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Washington, D.C. 20554

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DISPATCHED
In the Matter of)
)
Assessment and Collection) MD Docket No. 96-84
of Regulatory Fees for)
Fiscal Year 1996)

NOTICE OF PROPOSED RULEMAKING

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By the Commission: Commissioner Quello issuing a statement.

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I. Introduction

1. By this Notice of Proposed Rulemaking, the Commission commences a proceeding 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, has required it to collect for Fiscal Year (FY) 1996. See 47 U.S.C. § 159 (a).

2. For FY 1996, Congress has required that we collect \$116,400,000 through regulatory fees in order to recover the costs of our enforcement, policy and rulemaking, international and user information activities for FY 1996. P.L. 104-99 and 47 U.S.C. § 159(a)(2). This is the same amount that Congress designated for recovery through regulatory fees for FY 1995. See Assessment and Collection of Regulatory Fees for Fiscal Year 1995, FCC 95-227, released June 19, 1995, 60 FR 34004 (June 29, 1995). The current Schedule of Regulatory Fees is set forth in sections 1.1152 through 1.1156 of the Commission's rules. 47 C.F.R. §§ 1.1152-1.1156.

3. Because the amount that Congress requires that we recover for FY 1996 is the same amount as we were required to recover for FY 1995, we are not proposing to revise the Schedule of Fees to collect more or less in total fees. However, we are proposing adjustments to the Schedule and associated payment procedures to reflect changes in the estimated number of payment units associated with services subject to a fee and to incorporate certain public interest considerations. See 47 U.S.C. 159 (b).

4. Finally, we propose to amend the Schedule in order to assess regulatory fees upon licensees and/or regulatees of services not now subject to payment of a fee, to simplify and streamline the Schedule and to clarify and/or revise certain payment procedures. 47 U.S.C. § 159(b)(3).

II. Background

5. Section 9(a) of the Communications Act of 1934, as amended, authorizes the Commission to assess and collect annual regulatory fees to recover the costs, as determined annually by Congress, that it incurs in carrying out enforcement, policy and rulemaking, international, and user information activities. 47 U.S.C. 159(a). In our FY 1994 Fee Order, 59 FR 30984 (June 16, 1994), we adopted the Schedule of Regulatory Fees that Congress established and we prescribed rules to govern payment of the fees, as required by Congress. 47 U.S.C. § 159(b), (f)(1). Subsequently, in our FY 1995 Fee Order, we modified the Schedule to increase by approximately 93 percent the revenue generated by these fees in accordance with the amount Congress required us to collect in FY 1995 over FY 1994. 60 FR 34004 (June 29, 1995). Also, in the FY 1995 Fee Order, we amended certain rules governing our regulatory fee program based upon our experience administering the program in FY 1994. See 47 C.F.R. §§ 1.1151 et seq.

6. As noted above, for FY 1994 we adopted the Schedule of Regulatory Fees established in Section 9(g) of the Act. For fiscal years after FY 1994, however, Sections 9(b)(2) and (3), respectively, provide for "Mandatory Adjustments" and "Permitted Amendments" to the Schedule of Regulatory Fees. 47 U.S.C. §

159(b)(2), (b)(3). Section 9(b)(2), entitled "Mandatory Adjustments", requires that we revise the Schedule of Regulatory Fees whenever Congress changes the amount that we are to recover through regulatory fees. 47 U.S.C. § 159(b)(2).

7. Section 9(b)(3), entitled "Permitted Amendments", requires that we determine annually whether adjustments of the fees are warranted based upon criteria established in 47 U.S.C. 159(b)(3). Also, pursuant to Section 9(b)(3), we are to adjust the fees to take into account factors that are reasonably related to the payor of the fee and factors that are in the public interest. In making these amendments, we are to "add, delete, or reclassify services in the Schedule to reflect additions, deletions or changes in the nature of its services." 47 U.S.C. § 159(b)(3). Section 9(i) requires that we develop accounting systems necessary to making permitted amendments. 47 U.S.C. § 159(i). Finally, we are required to notify Congress of any permitted amendments 90 days before those amendments go into effect. 47 U.S.C. § 159(b)(4)(B).

III. Discussion

A. Overall Methodology and Format

8. As noted above, Congress has required the recovery of \$116,400,000 for FY 1996 through the collection of regulatory fees, representing the costs applicable to our enforcement, policy and rulemaking, international, and user information activities. 47 § U.S.C. 159(a).

9. Our approach to developing a FY 1996 fee schedule required that we first adjust our estimates of payment units so that we could determine how much revenue we would collect even if we did not change any individual fee amounts. We then compared the total estimated revenue that we would collect at the existing fee rates to the \$116.4 million that we are required to collect in FY 1996 and pro-rated the difference among all the existing fee categories. We then intended to compare these projected revenues with cost data gathered from our new cost accounting system and to make whatever adjustments were deemed necessary to ensure that costs generally equated to revenues in each fee category. As discussed elsewhere in this Notice, this particular step was not performed due to implementation problems associated with our new cost accounting system. A substitute mechanism was, however, put in place to provide assurances that estimated costs and revenues were reasonable.

10. We next considered various proposals made by Commission Bureaus and Offices for additions, deletions or other adjustments to the fees and to our collection procedures. The results of these actions were factored into our final schedule. That schedule is contained in Appendix D. Finally, we incorporated,

as Appendix F, proposed Guidance which provides detailed descriptions of each fee category, information on who is responsible for paying each fee and other critical information designed to assist potential fee payers in determining the extent of fee liability, if any, in FY 1996, assuming that our proposed fees set forth in Appendix D are ultimately adopted¹. The steps which we followed in the development of our FY 1996 regulatory fee proposals are discussed in more detail in the following paragraphs.

B. Adjustment of Payment Units

11. In order to calculate individual service fees for FY 1996, we first adjusted the estimated payment units for each service because, in many services, payment units have changed substantially since last year. We obtained our estimates through a variety of means. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade group projections, when available. We tried to verify these estimates from multiple sources to ensure that our estimates were reasonable. Appendix B provides a summary of how these revised payment units were determined for each fee category.

C. Recalculation of Fees

12. We next multiplied the revised payment units for FY 1996 by the FY 1995 fee amounts in each fee category to determine how much revenue the Commission would collect in FY 1996 if it made no changes to the existing Schedule of Regulatory Fees. Next, we adjusted these revenue requirements for each fee category on a proportional basis, consistent with Section 9(b)(2) of the Act, to insure that we would collect only the \$116.4 million prescribed by Congress. Then we recalculated the individual fee amounts required to collect the adjusted amount in each service and rounded each fee amount as provided by Section 9(b)(2). Appendix C provides detailed calculations showing how these revised fee amounts were determined.

D. Cost Accounting System

13. On October 1, 1995, the Commission established a cost accounting system which was designed, in part, to assist in the development of our regulatory fees, specifically to help determine whether and to what extent additional revisions to the Schedule of Regulatory Fees might be required. See 47 U.S.C. §§

¹ We also will incorporate a similar Appendix in the Report & Order concluding this rulemaking. That Appendix will contain updated information concerning any changes made to the proposed fees adopted by the Report and Order.

159(i). Our objective in establishing the cost accounting system was to provide us with data that we could use, in combination with other information, to ensure that fees closely reflected our actual costs of regulation.

14. We had intended to compare extrapolated data from the cost accounting system with the adjusted revenue requirements described above in order to help assure that the adjusted fees we developed for each service were reasonably related to the regulatory costs of each service. It was our intention to propose further adjustments to the fees in instances where the variance between the estimated costs of each service and its estimated revenues appeared appropriate.

15. While there would be inherent deficiencies to any cost accounting system relative to meeting the requirements of the Act, we nonetheless believed that we would have enough useful information from our new cost accounting system to warrant consideration of such data in formulating our proposed FY 1996 fees. Unfortunately, several factors have prevented us from relying on data derived from the cost accounting system for the development of FY 1996 regulatory fees.

16. First, immediately following implementation of our cost accounting system, it was discovered that the system contained a significant amount of erroneous data due to technical complications encountered during the start-up of the system. Although this data was later corrected, the delay in obtaining useful output from the system has prevented a thorough analysis of the data. Additionally, the lengthy government shutdown and subsequent weather emergency in Washington, D.C. prevented the accumulation of critical cost data for several weeks. Consequently, we lack the confidence that we originally anticipated we would have relative to FY 1996 cost data and, therefore, will not utilize such data in the development of our proposed FY 1996 Regulatory Fee Schedule.

17. However, because our overall costs incident to the activities described in Section 9(a)(1) of the Act remain unchanged from FY 1995, we are satisfied that our revenue estimates for FY 1996 generally reflect the relative costs applicable to our regulatory activities. As a result, many individual fees remain unchanged from last fiscal year.

E. Other Proposed Changes

18. We examined the results of our calculations made in Paragraph 12 to determine if further adjustments of the fees and/or changes to payment procedures were warranted based upon the public interest and other criteria established in 47 U.S.C. 159(b)(3). As a result of this review, we have proposed the following:

1. Commercial Mobile Radio Service (CMRS)

19. The Commercial Mobile Radio Service (CMRS) includes various services authorized to provide interconnected mobile radio services for profit to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public. CMRS includes certain licensees which formerly were licensed as part of the Private Radio Services (e.g., Specialized Mobile Radio Services and Private Paging), others formerly licensed as part of the Common Carrier Radio Services (e.g., Public Mobile Services and Cellular Radio Service) and one new service, the Personal Communications Service (PCS)². While specific rules pertaining to each covered service remain in separate Parts 22, 80 and 90 of the Commission's rules; general rules governing CMRS are contained in Part 20 of the rules. See 47 CFR Parts 20, 22, 80 and 90. We are proposing to replace the Public Mobile/Cellular Radio regulatory fee category with a CMRS Mobile Services category and replace the Public Mobile One-Way Paging fee category with a CMRS One-Way Paging Services category for regulatory fee collection purposes. CMRS Mobile Services will include: qualifying Business Radio Services, 220-222 MHz Land Mobile Systems, Specialized Mobile Radio Services (Part 90); Public Coast Stations (Part 80); Public Mobile Radio, Cellular, 800 MHz Air-Ground Radiotelephone, and Offshore Radio Services (Part 22). We propose that licensees in the CMRS Mobile Services pay annual regulatory fees on a per mobile or cellular unit (mobile or cellular call sign or telephone number), or on a per unit (two-way pager) basis. We propose that CMRS One-Way Paging Services licensees pay annual regulatory fees on a per unit (pager) basis. See Appendix F, Paragraphs 14-16.

2. Commercial AM/FM Radio

20. In our FY 1995 Notice, we considered an alternative methodology for assessing regulatory fees for Commercial AM and FM radio licensees based on market rankings. This methodology, based on markets, was ultimately rejected as incomplete and insufficiently accurate for fee determination. Other possible alternatives to using the existing class designations to differentiate various types of stations and take into consideration ability to pay were also eliminated due to a lack of vital data necessary for establishing and verifying these fees. We were particularly interested in a proposal which would associate population density and service area contours with

² Although PCS is a CMRS service, we are not proposing that PCS licensees pay a regulatory fee for FY 1996 because the service is, at most, in the very early start-up phase with few subscribers on the date (December 31, 1995) established for determining liability for such a fee and, therefore, it is premature to assess a fee.

license data. Unfortunately, this proposal appears to not be cost effective because it would require a significant expenditure of funds to develop the required database and additional funds to provide the results to our licensees to use for fee payment purposes.

21. In our FY 1995 Order, we invited commenters to propose viable alternatives to using designated class of station as the fee qualifier in our FY 1996 Notice. See FY 1995 Report and Order released June 19, 1995, Paragraph 54. We reiterate our invitation in this Notice. In the absence of a viable alternative, however, we are proposing to continue to base the fees for AM and FM broadcast stations on station class for FY 1996. See Appendix F, Paragraph 18.

3. Commercial AM/FM/TV Construction Permits

22. These categories of fees apply to holders of permits to construct new commercial AM, FM, UHF and VHF Television stations covered under Part 73 of the Commission's rules. Construction permit (CP) fees are based on the type of commercial broadcasting service (i.e., AM, FM or TV) for which the station is being constructed.

23. Because of the small number of construction permits relative to overall stations and the modest amount of revenue collected from these licensees, we considered elimination of construction permits as a separate fee category with the costs attributed to regulation of construction permits to be subsumed in the overall costs for regulation of broadcast stations. This approach would simplify the fee schedule and provide "one stop" fee payment by reducing or eliminating the need for a broadcaster, in certain instances, to submit multiple payments (e.g., when an existing broadcaster is also the holder of a construction permit). More generally, it would eliminate the fee on stations that are not yet operational and producing income.

24. To recoup revenues lost by the elimination of the construction permit fee, we would aggregate the revenue requirements associated with construction permits and distribute this revenue requirement on a pro rata basis to the primary station fee categories for AM/FM/TV commercial broadcast stations. New, slightly higher, primary station fees would result from this methodology.

25. In reviewing this issue, we determined that subsuming the fee for construction permits under the primary station fees is inherently inequitable since it would result in currently operating broadcast stations subsidizing stations under construction, some of which would eventually provide direct competition to the existing stations. Additionally, the impact on the FM Radio Service is particularly apparent. In this

service, the impact of a large number of pending construction permits combined with the relatively high construction permit fee (compared to construction permit fees in the AM and TV services) produces a situation where significant costs would have to be absorbed by a limited number of operational commercial FM stations, resulting in a much greater impact on these broadcasters.

26. Based on these factors, we propose to retain separate fee categories for construction permits for AM/FM/TV commercial broadcast stations in FY 1996. We do, however, welcome comments on this issue. See Appendix F, Paragraphs 19, 20, 23-25.

4. Commercial VHF/UHF Television Stations

27. In our FY 1995 Order, we specified that VHF and UHF television fees be determined in accordance with the station market rankings published by Warren Publishing in the 1994 Edition of the Television and Cable Factbook (No. 62). This ranking was based on Areas of Dominant Influence (ADIs) as determined by the Arbitron Rating Co. ("Arbitron"). Arbitron has now ceased publication of ADI market areas. However, the A.C. Nielsen Co. ("Nielsen") has published Designated Market Areas (DMAs) which approximate the same coverage areas as the Arbitron ADIs. The Nielsen DMAs also have the advantage of including stations in Alaska and Hawaii which Arbitron did not. Finally, the 1995 Edition of the Television and Cable Factbook (No. 63) has replaced the Arbitron ADI listing with the Nielsen DMA listing. In view of the above considerations, we propose for FY 1996 to require television licensees to use Nielsen DMA rankings to determine the appropriate regulatory fee. See Appendix F, Paragraph 21.

5. Auxiliary Broadcast Stations

28. This fee category includes licensees of Remote Pickup Stations, Aural Broadcast Auxiliary Stations, Television Broadcast Auxiliary Stations, and Low Power Auxiliary Stations, authorized under Part 74 of the Commission's Rules. These stations are generally associated with a particular television or radio broadcast station or cable television system.

29. In an effort to simplify the FY 1996 Fee Schedule, we examined the feasibility and equity of combining auxiliary broadcast station fees with the primary fees paid by broadcast station licensees and cable television operators. Combining these fees appeared to be an efficient approach due to the modest auxiliary fee relative to the fees assessed on broadcast stations and cable television systems.

30. Calculating a new fee encompassing both the auxiliary fee and station fee is relatively simple. We would add the auxiliary

service revenue requirement to the AM/FM/TV and cable television revenue requirements on a pro-rata basis and then recompute each AM/FM/TV and cable television fee. This would result in slightly higher fees for each of these entities, but would also reduce the number of individual fee payments required from many of these payors.

31. Although a single consolidated fee has certain advantages, we identified some significant problems with using this approach. One problem is that the number of auxiliary stations per parent station varies greatly, with some broadcast stations or cable systems having none of these licenses while others have more than a dozen. Also, it appears that no more than ten percent of current regulatees own and operate auxiliary facilities. Moreover, since applications for auxiliary stations currently do not identify the parent station, nor does the Commission maintain records providing this information, it is impossible to determine the actual number of auxiliaries by license category (AM/FM/TV, cable).

32. Finally, we determined that this proposal would likely result in serious inequities since the larger commercial broadcast stations and cable systems in the most profitable markets are most likely to utilize multiple auxiliary stations. While a consolidated fee would have little impact on them, it would result in smaller, less profitable stations subsidizing part of the larger stations' operating costs.

33. For these reasons, we propose to retain Auxiliary Broadcast Station fees as a separate category in FY 1996. We would, however, welcome any suggestions on alternative methods for assessing these fees. See Appendix F, Paragraph 27.

6. Interstate Telephone Service Providers

34. For FY 1995, all interstate telephone service providers were assessed regulatory fees based on a percentage of their adjusted gross revenue as computed from revenue data reported to the Telecommunications Relay Service (TRS) Fund. Our FY 1995 Schedule of Regulatory Fees listed each type of interstate telephone service provider separately (e.g., Inter-exchange Carriers, Local Exchange Carriers, Competitive Access Providers, Operator Services Providers) causing some inadvertent confusion for payees. Because we are proposing once again that all interstate telephone service providers compute their fee based on the same adjusted gross revenue method, we are proposing to consolidate Inter-Exchange Carriers, Local Exchange Carriers, Competitive Access Providers, Operator Service Providers/Pay Telephone Operators, Resellers, and Other Interstate Providers into a single fee category labeled "Interstate Telephone Service Providers." Details concerning who must pay interstate telephone service provider fees can be found in Appendix F, Paragraph 32.

7. Earth Stations

35. For FY 1995, all earth stations were assessed the same fee based on the number of authorizations or registrations. Our FY 1995 Schedule of Fees listed each type of earth station separately, causing some inadvertent confusion for payees. Because we are proposing that all earth stations (except receive only earth stations for which we propose to not assess a regulatory fee) continue to pay the same fee based on the number of authorizations or registrations, we are proposing to simplify the structure of the Schedule by combining VSATs/Equivalent C-Band/Mobile, Transmit/Receive, and Transmit Only Earth Stations into a single fee category labeled "Earth Stations." Further details concerning earth station fees may be found in Appendix F, Paragraphs 33-34.

8. Wireless Cable

36. Multi-Channel Multipoint Distribution Service Stations (MMDS; a.k.a. "Wireless Cable."), along with Multipoint Distribution Service Stations (MDS), are authorized under Part 21 of the Commission's Rules to use microwave frequencies for video and data distribution. These services were included in the Domestic Public Fixed Radio Service category in the FY 1995 Regulatory Fee Schedule.

37. When operated as a Multichannel Video Programming Distribution service (MVPD), MMDS licensees compete directly with cable television and with other MVPDs. Current industry estimates indicate that Wireless Cable has 800,000 subscribers or 1.19% of the MVPD market.

38. We propose to assess regulatory fees on MMDS licensees based on an individual call sign. We seek comment on this proposal. See Appendix F, Paragraph 28.

9. Direct Broadcast Satellite (DBS) Service

39. The Direct Broadcast Satellite (DBS) Service offers a wide range of programming options to its subscribers distributed via geosynchronous satellite. DBS service is expanding rapidly with total viewership currently estimated at 1,500,000 subscribers.

40. For FY 1995, we decided not to assess a fee for the DBS service because our resources devoted to regulation of DBS, other than those involving application processing, were negligible and because DBS operators then served few subscribers. See FY 1995 Report and Order, Paragraph 15. For FY 1996, however, we are proposing to assess a fee upon licensees in the DBS service since the service is operational, serving numerous subscribers and, therefore, subject to the regulatory activities (additional

resources devoted to policy and rulemaking, enforcement and public information) whose costs are recovered by assessment of a regulatory fee.

41. We propose to assess DBS licensees the fee applicable to all geosynchronous satellite licensees and, therefore, to include DBS for regulatory fee purposes in the Space Station fee category. In developing our proposed DBS fee, we considered assessing DBS licensees a per subscriber fee rather than including them within the geosynchronous satellite fee category. We currently assess per subscriber fees in several fee categories, including a per subscriber fee for cable television systems. However, we propose that DBS satellites be included in the geosynchronous satellite category. Despite the fact that DBS is a subscriber-based service, costs attributable to regulating DBS operators are more similar to those attributable to regulation of other geosynchronous space stations. Regulatory responsibilities related to space stations focus on policy and rulemaking activities, and are unrelated to the number of end users of satellite services. Moreover, DBS rules do not impose additional regulatory requirements on video service providers that are specifically related to the individual subscriber. Thus, the number of subscribers to a DBS service does not significantly affect the regulatory costs arising from DBS services. By contrast, cable service providers are subject to rate regulation, customer service standards, and certain programming obligations. In addition, a subscriber-based formula would penalize DBS licensees who win more subscribers with less space station capacity (and hence lower regulatory costs). Moreover, because DBS licensees are not restricted to the provision of video programming, but rather may provide various non-video services, we concluded that a facility-based fee would ensure that each DBS licensee contributed equitably to the cost of DBS regulation without the need to impose possibly burdensome and overly intrusive reporting requirements necessary to gather information identifying the services offered by individual DBS operators.

42. In light of the factors discussed above, we propose to assess fees on these licensees on a per station basis. See Appendix F, Paragraph 35.

10. Intelsat & Inmarsat Signatory

43. For FY 1995, we determined that Comsat was not subject to payment of a geosynchronous satellite regulatory fee for its Intelsat and Inmarsat satellites because the legislative history of Section 9 states that regulatory fees should not be assessed upon space stations operated by international bodies. See FY 1995 Report and Order, Paragraph 110. Instead, we propose to explore other ways to recover our regulatory costs incurred due to Comsat's participation in the Intelsat and Inmarsat programs. Thus, we are proposing to assess a new fee to recover our costs

of regulation of the U.S. Signatory to Intelsat and Inmarsat. We believe that the fee is appropriate in view of the unique role of the U.S. Signatory in Intelsat's and Inmarsat's structure and our unique regulatory role with respect to these entities.

44. We propose to establish the separate Signatory fee because our geosynchronous space station fee now recovers a significant amount of costs directly attributable to our resource burden related to conducting our oversight of the U.S. Signatory to these international operations.³ Currently, we are conducting several proceedings regarding the U.S. Signatories' authority to provide services via Intelsat and Inmarsat, the U.S. Signatories' authority to participate in the procurement or leasing of various Intelsat and Inmarsat space stations, and their authority to participate in certain Intelsat and Inmarsat-associated businesses. There also are proceedings pending before us related to whether the U.S. Signatory has conformed to applicable structural and financial separation rules. In addition, we actively participate on an ongoing basis with the Executive Branch in the oversight of the U.S. Signatories' representations of U.S. policy at the Intelsat and Inmarsat governing boards through the U.S. Government instructional process and participate directly in the Assembly of Parties meetings of the two intergovernmental organizations. Finally, we maintain public files of Intelsat and Inmarsat governing board and other organizational documents.

45. Because our regulation of the U.S. Signatories is substantially different from our regulatory activities related to satellite systems licensed by us, we are persuaded that the costs of our activities related to the signatories should be recovered directly from the U.S. Signatories rather than from space station licensees generally. Moreover, we do not believe that it is necessary or appropriate to base the Signatory fee on the number of space stations owned by the two intergovernmental satellite systems. Rather, we will formulate the Signatory fee pursuant to our cost of oversight of the Signatory's activities.

³ The U.S. Signatory to Intelsat is the Communications Satellite Corporation (COMSAT), the entity designated, pursuant to the Communications Satellite Act, as the sole operating entity to participate in the International Telecommunications Satellite Organization (Intelsat) in order to construct and operate the space segment of the global commercial telecommunications satellite system established under the Interim Agreement and Special Agreement signed by Governments on August 20, 1964. See 47 U.S.C. § 301. Also, the U.S. Signatory to Inmarsat is Comsat, solely designated, pursuant to the Communications Satellite Act, to participate in the International Mobile Satellite Organization (Inmarsat).

46. Our review of our signatory activities discloses that approximately 14.7% of the costs attributable to space station regulatory oversight (\$2,960,100), as determined in Appendix C, is directly related to Intelsat and Inmarsat Signatory activities (5.25 FTEs⁴ out of a total of 35.7 direct FTEs). This means that approximately \$435,135 must be collected from the signatories to offset the regulatory costs attributed to them (\$2,960,100 X 14.7%). Dividing this revenue requirement by two (there are signatories to two separate organizations), yields a signatory fee of \$217,575 (rounded). Therefore, we are proposing to add a new regulatory fee of \$217,575 for each designation as a signatory. See Appendix F, Paragraph 37. Comment is requested on our proposal to charge a signatory fee and on the methodology for calculating such a fee.

47. Since the proposed Signatory fee will recover our costs attributable to our signatory oversight, we are also proposing, in conjunction with that proposal, to reduce the corresponding space station fee. The new space station fee is computed by reducing the revenue requirement for space stations calculated in Appendix C (\$2,960,100) by the \$435,150 to be collected from signatories and dividing the reduced space station revenue requirement (\$2,524,950) by the number of payment units (39 operational space stations). The result of these calculations is a new fee of \$64,750 (rounded) for each operational space station.⁵

11. Low Earth Orbit (LEO) Satellite Systems

48. The FY 1994 statutory regulatory fee schedule (see 47 U.S.C. 159(g)) proposed a \$90,000 regulatory fee for licensees in the Low Earth Orbit (LEO) Satellite service. However, the Commission found that there were no operational LEO systems on the effective date of the FY 1994 Schedule and suspended the fee for that year and again for FY 1995. See FY 1995 Report and Order, Paragraph 15. For FY 1996, however, there are licensed and operational LEO systems. Therefore, we propose to include a Low Earth Orbit Satellite System fee in the Schedule of Regulatory Fees.

49. In developing a LEO System regulatory fee for FY 1996, we propose to apportion the total revenue requirement for all space stations between LEO systems and geosynchronous space station licensees. In so doing, we also propose to preserve the same

⁴ Full Time Equivalent (FTE) employment is the total number of regular straight-time hours (i.e., not including overtime or holiday hours) worked or to be worked by current and future employees divided by the number of compensable hours applicable to each fiscal year.

⁵ This fee is further adjusted in Paragraph 51.

relative relationship between the fees established by the Congress in Section 9(g) of the Act for geosynchronous space stations and LEO systems; i.e., an approximate 38.5% differential between the fee for LEO systems and the fee for geosynchronous space stations. 47 U.S.C § 159(g). Reliance on this methodology will reduce the revenue which must be collected from space stations other than LEOs and the corresponding fees for space stations which had been calculated in Appendix C and subsequently adjusted in Paragraph 49. As a result of our calculations, we are proposing a new LEO system regulatory fee of \$87,725 and a new geosynchronous space station fee of \$63,500 for FY 1996.⁶

⁶ The FY 1996 adjusted revenue requirement for all space stations has been determined to be \$2,524,950. See Paragraph 49. For FY 1996, there are two LEO systems and 37 geosynchronous space stations subject to fee payment. The formula for computing the new LEO and geosynchronous space station fees is as follows:

(a) We have assigned "L" to represent the proposed LEO system fee and "G" to represent the proposed geosynchronous space station fee. I.e.,

L = LEO System Fee
G = Geosynchronous Space Station Fee

(b) The relationship between the LEO fee and the geosynchronous fee may be expressed as:

$L = 1.385G$ (i.e., the LEO fee needs to be 38.5% higher than the corresponding geosynchronous space station fee).

(c) The total revenue to be collected from LEOs and geosynchronous space stations may be expressed as:

$2L + 37G = \$2,524,950$ (i.e., the two existing LEO systems and 37 geosynchronous stations together must account for \$2,524,950 in revenues).

(d) Substituting the value of "L" in (b) above into the formula in (c) above yields the following:

$2(1.385G) + 37G = \$2,524,950$
 $2.77G + 37G = \$2,524,950$
 $39.77G = \$2,524,950$
 $G = \$63,489$

(e) Therefore, "G" (Geosynchronous space station fee) is \$63,500 (after rounding).

(f) Substituting the computed value of "G" in (d)

See Appendix F, Paragraphs 35-36.

12. Minimum Fee Payment Liability

50. In FY 1995 the Commission received several small fee payments that cost more to deposit and process than the actual amount collected. Such payments occur in fee categories where there is a per unit or per subscriber charge, such as the fee for cable television (per subscriber) or CMRS one-way paging (per unit).

51. Our collection and verification costs for small payments is considerably more than any revenue generated from these collections. Thus, we are proposing for FY 1996 a minimum fee liability for payees of Commission regulatory fees. Our minimum fee liability policy would exempt fee payment for any licensee whose total fee liability was less than \$10. This exemption would apply only when the total fee due from an entity, including all categories of fees for which a payment is due by an entity, is less than \$10. To ensure that this exemption is utilized as envisioned, we are also proposing to continue to require that licensees complete and submit FCC Form 159, "FCC Remittance Advice" so that we may verify that a fee payment is not required of these entities.

F. Procedures for Payment of Regulatory Fees

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

above into the formula in (c) above yields the following:

$$2L + 37(63,500) = 2,524,950$$

$$2L + 2,349,500 = 2,524,950$$

$$2L = 175,450$$

$$L = 87,725$$

(g) Therefore, "L" (LEO fee) is \$87,725.

1. Annual Payments of Standard Fees

53. Standard fees are those regulatory fees that are payable in full on an annual basis. Payers of standard fees are not required to make advance payments for their full license term and are not eligible for installment payments. All standard fees are payable in full on the date we establish for payment of fees in their regulatory fee category. The payment dates for each regulatory fee category will be announced either in the Report and Order in this proceeding or by public notice in the *Federal Register* following the termination of the proceeding.

2. Installment Payments for Large Fees

54. In our FY 1995 Notice, we proposed that regulatees in any category of service with a payment liability of \$12,000 or more would be eligible to make installment payments. Further, we proposed that eligibility for payment by installment would be based upon the amount of either a single regulatory fee payment or combination of fee payments by the same licensee or regulatee. However, in our FY 1995 Order, we declined to adopt our installment payment proposals because, as a practical matter, there would be insufficient time following the effective date of our FY 1995 Schedule of Fees to permit a meaningful implementation of an installment payment program.

55. For FY 1996, while we are mindful that time constraints may preclude an opportunity for installment payments, we will once more propose that regulatees in any category of service with a payment liability of \$12,000 or more be eligible to make installment payments and that eligibility for payment by installment be based upon the amount of either a single regulatory fee payment or combination of fee payments by the same licensee or regulatee. Therefore, we propose that regulatees eligible to pay by installment payments may submit their required fee in two equal payments (on dates to be announced in the Report and Order terminating this proceeding or in the *Federal Register* following the proceeding's termination), or, in the alternative, may submit a single full payment on the date that their final installment payment is due.

3. Advance Payments of Small Fees

56. As we have in the past, we are proposing to treat regulatory fee payments by certain licensees as small fees subject to advance payments. Advance payments will be required from licensees of those services that we decided would be subject to

advance payments in our FY 1994 Order.⁷ Payers of advance fees will submit the entire fee due for the full term of their licenses when filing their initial, renewal or reinstatement application. Regulatees subject to a payment of small fees shall pay the amount due for the current fiscal year multiplied by the number of years in the term of their requested license. In the event that the required fee is adjusted following their payment of the fee, the payor would not be subject to the payment of a new fee until filing an application for renewal or reinstatement of the license. Thus, payment for the full license term would be made based upon the regulatory fee applicable at the time the application is filed. The Commission will announce by public notice in the *Federal Register* the effective date for the payment of small fees pursuant to the FY 1996 fee schedule.

4. Minimum Fee Payment Liability

57. As discussed above, regulatees whose total fee liability is less than ten dollars are exempted from fee payment in 1996. See Paragraphs 54-55. However, such regulatees must complete and submit FCC Form 159, "FCC Remittance Advice" so that we may verify that a fee payment is not due. The Commission will announce by public notice in the *Federal Register* the effective date for the submission of this fee form.

5. Standard Fee Calculations and Payment Dates.

58. As noted, the time for payment of standard fees and any installment payments will be published in the *Federal Register*. For licensees, permittees and holders of other authorizations in the Common Carrier, Mass Media, and Cable Services, whose fees are not based on a subscriber, line or circuit count, fees should be submitted for any authorization held as of October 1, 1995. October 1 is the date to be used for establishing liability for payment of standard fees since it is the first day of the federal government's fiscal year.

59. In the case of regulatees whose fees are based upon a subscriber, line or circuit count, the number of a regulatees' subscribers, licenses or circuits on December 31, 1995, will be

⁷ Applicants for new, renewal and reinstatement licenses in the following services will be required to pay their regulatory fees in advance: Land Mobile Services, Microwave services, Interactive Video Data Services (IVDS), Marine (Ship) Service, Marine (Coast) Service, Private Land Mobile (Other) Services, Aviation (Aircraft) Service, Aviation (Ground) Service, General Mobile Radio Service (GMRS). In addition, applicants for Amateur Radio vanity call signs will be required to submit an advance payment.

used to calculate the fee payment.⁸ We have selected the last date of the calendar year because many of these entities file reports with us as of that date. Others calculate their subscriber numbers as of that date for internal purposes. Therefore, calculation of the regulatory fee as of that date will facilitate both an entity's computation of its fee payment and our verification that the correct fee payment has been submitted.

G. Schedule of Regulatory Fees

60. The Commission's proposed Schedule of Regulatory Fees for FY 1996 is contained in Appendix D of this Notice.

IV. Procedural Matters

A. Comment Period and Procedures

61. Pursuant to the procedures set forth in sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before April 29, 1996, and reply comments on or before May 9, 1996. All relevant comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments and supporting materials. If participants want each Commissioner to receive a personal copy of their comments, an original and nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Interested parties, who do not wish to formally participate in this proceeding, may file informal comments to the same address. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20054.

B. Ex Parte Rules

62. This is a non-restricted 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. See 47 C.F.R. §§ 1.1202, 1.1203 and 1026(a).

⁸ Cable systems calculate their regulatory fees using subscriber data submitted to the Commission in their Annual Report of Cable Television Systems (FCC Form 325). Accordingly, the number of cable subscribers will not necessarily be based on account as of December 31, 1995, but rather on "a typical day in the last full week" of December 1995.

C. Initial Regulatory Flexibility Analysis

63. As required by section 603 of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1165, 5 U.S.C. § 601 et seq. (1981), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth in Appendix 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 Notice, but they must have a separate and distinct heading, designating the comments as responses to the IRFA. The Secretary shall send a copy of this Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act.

D. Paperwork Reduction Act Compliance

64. The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Comments are requested concerning (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.

65. Written comments should be submitted on or before [insert date 60 days after date of publication in the FEDERAL REGISTER]. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

66. Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to dconway@fcc.gov, and Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th St., N.W. Washington, DC 20503 or via internet to fain_t@al.eop.gov.

67. FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202-418-0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: (Number should be included if it is a revision to an existing collection)

Title:

Form No.:

Type of Review: (i.e. new collection, revision of existing collection)

Respondents:

Number of Respondents:

Estimated Time Per Response:

Total Annual Burden:

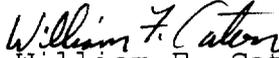
Needs and Uses: (Brief description of how the information will be used)

E. Authority and Further Information

68. Authority for this proceeding is contained in sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934 as amended, 47 U.S.C. §§ 154(1) and (j) and 159 and 303(r).

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

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Acting Secretary

Initial Regulatory Flexibility Analysis

Reason for Action

This rulemaking proceeding is initiated to obtain comment regarding the Commission's proposed amendment of its Schedule of Regulatory Fees in order to collect regulatory fees in the amount of \$116,400,000, the amount that Congress has required the Commission to recover through regulatory fees in Fiscal Year 1996.

Objectives

The Commission seeks to collect the necessary amount through its proposed revised regulatory fees, as contained in the attached Schedule of Regulatory Fees, in the most efficient manner possible and without undue burden to the public.

Legal Basis

The proposed action is authorized under sections (4)(i) and (j), 9 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and (j), 159, and 303(r).

Reporting, Recordkeeping and other Compliance Requirements

The Commission has developed FCC Form 159 and FCC Form 159C for submission with regulatory fee payments. Also, the Commission has adopted implementation rules governing the payment of regulatory fees. See 47 C.R.R. § 1.1151 et seq.

Federal Rules that Overlap, Duplicate or Conflict with Proposed Rule

None.

Description, Potential Impact, and Number of Small Entities Involved

The proposed amendment of the Schedule of Regulatory Fees will affect permittees, licensees and other regulatees in the cable, common carrier, mass media, private radio and international services. After evaluating the comments in this proceeding, the Commission will further examine the impact of any fee revisions or additions or rule changes on small entities and set forth our findings in the Final Regulatory Flexibility Analysis.

Any Significant Alternatives Minimizing the Impact on Small
Entities Consistent with the Stated Objectives

The Notice solicits comments on alternative methods of assessing the regulatory fees necessary to recover the \$116,400,000 in costs that Congress has required us to recover through regulatory fees in FY 1996.

SOURCES OF PAYMENT UNIT ESTIMATES FOR FY 1996

In order to calculate individual service fees for FY 1996, we adjusted FY 1995 payment units for each service to more accurately reflect expected FY 1996 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections when available. We tried to obtain verification for these estimates from multiple sources and, in all cases, we compared FY 1996 estimates with actual FY 1995 payment units to ensure that our revised estimates were reasonable. Where it made sense, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units yet cannot be estimated exactly. These include an unknown number of waivers and/or exemptions that may occur in FY 1996 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 1996 payment units are based on FY 1995 actual payment units, it does not necessarily mean that our FY 1996 projection is exactly the same number as FY 1995. It means that we have either rounded the FY 1995 number or adjusted it slightly to account for these variables.

FEE CATEGORY	SOURCES OF PAYMENT UNIT ESTIMATES
Land Mobile (All), Microwave, IVDS, 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 proposals to license portions of these services on a voluntary basis.
CMRS Mobile Services (incl. Cellular/Public Mobile Radio Services and Two Way Paging Services)	Based on actual FY 1995 payment units adjusted to take into consideration industry estimates of growth between FY 1995 and FY 1996 and Wireless Telecommunications Bureau projections of new applications and average number of mobile units associated with each application.
CMRS One Way Paging Services	Based on industry estimates of the number of pager units in operation.
AM/FM Radio Stations	Based on actual FY 1995 payment units.
UHF/VHF Television Stations	Based on actual FY 1995 payment units.
AM/FM/TV Construction Permits	Based on actual FY 1995 payment units.
LPTV, Translators and Boosters	Based on actual FY 1995 payment units.
Auxiliaries	Based on actual FY 1995 payment units.
MDS/MMDS	Based on actual FY 1995 payment units.
Cable Antenna Relay System (CARS)	Based on actual FY 1995 payment units.
Cable Television System Subscribers	Based on Cable Services Bureau and industry estimates of subscribership.
IXCs/LECs, CAPs, Other Service Providers	Based on actual FY 1995 interstate revenues associated with contributions to the Telecommunications Relay System (TRS) Fund adjusted to take into consideration FY 1996 revenue growth in this industry as estimated by the Common Carrier Bureau.
Earth Stations	Based on actual FY 1995 payment units.
Space Stations & LEOs	Based on International Bureau licensee data bases.
International Bearer Circuits	Based on actual FY 1995 payment units.
International HF Broadcast Stations, International Public Fixed Radio Service	Based on actual FY 1995 payment units.

