴ Additionally, we note that the implementation of regulatory fees will further the National Performance Review goals of reinventing Government by requiring beneficiaries of Commission services to pay for such services.

II. Discussion

A. Establishment, Adjustment and Amendment of Regulatory Fees

3. Section 9(b)(1)(C) of the Communications Act, 47 U.S.C. § 159(b)(1)(C), requires the Commission to collect the fees established by the Schedule of Regulatory Fees in section 9(g), "until adjusted or amended by the Commission pursuant to paragraph (2) or (3)" of section 9(b). The statutory schedule in

²In this Notice, we also propose several conforming and clarifying amendments to our application fee rules. See part G., below.

³47 U.S.C. § 158. See generally 47 C.F.R. Part 1, Subpart G; Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, 2 FCC Rcd 947 (1987) (hereinafter "Fees I"), Supplemental Order, 2 FCC Rcd 1882 (1987), recon. granted in part, 3 FCC Rcd 5987 (1988) (hereinafter "Fees I Reconsideration"); Establishment of a Fee Collection Program to Implement the Provisions of the Omnibus Budget Reconciliation Act of 1989, 5 FCC Rcd 3558 (1990) (hereinafter "Fees II"), recon. granted in part, 6 FCC Rcd 5919 (1991) (hereinafter "Fees II Reconsideration"). See also section 6003(a)(2) of the 1993 Budget Act, Pub. L. 103-66, Title VI, § 6003(a)(2), 107 Stat. 401 (1993) (making conforming amendments to section 8).

⁴See Fees I, 2 FCC Rcd at 948, citing Notice of Proposed Rulemaking in Gen. Docket No. 86-285, FCC No. 86-301, 51 Fed. Reg. 25792 (July 16, 1986) (hereinafter "Fees I Notice").

section 9(g) lists various regulatory fee categories under the Commission's Private Radio Bureau, Mass Media Bureau, and Common Carrier Bureau, and it specifies an annual fee amount for each category. See 47 U.S.C. § 159(g); Appendix A, below. An explanation of each regulatory fee category is set forth below in part F.

4. As indicated above, the statute requires the Commission, in certain circumstances, to make adjustments or amendments to the Schedule of Regulatory Fees. First, since regulatory fees must result in collections of amounts that can reasonably be expected to equal amounts appropriated by Congress, for any fiscal year after fiscal year 1994,⁵ paragraph (2) of section 9(b) requires the Commission to revise the Schedule of Regulatory Fees by proportionate increases or decreases to reflect changes in the amount appropriated for that fiscal year for the performance of the Commission's enforcement, policy and rulemaking, information services, and international activities.⁶ Such increases or decreases shall also reflect unexpected increases or decreases in the number of licensees or units subject to regulatory fees.⁷

5. Second, amendments to the schedule may also be made to reflect other changes and factors. Paragraph (3) of section 9(b) provides that, "[i]n addition to the adjustments required by paragraph (2), the Commission shall, by regulation, amend the Schedule of Regulatory Fees if the Commission determines that the schedule requires amendment to comply with the requirements of paragraph (1) (A) [of section 9(b)]."⁸ Paragraph (1) (A) of section 9(b) provides that regulatory fees are to be derived by determining the full-time equivalent number of employees performing the specified regulatory activities within the Private Radio Bureau, Mass Media Bureau, Common Carrier Bureau, and other offices of the Commission, "adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities, including such factors

⁵47 U.S.C. § 159(b) (1) (B). The government's 1994 fiscal year ("FY 1994") commenced on October 1, 1993, and ends September 30, 1994.

⁶See 47 U.S.C. § 159(b) (2). Public Law 103-121, enacted October 28, 1993, amended section 9(a) by redesignating the existing text as section 9(a) (1) and by adding a new provision at section 9(a) (2), which states, "The fees described in paragraph (1) of this subsection shall be collected only if, and only in the total amounts, required in Appropriations Acts." Pub. L. No. 103-121, title II, 107 Stat. 1226 (1993).

⁷47 U.S.C. § 159(b) (2) (A).

⁸47 U.S.C. § 159(b) (2).

as service area coverage, shared use versus exclusive use, and other factors that the Commission determines are necessary in the public interest."⁹ In making amendments to the schedule under paragraph (3), the Commission must also add, delete, or reclassify services 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 law.¹⁰

6. Before making changes under paragraph (3), however, certain preconditions must be satisfied. Pursuant to section 9(i), the Commission is required to utilize accounting systems necessary to making these adjustments¹¹ and must afford interested persons the opportunity to submit comments concerning the allocation of the costs of performing the functions described in section 9(a)(1) among the services in the schedule.¹² In addition, section 9(b)(4)(B) provides that the Commission must provide Congress advance notice of any amendment made pursuant to paragraph (3) not later than 90 days before the effective date of such amendment.¹³

⁹47 U.S.C. § 159(b)(1)(A).

¹⁰47 U.S.C. § 159(b)(3). For example, section 6002(b)(2)(A) of the 1993 Budget Act amended section 332 of the Communications Act, creating a new comprehensive regulatory framework for all existing and future mobile services. As a result, existing private land mobile radio services may be reclassified due to the Commission's implementation of section 332, undoubtedly requiring amendments to the Schedule of Regulatory Fees. See Implementation of Section 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Notice of Proposed Rulemaking, 8 FCC Rcd 7988 (1993), Second Report and Order, FCC 94-31 (released March 4, 1994). We do not anticipate that these modifications to the schedule will result in current private land mobile radio licensees being subject to different fees until FY 1995 or later. See section 6002(c)(2)(B), (d)(3) of the 1993 Budget Act.

¹¹The Commission must prepare an analysis of its progress in developing such systems in its annual report. 47 U.S.C. § 159(i).

¹²Toward this end, and pursuant to section 9(i), we plan to commence a separate proceeding, in connection with the assessment of fees for the 1995 fiscal year, through which we will seek comment from interested parties concerning the allocation of costs of performing the Commission's enforcement, policy and rulemaking, information services, and international functions among the regulated services. See 47 U.S.C. § 159(i), (b)(3).

¹³47 U.S.C. § 159(b)(4)(B).

7. For fiscal year 1994, we propose to adopt the fee amounts established by the Schedule of Regulatory Fees as approved by Congress. Adjustments to the statutory schedule required under paragraph (b)(2) may not take place until after the 1994 fiscal year, and thus we do not have authority during the current fiscal year to revise the schedule for purposes of matching the amounts actually appropriated for the current fiscal year.¹⁴

8. With regard to amendments under paragraph (3) of subsection (b), we similarly believe that the statutory scheme does not envision that the Commission would exercise its authority to amend the fee amounts in the schedule until at least after FY 1994. This interpretation is supported by the Conference Report, which states that "[t]he Commission is given authority to review these fees [in the Schedule of Regulatory Fees] after one year and make recommendations for their adjustment."¹⁵ We also believe that this is a reasonable interpretation, since the regulatory fees established in the statutory schedule were established by Congress after reviewing information the Commission had supplied to it shortly before enactment of the statutory fee schedule. We do not think that Congress intended for the Commission immediately to make changes in the fees so recently considered by it.

9. Finally, our interpretation that subsection (b)(3) amendments should not be made until the next fiscal year is supported by other provisions of section 9. As noted, section 9(i) requires that, before implementing subsection (b)(3), the Commission must have provided an opportunity for public comment concerning the allocation of the Commission's costs among the services set forth in the statutory schedule. Section 9(i) therefore, does not in any way suggest that the Commission would have sought comments on such an accounting system, which Congress believed was "necessary to making the adjustments authorized by subsection (b)(3)," in time to collect fees in FY 1994. Similarly, as noted above, section 9(b)(4)(B) provides that any amendment made pursuant to subsection (b)(3) cannot become effective until 90 days after Congress is notified. Again, this additional three-month delay required by the statute indicates that Congress did not

¹⁴On October 28, 1993, Public Law 103-121 was enacted, making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies for the fiscal year ending September 30, 1994, which appropriates for the Commission a total of \$160,300,000. Of this amount \$60,400,000 of offsetting collections must be assessed and collected pursuant to section 9. Pub. L. No. 103-121, title II, 107 Stat. 1226 (1993).

¹⁵ H.R. Rep. No. 213, 103d Cong., 1st Sess. 499 (1993) (emphasis added) (hereinafter "Conference Report").

anticipate that the Commission would amend the statutory schedule for FY 1994 collections.

10. Accordingly, we do not propose to make any changes in the amounts established by the statutory fee schedule at this time. Interested parties are invited instead to comment on a proposal to adopt the fee amounts set forth in the statutory Schedule of Regulatory Fees.

B. Exemptions from Regulatory Fees

11. Section 9(h) of the Communications Act provides that the regulatory fees established under section 9 "shall not be applicable to (1) governmental entities or nonprofit entities; or (2) to amateur radio operator licenses under part 97 of the Commission's regulations (47 C.F.R. Part 97)." 47 U.S.C. § 159(h). In addition, the Schedule of Regulatory Fees in section 9(g) and the statute's legislative history indicate that Congress intended to exempt other entities from regulatory fees. Accordingly, we propose to exempt the entities described below from regulatory fees. We invite comment on the following proposals.

1. Governmental Entities

12. Section 9(h) establishes an exemption from fees for "governmental entities." Similarly, section 1.1112(f) of the Commission's rules, which implements section 8(d)(1) of the Act, provides that no application filing fees are required for applicants, permittees or licensees who qualify as governmental entities. 47 C.F.R. § 1.1112(f). For purposes of the section 8 exemption, we have defined a governmental entity as any state, possession, city, county, town, village, municipal corporation or similar political organization or subpart thereof controlled by publicly elected or duly appointed public officials exercising sovereign direction and control over their respective communities or programs. Id.; see Fees I, 2 FCC Rcd at 959-60. We propose to apply this definition to governmental entities exempt from regulatory fees. While the section 8(d)(1) exemption is available only to governmental entities who apply to operate "licensed" radio facilities or services," the exemptions under section 9 apply to all FCC-regulated services in which governmental entities operate. Therefore, our proposed regulatory fee exemption would apply to applicants, permittees, licensees, as well as any other regulatees who qualify as governmental entities.

¹See Fees I, 2 FCC Rcd at 960.

13. We must also adopt procedures for identifying regulatees that are governmental entities exempt from regulatory fees under section 9. Commenters should address the option of requiring entities, in lieu of the required fee, to file certifications (or other relevant information) as to their exempt status. Alternatively, for those governmental entities that have already established their governmental status for purposes of section 8 filing fees," we may determine, to the extent possible, that no additional filings are necessary.

2. Nonprofit Entities

14. Section 9(h) also establishes an exemption from regulatory fees for all "nonprofit entities." In contrast, section 8(d)(1)(A), governing exemptions from application fees, exempts from application fees only those nonprofit entities licensed in Special Emergency Radio or Public Safety Radio services." Further, the statutory exemption for "nonprofit entities" is clearly broader than the current exemption in the mass media services covering noncommercial, educational broadcast stations and limited categories of other facilities. See 47 C.F.R. § 1.1112.

15. In applying the exemption for these nonprofit entities under section 8, we have interpreted the term "nonprofit entities" to mean entities that receive nonprofit, tax exempt status under section 501 of the Internal Revenue Code, 26 U.S.C. § 501." We note that the version of the regulatory fees legislation that passed the House in the 102nd Congress would have limited the nonprofit entities qualifying for an exemption to those holding tax exempt status under paragraph (c)(3) of section 501 of the Internal Revenue Code." The language of the statute, as enacted, contains no such limitation. We propose, therefore, to interpret the term "nonprofit entities" to include all nonprofit organizations exempt under section 501 generally, rather than including only those specified in section 501(c)(3)."

¹⁷See 47 C.F.R. § 1.1112 note.

¹⁸See 47 U.S.C. § 158(d)(1)(A); see also Fees II, 5 FCC Rcd at 3573.

¹⁹See Fees II, 5 FCC Rcd at 3573.

²⁰See H.R. 1674, 102d Cong., 1st sess, § 3(a), 137 Cong. Rec. H6752 (daily ed. Sept. 24, 1991).

²¹Our proposal would exempt, for example, certain nonprofit cooperative telephone and electric companies that are Commission regulatees. See 26 U.S.C. § 501(c)(12).

16. Under section 8 fee rules, an applicant claiming nonprofit status must include a current IRS Determination Letter documenting its nonprofit status." We seek to avoid unnecessary paperwork, to the extent possible, by relying on existing information in Bureau files to identify regulatees that are nonprofit entities exempt from regulatory fees under section 9. However, since the exemption under section 8(d) only applies to nonprofit entities licensed in the Special Emergency Radio or Public Safety Radio services," we propose to require any other regulatee seeking an exemption as a nonprofit entity to file, in lieu of the required fee, a current IRS Determination Letter documenting its nonprofit status."

3. Amateur Licensees

17. Section 9(h) also provides a specific statutory exemption for "amateur radio operator licenses under part 97 of the Commission's regulations." 47 U.S.C. § 159(h)(2). This exemption is straight-forward and we propose to incorporate it into our fee rules. The Schedule of Regulatory Fees does establish a fee category for "Amateur vanity call-signs." At the present time we have no rules, regulations or procedures allowing for "vanity call-signs" in the Amateur Radio Service. However, we have proposed new rules in PR Docket No. 93-305 that would allow vanity call-signs. See Notice of Proposed Rulemaking, 9 FCC Rcd 105 (1993). After those rules (if adopted) become effective, amateur licensees requesting vanity call-signs will be required to pay the statutory fee under section 9.

"47 C.F.R. § 1.1112(b). An entity can request nonprofit tax exempt status by filing an application with the Internal Revenue Service. The IRS will issue a ruling or determination letter to the entity if its application and supporting documents establish that it meets the particular requirements under section 501. See 26 C.F.R. § 601.201(n) and § 1.501(a)-1.

"Below, we propose to exempt these public safety services altogether from regulatory fees.

"Such documentation would be filed on or before the payment due date for the relevant regulatory fee category. See part D.1. below regarding timing of payments. If proper documentation is not received or a claimed exemption is otherwise rejected, an entity failing to pay the proper fee on time may be subject to a 25 percent late-payment penalty. See part E.1. below.

4. Noncommercial Educational Broadcasters

18. The Schedule of Regulatory Fees in section 9(g) specifies that fees shall be collected from "VHF Commercial" television and "UHF Commercial" television licensees and permittees. 47 U.S.C. § 159(g) (emphasis added). Thus, regulatory fees are expressly not applicable to noncommercial educational television licensees and permittees.²⁵ However, the schedule does not specifically provide that regulatory fees apply only to "commercial" AM and FM radio licensees and permittees.²⁶ Similarly, the schedule does not expressly state that other Mass Media Services are subject to regulatory fees only if they are commercial in nature.²⁷ Nevertheless, based on the legislative history, we believe that Congress intended to exempt all noncommercial educational FM and AM radio licensees and permittees from regulatory fees. House Report 102-207, which is incorporated by reference in the legislative history of section 9, states that "[t]he legislation includes as 'feeable' all entities regulated by the FCC, with the exemption of . . . noncommercial users."²⁸ The House Report states further that "public television and radio licensees were exempted from user fees. Since these licensees were exempted in the public interest, it is appropriate to fund these functions

²⁵We also note that there is no specified fee category for the Instructional Television Fixed Services ("ITFS"). As discussed below, we believe that Congress intended that regulatory fees would not be applied to this "noncommercial" service. Therefore, ITFS licensees will be exempt from regulatory fees.

²⁶We also note that the schedule includes Class D FM radio stations which are, by definition, noncommercial stations. See 47 C.F.R. Part 73, Subpart C.

²⁷Specifically, the schedule establishes fees for "AM radio" stations; "FM radio" stations; "Low Power TV, TV Translator, and TV Booster" stations; "Broadcast Auxiliary" services; and "International (HF) Broadcast" stations.

²⁸H.R. Rep. No. 207, 102d Cong., 1st Sess. 11 (1991) (hereinafter "House Report"). The Conference report states that "the fee provisions contained in this section are virtually identical to those contained in H.R. 1674, which passed the House in 1991." Conference Report at 499; see also 137 Cong. Rec. H6754-58 (Daily ed. sept. 24, 1991). The Conference report states further that "[t]o the extent applicable, the appropriate provisions of the house report [H.R. Rep. No. 102-207] are incorporated herein by reference." Conference report at 499.

with general revenues, not user fees." By comparison, we also note that Congress exempted noncommercial FM and AM radio broadcast facilities from application filing fees." We therefore propose to exempt from regulatory fees FM radio, AM radio and television licensees and permittees qualifying as noncommercial educational stations."

19. Similarly, we believe that Congress intended to exempt noncommercial secondary and auxiliary broadcast services, such as low power television ("LPTV") stations, television translators and boosters, remote pickup stations and intercity relay stations." This interpretation is consistent with our interpretation of the application fee provisions in section 8. As we stated in Fees I Reconsideration, the congressional exemption for noncommercial applicants was apparently intended to enhance the financial support for these services beyond that provided by the Corporation for Public Broadcasting ("CPB") and National Telecommunications Information Administration ("NTIA") facilities grants. 3 FCC Rcd at 5988. We stated further that "exacting fees from noncommercial educational applicants would dilute the financial support offered by Congress" and that such a concern applies to translator and LPTV applicants that propose to operate as noncommercial as noncommercial stations and that are constructed with NTIA grants. Id. Accordingly, we propose to utilize our current noncommercial exemption for LPTV and translator stations for regulatory fees." We also propose to utilize this fee exemption for boosters, auxiliary broadcast services, and other Mass Media, Common Carrier or Private Radio

"House Report at 16; see also 137 Cong. Rec. at H6755 (Sept. 24, 1991) (Statement of Rep. Markey); House Report at 21-22 (describing the radio and television stations, "other than those stations licensed as noncommercial, educational stations," subject to regulatory fees).

"See 47 U.S.C. § 158(g); Fees I, 2 FCC Rcd at 959.

"See 47 C.F.R. § 1.1112(c), (e). An AM licensee claiming a noncommercial exemption must be licensed as a noncommercial educational facility.

"We note that the schedule does not specify FM translators and FM boosters in the fee categories associated with Part 74. See n. 52, below. In the event that we later include FM translators and boosters with the other Part 74 fee categories, the proposal outlined here with regard to a noncommercial exemption would be applicable.

"See 47 C.F.R. § 1.1112(d), (e).

authorizations used in conjunction with qualifying noncommercial educational radio, television, or instructional services."

20. Finally, it does not appear that Congress intended that a noncommercial exemption for regulatory fees be available to international short-wave broadcast stations. As was the case when we were implementing section 8, we do not intend to provide a noncommercial exemption for international broadcast licensees." Like LPTV and translator stations, the regulatory fees created by Congress are not limited to commercial international broadcasters. However, unlike LPTV and translator stations, the government does not provide financial support through CPB and NTIA facilities grants. Thus, we tentatively conclude that the considerations leading us to propose an exemption for noncommercial educational LPTV and translator stations are not present with respect to international shortwave broadcast stations."

21. As with the exemption for governmental and nonprofit entities, to avoid unnecessary paperwork to the extent possible, we propose to rely on information currently in Bureau files to identify most noncommercial licensees and permittees. However, where necessary, we reserve the option of requiring such entities, in lieu of paying the required fee, to file certifications (and other relevant information) as to their noncommercial status." If additional information beyond a certification is requested, it would be done on a case-by-case basis and such information would have to show that the entity qualifies under our rules for the noncommercial exemption.

"See Fees I, 2 FCC Rcd at 959. We thus propose to extend the exemption to noncommercial services used in conjunction with ITFS facilities, which are exempted. See 47 C.F.R. § 1.1112(e)(4).

"See Fees II Reconsideration, 6 FCC Rcd at 5925.

"We note, moreover, that since we denied an exemption for international broadcaster application fees in our 1991 Fees I Reconsideration Order, 6 FCC Rcd at 5925, Congress undoubtedly was aware that many major international licensees were noncommercial and were not exempt under our application fee rules.

"Entities claiming an exemption would be required to file this information on or before the payment due date for the relevant regulatory fee category. See part D.1. below regarding timing of payments. If a showing is not properly documented or a claimed exemption is otherwise rejected, an entity failing to pay the proper fee on time may be subject to a 25 percent late-payment penalty. See part E.1. below.

5. Public Safety Services

22. The Schedule of Regulatory Fees does not list specific Private Radio services under the category of "Shared use services." See 47 U.S.C. § 159(g). Absent an exemption, therefore, all such Private Radio services and authorizations are subject to the \$7.00 annual regulatory fee. In this regard, however, the legislative history clearly states that Congress intended to exempt public safety licensees from regulatory fees. See House Report at 11 and 16. As with noncommercial and amateur licensees, the House Report states that public safety users are "exempted in the public interest" and that "it is appropriate to fund these functions with general revenues, and not user fees." Id. at 16. See also 137 Cong. Rec. H6755 (daily ed. September 24, 1991) (statement of Rep. Markey).

23. We note that under section 8(d), licensees in the Special Emergency Radio or Public Safety Radio services qualify for an application fee exemption only if they are governmental entities or nonprofit entities. See 47 U.S.C. § 158(d)(1). It does not appear that Congress intended to similarly limit the exception for regulatory fees. Governmental entities and nonprofit entities are provided a blanket exemption in section 9(h) for all regulated services, see id. § 159(h)(1), and the legislative history refers to a "public safety" exemption independently of the governmental and nonprofit exemptions. Accordingly, we propose to exempt all licensees in the Public Safety Radio and Special Emergency Radio Services from regulatory fees, but we also seek comment on whether the exemption should be limited to governmental and nonprofit entities, which are explicitly mentioned in the statute."

C. Waivers, Reductions and Deferments of Regulatory Fees

24. Section 9(d) states that "[t]he Commission may waive, reduce, or defer payment of a fee in any specific instance for good cause shown, where such action would promote the public interest." 47 U.S.C. § 159(d). There is little legislative history to guide us in interpreting this waiver authority," but this provision is

"See 47 C.F.R. Part 90, Subparts B and C.

"The House Report accompanying H.R. 1674 states that "[t]o further ensure fair administration of the user fee proposal, H.R. 1674... grants the Commission authority to waive certain fees in a specific instance if such action would promote the public interest." House Report at 17.

similar to section 8(d)(2),” which we have interpreted narrowly. We stated that, under section 8(d)(2), we would permit waivers or deferments on a case-by-case basis in extraordinary and compelling circumstances upon a showing that a waiver or deferment would override the public interest in reimbursing the Commission for its regulatory costs.” We propose to apply this same interpretation to our implementation of section 9(d) and thus propose to grant waivers, reductions or deferments of regulatory fees only in such unusual circumstances.

25. As discussed below, small regulatory fees must be paid at the time applications are filed. When regulatory fees are due at the same time an application is filed, we propose, when processing requests for regulatory fee waivers, reductions or deferments, to use procedures similar to those now used for application fee waiver requests. See 47 C.F.R. § 1.1115(e). Applicants seeking application fee waivers must submit both the request for waiver and the required fee, accompanied by the required form(s). Applications that do not include these materials are dismissed in accordance with section 1.1107 of the rules. For regulatory fees that are supposed to accompany applications, we would also require regulatees seeking a waiver or reduction to submit their regulatory fee payment with their waiver request. This would ensure that the processing of any pending application is not delayed while a waiver or reduction request is pending. Similarly, for standard regulatory fees that are due on a certain date, we propose to require that the appropriate regulatory fee accompany any waiver or reduction request. This would ensure efficient collections in situations where a waiver or reduction is not warranted and would allow the requestor to avoid a late-payment penalty if its request were denied. The regulatory fees submitted would be refunded later if a waiver or reduction were granted. Requests for deferment would have to be filed and approved before the payment due date in order to avoid late-payment penalties.

“Section 8(d)(2) does not specifically grant authority to “reduce” the payment of an application fee.

“See Fees I, 2 FCC Rcd at 961; see also id. at 954 and Fees I Notice, 51 Fed. Reg. at 25801 (“the Commission may -- on a case by case basis -- grant waivers or deferrals to specific applicants upon a showing of extraordinary and compelling circumstances”), citing H.R. Rep. No. 453, 99th Cong., 1st Sess. 423 (1985).

D. Procedures for Payment of Regulatory Fees

1. Timing of Payments

26. Section 9(f) of the Communications Act provides that the Commission's regulations implementing regulatory fees must "permit payment by installments in the case of fees in large amounts, and in the case of fees in small amounts, shall require the payment of the fee in advance for a number of years not to exceed the term of the license held by the payor." 47 U.S.C. § 159(f)(1). We propose to establish three classes of regulatory fees, each of which would be based on the size of the annual fee amount. The three classes of regulatory fees are standard fees, small fees and large fees. The class of the fee would determine the timing of the regulatory fee payment. Pursuant to section 9(f), our regulations will permit regulatees subject to "large" fees to make two installment payments in FY 1994 (rather than a single payment). Regulatees subject to "small" fees will have to pay their fees for each year of their license term in advance at the beginning of the license term. Regulatees subject to standard fees would pay their regulatory fee, in full, on an annual basis.

a. Annual Payments for Standard Fees

27. We propose to classify most of the fee amounts which will be paid under section 9 as standard fees. Standard regulatory fees would be those that are neither "large" nor "small." (The proposed definitions of these terms are discussed below.) As noted above, standard fees are to be paid in full on an annual basis. We propose further that each licensee or regulatee required to pay a standard fee must pay the full amount specified for each relevant fee category by a date certain each year. The specific payment due dates for each regulatory fee category for the 1994 fiscal year will be announced in the Report and Order in this proceeding or in a Public Notice published in the Federal Register to be released well before the first payment due date. We anticipate that all regulatory fees will be collected as early as possible before the end of the fiscal year. In subsequent fiscal years, we intend to establish regular, fixed payment due dates for regulatory fees.

b. Installment Payments for Large Fees

28. Section 9(f) states that the Commission's regulations shall permit payment by installments for regulatory fees in "large amounts." The House Report mentioned that the purpose of this provision was "[t]o further ensure fair administration of the

user fee proposal."⁴ However, nowhere in the statute or the legislative history did Congress define the term "large." Therefore, in promulgating regulations in accordance with section 9(f), we must first determine what constitutes a "large" fee. In carrying out this task, we seek to adopt a system for large fee installment payments that is fairly administered, is simple to apply, and enables the Commission to recover its regulatory costs on a timely basis.

29. With these congressional and administrative goals in mind, we have analyzed the amounts set forth in the statutory fee schedule that we propose to use for FY 1994 and have estimated the likely regulatory fee obligations for regulatees in various fee categories. For purposes of establishing eligibility criteria for regulatory fee installment payments, we propose generally to classify a fee amount as "large" if it greatly exceeds the average annual fee for regulatees in a particular category. Specifically, for some regulatory fee categories, we propose to establish a fixed annual amount which is based on the relative payment obligations of regulatees within that regulatory fee category. Those fees which are significantly higher than all others would be deemed large and entities who are required to pay significantly more than most other regulatees may elect to make two payments in FY 1994 instead of paying the entire amount all at once. For future years, we seek comment on whether large fee payors should be permitted to pay their annual regulatory fee in four or more installments.

30. We recognize that many entities hold multiple licenses or other authorizations or serve many areas, and that these regulatees may be required to pay what appear to be significant amounts solely as a result of the aggregation of their various regulatory fee amounts. We propose, however, that an entity's installment payment eligibility should not be based on its total regulatory fee payments because it happens to hold multiple licenses or authorizations or serve multiple areas. Instead, a regulatory fee would be deemed large based on the fee for each individual license, authorization or authorized service area. If, for example, the regulatory fee is large (as defined herein) for one or more of a regulatee's licenses and not for other licenses, the regulatee will be eligible for installment payments only for those large fee licenses and must pay the entire regulatory fee for all of the other licenses. We invite specific comment on whether, for purposes of determining whether fees are large, telephone local exchange carriers should be assessed fees on an operating company or holding company level.

31. In applying the method described above, we propose below, in the section explaining the regulatory fee categories, several

⁴House Report at 17.

"large" fee amounts that would be eligible for installment payments. In sum, for the 1994 fiscal year we have identified the following fee amounts which appear relatively large:

<u>Regulatory Fee Category</u>	<u>Large Fee</u>
VHF and UHF Commercial Television Station	above \$12,000
Cable Television System	above \$18,500
Inter-Exchange Carrier	above \$500,000
Local Exchange Carrier Holding Co.	above \$700,000

As explained below, when compared with the amounts to be paid by the average regulatee in these categories, these regulatory fee amounts appear significantly higher."

32. If a regulatee finds it necessary to pay its large regulatory fee by installments, we propose to establish fixed dates on which installment payments will be due. For the 1994 fiscal year, any eligible regulatee that elects to pay a large fee in installments shall make half of its payment on a date to be specified. We also shall specify the date for the second and final installment. Payments in their entirety will be due prior to the end of this fiscal year. As with standard fees, the payment due dates for each large fee category for the 1994 fiscal year will be announced in the Report and Order in this proceeding or in a Public Notice published in the Federal Register to be released well before the first installment payment due date.

33. To recover the additional costs of maintaining installment payment plans, we propose that each installment payment would be subject to an additional processing charge to cover administrative costs. We tentatively propose that these fees will be \$50.00 per payment. Installment payments received after the due date for standard regulatory fees would be subject to interest payments." Further, as discussed below, late installment payments would be subject to a 25 percent late fee and applications filed by delinquent payors would be subject to dismissal. We would also reserve the right to require a regulatee to pay its regulatory fees in a single, full payment if one or more installment payments has not been received in a timely manner.

"See Appendix C. In each case, we will use the most current relevant data at the time we establish the required fee payment for the current fiscal year.

"See 4 C.F.R. Part 102; 47 C.F.R. § 1.1940(c).

c. Advance Payments for Small Fees

34. Section 9(f) states that the Commission's regulations shall require the payment of "small" regulatory fees "in advance for a number of years not to exceed the term of the license held by the payor." 47 U.S.C. § 159(f)(1). We note that the version of this provision passed by the House in the 102nd Congress stated that "If the Commission determines that, because of the small amount of fee involved relative to the cost of annual collection, it would be inefficient to collect any regulatory fee each year, such rules and regulations may also require the payment of the fee in advance for a number of years not to exceed the term of the license held by the payor."⁴⁵ The modified language contained in section 9(f) now mandates the payment of small regulatory fees in advance. The enacted language also deleted the requirement that the Commission make an affirmative determination that it would be inefficient to collect a specific regulatory fee each year because of its relatively small amount. We note further that the House Report mentioned that, because of the relatively small annual fee amounts in the Private Radio Services, license applicants (including renewal applicants) would pay a fee covering the entire license term, with only a percentage of licensees paying a fee in any one year. See House Report at 17.

35. Based on the legislative history, for the 1994 fiscal year we propose to require advance payment for regulatory fees in Private Radio services. Due to the large volume of Private Radio licensees and other authorizations, we believe that assessment and collection of these small regulatory fees on an annual basis would be very costly and would likely result in a larger number of delinquent payments unless such payments coincide with the filing of new, renewal or reinstatement applications. We do not propose at this time to require a similar advance payment program for any fees for Mass Media and Common Carrier services. However, we reserve the option of requiring advance payment of regulatory fees for other fee categories in subsequent fiscal years if we determine that these fees are small, especially if it appears that it would be inefficient to collect such fees on an annual basis.

36. We propose to require those who are assessed a small regulatory fee to pay their annual fee for their entire license or authorization term. For example, regulatees in the private, shared use services would pay a regulatory fee of \$35.00 per license to cover the entire five-year term of their license or authorization. (Those with a ten-year license or authorization will pay \$70.00.) These regulatory fees would generally be paid concurrently with an applicant's new, renewal or reinstatement

⁴⁵ H.R. 1674, 102d Cong., 1st Sess. § 3(a), 137 Cong. Rec. H6752 (daily ed. Sept. 24, 1991). See also House Report at 4.

application. We propose to require persons holding lifetime restricted radiotelephone and radio operator licenses or permits for commercial use to pay a one-time regulatory fee of \$105.00 to cover the entire lifetime license or permit term. We note that, due to the staggered expiration dates of private radio authorizations, only a percentage of these regulatees would be paying their regulatory fees in any one year. If the fee amount is adjusted subsequent to a regulatee's advance payment, the regulatee would not be subject to the new fee amount until its next renewal application and regulatory fee is due. Regulatees thus would only be subject to the fee amounts in effect for the fiscal year in which their application is filed. Finally, for the first round of fee payments for regulatees in the private radio service, we may require payments subsequent to the time when the application is filed."

2. Method of Payment and Payment Location

37. As noted above, we propose to use the same general requirements and procedures for the payment of both application fees and regulatory fees. First, in addition to the payment methods in section 1.1108(a) of our Rules, we propose to allow the filing of fee payments by electronic means. We will first allow electronic fee payments only on a limited, experimental basis. We anticipate, however, that in the foreseeable future we will be accepting all fees and other monies to be paid to the Commission through electronic means." We also propose to allow payment by credit card in some circumstances. The credit cards which will be accepted are VISA and Mastercard. When a credit card is employed for a fee payment, the entire fee payment must be made by a single credit card transaction.

38. Second, we propose to allow the use of one payment instrument to cover multiple standard regulatory fee payments and, where applicable, multiple installments." Our new remittance form and

"We note that some existing private radio licensees will be reclassified as Commercial Mobile Radio Service (CMRS) providers pursuant to section 332 of the Communications Act. 47 U.S.C. § 332(c), (d). See n. 10, above. To the extent that private radio licensees will have paid their "small" fees in advance for the term of their licenses, we would apply the advance payment toward any new annual regulatory fee requirement imposed upon such licensees as a result of being reclassified as CMRS.

"Accordingly, we are also proposing below to amend our rules with respect to electronic filing of application fees.

"Since small regulatory fees will be paid at the same time as application fees, our current application fee filing procedures requiring one instrument per application would apply.

payment procedures would allow individual entities to use a single payment method or instrument to pay the standard regulatory fees for each Mass Media and Common Carrier license or authorization it holds. Each individual regulatee will be solely responsible for accurately accounting for and listing each license or authorization and the number of subscribers, antennas, access lines, or other relevant units, and for paying the proper cumulative amount by the single instrument. As discussed below, any omission or payment deficiency may result in a penalty, dismissal of applications, and/or license revocation.

39. Finally, in order to efficiently process Mass Media and Common Carrier regulatory fee payments, we propose to set up a single lockbox at the lockbox bank, separate from the lockboxes established for applications and application fees. Regulatory fee payments for both services are to be submitted to this lockbox. This will allow regulatees in the Mass Media and Common Carrier services to combine payments for different fee categories. However, since regulatory fees for Private Radio services will generally be due at the same time as applications and application fees, these regulatory fees must be paid to the same lockbox as the application fees. Because they are paid to different lockboxes, Private Radio fees may not be combined with Mass Media and Common Carrier regulatory fees. We request comment on the above proposals.

E. Enforcement of Regulatory Fees Statute and Regulations

40. Section 9(c) of the Communication Act provides the Commission with three methods of enforcing the statute: monetary penalties for late payment, dismissal of applications, and revocation. 47 U.S.C. § 159(c). In order to ensure an effective regulatory fee collection program, we intend to use these enforcement mechanisms to the fullest extent possible. In addition, the Commission will pursue all available remedies against delinquent payors under the Debt Collection Act, 31 U.S.C. § 3711 et seq., and related statutory provisions. We invite comment on the proposals which follow.

1. Penalties for Late Payment

41. Section 9(c)(1) states:

The Commission shall prescribe by regulation an additional charge which shall be assessed as a penalty for late payment of fees required by subsection (a) of

However, we are proposing below to modify the one-instrument/one-application rule to allow one payment instrument to cover multiple applications filed in the same bank lockbox.

this section. Such penalty shall be 25 percent of the amount of the fee which was not paid in a timely manner.

47 U.S.C. § 159(c)(1). We propose to incorporate section 9(c)(1) into our rules. Thus, we will charge a 25 percent penalty to any regulatee that fails to pay its regulatory fee (or installment) in a timely manner. We intend to consider a payment to be late, or "not paid in a timely manner," if the full regulatory fee amount or the entire installment payment is not received at the lockbox bank by the due date specified by the Commission. A payment would also be considered late if the payment (check, bank draft or other means) is not collectible." If only a portion of the required regulatory fee is paid in a timely manner, a 25 percent penalty will be assessed against the shortage. If an installment payment is not received by the established date, a 25 percent penalty will be assessed against any amount that is late. As noted above, the Commission in its discretion may, following one or more late installment payments, require a regulatee to pay the balance of its regulatory fee installment payments by a date certain, in addition to a 25 percent penalty.

42. If a regulatory fee is not paid in a timely manner, we will make every effort to identify delinquent payors and to notify them of their delinquency as soon as possible. This notice will, pursuant to the statute, automatically assess the 25 percent penalty and, as proposed below, will require the delinquent payor to pay the fee and penalty, may subject the delinquent payors' applications to dismissal, and may require a delinquent payor to show cause why its existing instruments of authorization should not be subject to revocation.

2. Dismissal of Application

43. Section 9(c)(2) authorizes the Commission to dismiss any application, group of applications or other filings for failure to pay in a timely manner any fee or penalty under section 9. 47 U.S.C. § 159(c)(2). Because application fees and small regulatory fees paid in advance are to be combined, we propose that, where a regulatory fee is required to accompany a regulatee's new or renewal application (as is the case with the small fees), the application will be returned if the regulatory fee is not included. If the application that must be accompanied by a regulatory fee is a mutually exclusive application with a filing deadline (or any other application that must be filed by a

"We will also continue our policy of not accepting instruments other than cashier's checks for payors who are notified that other payment methods are unacceptable. See Fees II, 5 FCC Rcd at 3571.

date certain), we also propose to dismiss the application if not accompanied by the regulatory fee. This will have no impact on any other types of payors. If any application that included an advance regulatory fee payment is not granted, we propose to refund any advance payment, but not any late-payment penalty which was also assessed.

3. Revocation

44. Section 9(c)(3) provides that, "[i]n addition to or in lieu of" the 25 percent penalty required by section 9(c)(1) and the application(s) dismissal authorized by section 9(c)(2), "the Commission may revoke any instrument of authorization held by any entity that has failed to make payment of a regulatory fee assessed pursuant to this section." 47 U.S.C. § 159(c)(3). The statute specifies that the Commission must provide notice to the licensee of the Commission's intent to take such action and must allow the licensee at least 30 days to either pay the fee or show cause why the fee does not apply to the licensee or should otherwise be waived or payment deferred. A hearing is not required under this revocation provision unless the licensee's response presents a "substantial and material question of fact."¹⁰ In any case where a hearing is conducted, it shall be based on written evidence only, and the burden of proceeding with the introduction of evidence and the burden of proof shall be on the licensee." Unless the licensee "substantially prevails" in the hearing, the Commission may assess costs against the licensee. 47 U.S.C. § 159(c)(3). A revocation order will not become final until the licensee has exhausted its right to judicial review under section 402(b)(5) of the Communications Act (47 U.S.C. § 402(b)(5)).

45. While we do not foresee that revocation will be necessary except in egregious circumstances, we reserve the right to invoke these abbreviated revocation proceedings against any delinquent regulatee. We note that this provision requires only that a regulatee "has failed to make payment of a regulatory fee." *Id.* (emphasis added). It does not require "willful or repeated" failure to pay. Compare 47 U.S.C. § 312(a)(3), (4) and (7). Therefore, if we deem it appropriate, our notification to a regulatee that is delinquent with its regulatory fee payment will take the form of an "Order to Show Cause," allowing the regulatee to either pay the fee or show cause why the fee does not apply or should otherwise be waived or payment deferred. We propose to provide a 60 day period for a reply by the subject regulatee in order to afford an adequate opportunity for the regulatee to

¹⁰Compare 47 U.S.C. § 309(e).

¹¹Compare 47 U.S.C. § 312(d).

obtain any necessary financing to cover its fee payment and to otherwise prepare its response.

4. Debt Collection Act Remedies

46. In addition to the above-described remedies under section 9(c), we intend to invoke our authority under the Debt Collection Act against any person or entity failing to meet its regulatory fee payment obligations. See 31 U.S.C. § 3711 et seq. We believe that such action would help ensure and expedite the collection of any outstanding regulatory fee payments. In accordance with Part 1, Subpart O of our rules (47 C.F.R. §§ 1.1901-1.1952), we intend to pursue the collection of outstanding debts arising from regulatory fee payment failures at the same time we proceed against the debtor with the other sanctions authorized by section 9(c). Moreover, where circumstances require, we will refer outstanding debts to the Internal Revenue Service. See 31 U.S.C. § 3720A. Included in the recovery of the unpaid fee will be the assessment of interest on the debt due, penalty for nonpayment and the full cost incurred by the Federal government in the collection process. See 31 U.S.C. § 3717. In sum, Commission regulatees should be on notice that failure to make timely fee payments may result in substantial penalties, including the loss of operating authority.

F. Explanation of Regulatory Fee Categories

47. The following explanation of regulatory fee categories is based on the categories established by the Schedule of Regulatory Fees in section 9(g) of the Communications Act. 47 U.S.C. § 159(g). Where regulatory fee categories from the schedule need additional interpretation or clarification, we have relied on the legislative history of section 9 and our own experience in establishing and regulating the various services. We also note that the categories and amounts set out in the schedule may, by the next fiscal year and in subsequent fiscal years, be amended, adjusted or modified to reflect changes in the Commission's appropriations, its costs and changes in the nature of the Commission's regulated services. See 47 U.S.C. § 159(b)(2), (3).

1. Private Radio Bureau

48. The two levels of statutory fees for Private Radio services, exclusive use service and shared use services, were established on the basis that those licensees who generally receive a higher quality communications channel, due to exclusive or lightly shared frequency assignments, will pay a higher fee than those who share marginal quality channels. House Report at 17. In addition, as noted above, because of the relatively small annual

fee amounts in the Private Radio Services, applicants for new licenses, reinstatements and renewal will be required to pay a regulatory fee covering an entire license term, with only a percentage of all licensees paying a regulatory fee in any one year. We intend to use our computer data bases for verifying the identity of regulatees subject to regulatory fees and the number of licenses, permits or other authorizations subject to fees.

49. Applications for modification or assignment of an existing authorization will not require payment of a regulatory fee. The expiration date of these authorizations will not reflect a new license term when either modifications or assignments are processed. In an effort to reduce public confusion, the Commission has provided separate lockbox addresses for these applications.

a. Exclusive Use Services

50. Land Mobile. Regulatees covered under this category include those authorized under Part 90 of the Commission's Rules to provide limited access private radio service that allows high quality voice or digital communications between vehicles or to fixed stations to further the business activities of the licensee. These services, using the 220-222 MHz band and frequencies at 470 MHz and above, may be offered on a private carrier basis in the Specialized Mobile Radio Services (SMRS). These land mobile licensees are subject to a regulatory fee of \$16.00 per license per year. They will pay either a \$80.00 or \$160.00 regulatory fee (depending whether their license term is 5 or 10 years).

51. Microwave. Private microwave systems, authorized under part 94 of the Commission's Rules, provide telecommunications services between fixed points and are often used to relay data and to control railroad, pipeline and utility equipment. Microwave licensees are required to pay the total regulatory fee for the entire term of their license when filing their initial or renewal application. The annual fee is \$16.00. Microwave licensees will pay an \$80.00 regulatory fee to cover each five year term.

52. Interactive Video Data Service (IVDS). IVDS is a two-way point-to-multi-point radio service which provides information about products and services, and allows subscribers to respond through their television sets. IVDS is offered on a private carrier basis and is authorized under Part 95, Subpart F of the Commission's Rules. IVDS licensees will be assessed a regulatory fee of \$80.00 per license to cover each five year license term (\$16.00 per year).

b. Shared Use Services and Other Authorizations

53. The specific categories of shared-use services listed below are not on the statutory schedule but were listed in the House Report. As discussed above, we propose that emergency and public safety services would be exempted from regulatory fees.

54. Aviation (Aircraft and Ground Stations). The aircraft radio service provides communications between aircraft or from aircraft to ground stations and includes frequencies used to communicate with air traffic control facilities. See generally 47 C.F.R. Part 87. Aviation aircraft stations are subject to a regulatory fee of \$7.00 per year per station (the total fee of \$70.00 per station for ten year license term is to be paid at the time a renewal or new application is filed). Aviation ground stations provide communications to aircraft for weather or landing information, or for logistical support to aircraft operations. These stations are subject to a regulatory fee of \$7.00 per year per license (the total fee of \$35.00 per license for five year license term is to be paid at the time a renewal or new application is filed).

55. Marine (Coast and Ship Stations). Marine coast stations are land-based stations in the maritime services, authorized under Part 80 of our rules, which provide communications services to ships and other watercraft in coastal and inland waterways. Coast stations are subject to a \$35.00 regulatory fee for each license, covering the five year license term (\$7.00 per year). Marine ship stations, also authorized under Part 80, provide telecommunications between watercraft or between watercraft and shore-based stations. Shipboard radio installations are required by domestic and international law for large passenger or cargo vessels. Radio equipment may be voluntarily installed on smaller vessels, such as recreational boats. Ship stations are assessed a \$70.00 regulatory fee per station, covering the ten year license term (\$7.00 per year) and is to be paid at the same time a license renewal application or new application is filed.

56. General Mobile Radio Service (GMRS). GMRS, authorized under Part 95 of the Rules, is a land mobile radio service that provides personal and limited business communications between vehicles or to fixed stations for short-range, two-way communications. Each GMRS license is subject to a \$35.00 regulatory fee, which covers the five year license term (\$7.00 per year) and is to be paid at the same time a license renewal application or new application is filed.

57. Other Land Mobile. Licensees in the land mobile services not covered in the exclusive use category provide one or two way communications between vehicles, persons or to fixed stations on a shared basis. These services, authorized under Part 90 of the Rules, include radiolocation services, private carrier paging, industrial radio services and land transportation radio services. Regulatory fees will be assessed on a per license basis with the