

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

FCC 97-215
74842

In the Matter of)
)
Assessment and Collection) MD Docket No. 96-186
of Regulatory Fees for)
Fiscal Year 1997)

REPORT AND ORDER

Adopted: June 16, 1997 ; Released: June 26 , 1997

By the Commission:

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I. Introduction

1. By this Report and Order, the Commission concludes its rulemaking proceeding to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress, pursuant to Section 9(a) of the Communications Act, as amended, has required it to collect for Fiscal Year (FY) 1997. See 47 U.S.C. § 159 (a).

2. Congress has required that we collect \$152,523,000 through regulatory fees in order to recover the costs of our enforcement, policy and rulemaking, international and user information activities for FY 1997. Public Law 104-208 and 47 U.S.C. § 159(a)(2). This amount is \$26,123,000 or nearly 21% more than the amount that Congress designated for recovery through regulatory fees for FY 1996. See Assessment and Collection of Regulatory Fees for Fiscal Year 1996, FCC 96-295, released July 5, 1996, 61 FR 36629 (July 12, 1996). Thus, we are revising our fees in order to collect the increased amount that Congress has required that we collect. Additionally, we are amending the Schedule in order to assess regulatory fees upon licensees and/or regulatees of services not previously subject to payment of a fee, to simplify and streamline the Fee Schedule, and to clarify and/or revise certain payment procedures. 47 U.S.C. § 159(b)(3).

3. In revising our fees, we have adjusted the payment units and revenue requirement for each service subject to a fee, consistent with Sections 159(b)(2) and (3). In addition, we have made changes to the fees pursuant to public interest considerations including the establishment of a procedure to limit the maximum increase in a fee for any individual fee category. The current Schedule of Regulatory Fees is set forth in §§ 1.1152 through 1.1156 of the Commission's rules. 47 CFR §§ 1.1152 through 1.1156. See Rule Changes and Attachment F for our revised fee schedule for FY 1997.

II. Background

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

5. For fiscal years after FY 1994, 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). Section 9(b)(3), entitled "Permitted Amendments," requires that we determine annually whether adjustments to the fees are warranted based upon the requirements of this subsection and that, whenever we make such adjustments, we take into account factors that are reasonably related to the benefits provided to the payer 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).

6. Section 9(i) requires that we develop accounting systems necessary to adjust our fees when making permitted amendments to the Fee Schedule and for other purposes and that we provide interested persons with an opportunity to comment concerning the allocation of our regulatory costs. 47 U.S.C. § 9(i). Finally, Section 9(b)(4)(B) requires that we 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. Summary of FY 1997 Fee Methodology

7. As noted above, Congress has required that we recover \$152,523,000 for FY 1997 through the collection of regulatory fees, reflecting its determination of the costs of our enforcement,

policy and rulemaking, international, and user information activities.¹ 47 U.S.C. § 159(a).

8. In our FY 1997 NPRM we developed our proposed FY 1997 fee schedule by first estimating payment units² for FY 1997 in order to determine the aggregate amount of revenue we would collect without any revision to our FY 1996 fees. Next, we compared this revenue amount to the \$152,523,000 that Congress has required us to collect in FY 1997 and pro-rated the shortfall of \$15,188,635 among all the existing fee categories. We then adjusted the projected revenue requirements of each category of service so that it equaled the actual cost of each service, using data accumulated by our cost accounting system to ensure that revenues from each category of service approximated, to the extent possible, our regulatory costs for each fee category.

9. We next examined the impact on each class of regulatees of using actual costs to establish regulatory fees in order to determine whether any regulatees would experience an unduly large fee increase. Our review disclosed that cost-based fees would result in fee payments dramatically higher for regulatees in many service categories in FY 1997 compared with their fees in FY 1996. Therefore, rather than proposing fully cost-based fees for FY 1997, we proposed to phase in full reliance on cost-based fees and, for FY 1997, to establish a revenue ceiling in each service no higher than 25 percent above the revenue that payers within a fee category would have paid if FY 1997 fees had remained at FY 1996 levels adjusted only for changes in payment unit volumes and the overall increase required by Congress.

10. Once we established our tentative FY 1997 fees, we evaluated various proposals made by Commission staff concerning other adjustments to the Fee Schedule and to our collection procedures. We discussed these proposals in Paragraphs 20-40 of the NPRM and factored them into our proposed FY 1997 Schedule of Regulatory Fees, set forth in Attachment F of the NPRM.

11. Finally, we incorporated, as Attachment H of the NPRM, proposed Guidance containing detailed descriptions of each fee category, information on the individual or entity responsible for paying a particular fee and other critical information designed to assist potential fee payers in determining the extent of their fee liability, if any, for FY 1997.

¹ The impact of regulatory fees on the FCC's appropriation is substantial. For example, without regulatory fees to offset the Commission's costs, the FCC would require a Congressional appropriation of \$189 million for FY 1997. When offsetting regulatory fees are taken into consideration, only \$37 million must be appropriated from tax receipts to fund the Commission. Thus, taxpayers are spared the expense of funding almost 80% of the Commission's annual budget. Funds collected as application or filing fees pursuant to Section 8 of the Act are deposited into the General Fund of the U.S. Treasury as reimbursement to the United States but, unlike Section 9 regulatory fees, do not offset funds appropriated to the Commission. 47 U.S.C. 158(a)

² Payment units are the number of subscribers, mobile units, pagers, cellular telephones, licenses, call signs, adjusted gross revenue dollars, etc. which represent the base volumes against which fee amounts are calculated.

B. Cost-Based Fee Methodology

12. In our NPRM, we announced that we had implemented our new cost accounting system and that we would rely on the cost accounting system to assist us in determining our costs of regulation of those services subject to a fee for FY 1997. In response, several interested parties, including the Personal Communications Industry Association (PCIA), Century Cellunet, Inc. (Century), and PanAmSat Corporation (PanAmSat), contend that we failed to explain the accounting system sufficiently to permit interested parties to determine how the system distributes costs among our various services. Comsat argues that we merely disclosed the results of the cost accounting system and, therefore, interested parties cannot evaluate our cost accounting system or suggest improvements. In addition, PCIA, Arch Communications Group, Inc. (Arch) and Columbia Communications Corporation (Columbia), among others, argue that without more data concerning our assignment of costs, they cannot determine whether the costs attributed to their services are reasonable estimates of our actual costs of regulating their services.

13. We are satisfied that our NPRM provided sufficient information describing the accounting system to afford interested parties the opportunity to comment. Our NPRM made it clear that our cost accounting system relied upon information derived from our personnel/payroll system and our fiscal accounting system as the basis for recording direct and indirect costs, separately and combined, for every major category of service subject to a fee. Also, we stated that the cost accounting system was designed to generate useful data for identifying the actual costs of our regulation by category of service and that this information, combined with other information,³ would yield fees more closely reflecting our cost of service. We stated that the system was integrated with our personnel/payroll system and collected both personnel and payroll information by category of service to insure accurate and timely production of cost of service information. In sum, the system we developed for distributing costs is a derivative of our payroll and accounting systems with the added feature that it collects cost of service information on an employee-by-employee basis.

14. Moreover, we are confident that our NPRM provided sufficient detail concerning not only our manner of distributing costs of personnel directly assigned to regulatory activities, but other costs included in our determination of regulatory costs. We stated that the system separately identifies direct costs, including salary and expenses for staff directly assigned to our operating Bureaus, and other costs, such as rent, utilities and contracts, directly attributable to such personnel. Also, we stated that we included as indirect costs those costs attributable to personnel assigned to overhead functions, including such functions as field and laboratory staff, on a proportional basis; i.e., spread among all categories of service subject to a fee according to their share of direct costs. Finally, in Attachment D of the NPRM, we provided a precise calculation of the regulatory costs, including separate discussions of the cost accounting system's accumulation of the direct, indirect and total actual costs for each

³ Specifically, information pertaining to payment units and total amounts required to be collected.

major category of service. Thus, we are satisfied that our NPRM, consistent with Section 9(i) of the Act, sufficiently described our cost accounting system, including how it distributes actual costs among the various categories of service, affording parties an understanding of the system sufficient for them to submit comments on how the system allocated costs among those services subject to a regulatory fee. 47 U.S.C § 159(i).

15. Nevertheless, in consideration of the increased amount that Congress has required that we recover through regulatory fees in FY 1997, we believe that we should describe our cost accounting system in further detail so that interested parties may be reassured about the integrity of the system and its unbiased distribution of costs.

16. Our cost accounting system was developed under contract by American Management Systems, Inc (AMS) in FY 1995. From its inception, the system has been integrated with the Commission's bi-weekly payroll and fiscal accounting systems and, as such, its procedures conform to generally accepted cost accounting principles and standards as mandated by the General Accounting Office (GAO) and by the U.S. Treasury Department. The cost accounting system contains built-in safeguards and internal controls designed to ensure data integrity. For example, employees are required to certify the accuracy of the service category codes they designate on their time and attendance reports, timekeepers must enter data according to procedures established in system guidelines, and supervisors are required to review and attest by their signature that coding appears to be appropriate. Additionally, standards are in place which prevent employees from altering their own cost accounting data in the automated payroll system. Standardized system follow-up reports are also periodically provided to Bureau/Office administrative and management officials for their review to ensure that staff are following system guidelines.

17. Additionally, as official financial records, employee cost accounting code sheets are associated with formal time and attendance records and maintained in accordance with prescribed GAO standards. As with all financial systems, criminal and/or administrative penalties apply should any fraudulent or coercive actions associated with either the payroll or cost accounting system be discovered. To date, no known deficiencies of this nature have been identified or alleged.

18. As we have noted, the actual accumulation of cost of service information is derived from our automated personnel/payroll system. In order to collect cost of service information, the cost accounting system requires that each Commission employee select or designate a particular cost code or multiple codes when completing bi-weekly payroll sheets.⁴ Cost codes consist of a two digit code designating the proper "Activity" (e.g., Authorization of Service, Policy & Rulemaking, Enforcement, Public Information) together with a three digit code

⁴ Some employees who routinely work on the same activities each pay period may use default codes which reduce the need to enter new codes each pay period. These employees have the option of changing codes as dictated by the work they perform.

designating the "program" or fee category.⁵ The Commission has utilized its basic "activity" definitions for Office of Management and Budget (OMB) and Congressional Budget purposes and for fiscal accounting reporting requirements for many years, with agency employees generally well acquainted with the distinction between feeable (i.e., Policy & Rulemaking, Enforcement, Public Information, International) and non-feeable (i.e., Authorization of Service) activities. The selection of "program codes" used for accumulating regulatory fee costs by service category, on the other hand, were newly established for the cost accounting system.^{6 7} To ensure smooth implementation, extensive training was provided to timekeepers and each Commission employee was provided with detailed instructions pertaining to use of the cost accounting system prior to system implementation.

19. As noted, the program cost codes that we designated for regulatory fee development correspond to the major fee categories contained in the Commission's Schedule of Fees. Every pay period, each employee completes a time and attendance form and verifies with his or her initials the accuracy of the distribution of worktime among the various Commission programs, including those programs covered by regulatory fees.⁸ In turn, the employee's supervisor is required to review and to certify the accuracy of the employee's entries before the details of the employee's work statement are key-entered into our automated payroll

⁵ Although the Commission collects cost data for Authorization of Service activities and for reimbursable activities, these costs are not used in developing annual regulatory fees.

⁶ See Attachment J for a list of all cost accounting codes.

⁷ The Commission's cost accounting system was designed to provide the flexibility to add or delete cost codes not only at the beginning (or end) of a fiscal year, but during the course of the fiscal year as well. This increases the accuracy of cost allocation by allowing the agency to quickly begin accumulating costs when required for operational or fee development purposes without waiting weeks or months to do so. In June 1996, two new codes were added to the cost code structure in place at the beginning of FY 1996. One of the codes was for accumulating costs relative to LEOs and the other was for accumulating costs associated with Signatory activities. Prior to establishment of these new codes, International Bureau staff were only able to allocate their work time to existing fee categories (i.e., space stations, earth stations, international public fixed radio, international HF radio stations and international bearer circuits). To obtain an approximation of full-year costs in these situations, the standard mathematical procedure would normally be to "annualize" the partial year costs. Annualization is a simple predictive process which estimates what accumulated costs would be for a full year based on partial year data. It assumes that costs for similar periods during the fiscal year would mirror the costs accumulated in the partial year period. For example, if \$500 in costs were accumulated for three months of a fiscal year, the annualized cost accumulation would total \$2000 (\$500/3 months times 12 months). Unfortunately, due to administrative oversight, many employees actually working on activities related to LEOs and signatory activities were not made aware of the new cost codes and, therefore, the time allotted by employees to these two activities was inadvertently less than the time actually spent by employees on these two activities. To correct this imbalance, the International Bureau reviewed its actual FY 1996 FTE usage to identify by Activity and fee category where it had actually been spending its finite staff resources during FY 1996. This breakout of staff time was then used to allocate actual International Bureau costs to its several fee categories as shown on Attachment D.

⁸ As noted in the NPRM, it is impractical to require employees to allocate their time into very small increments. However, most employees do allocate their time in increments of one hour.

system (operated by the Department of Agriculture's National Finance Center) along with all other bi-weekly payroll data by time and attendance clerks. Built-in system checks and detailed follow-up reports are distributed to all Bureaus/Offices to insure that data entry is completed in an accurate manner and that resulting reports are accurate.⁹ During FY 1996, senior administrative staff were assigned to carefully monitor the new cost accounting system to insure system integrity. Although the government-wide furlough in early FY 1996 hindered the resolution of minor problems pertaining to integration of the new program codes at the onset of system implementation, these problems were subsequently corrected and cost accounting data for FY 1996 used in the formulation of FY 1997 fees do not contain any known omissions or erroneous data.

20. In addition to personnel costs, which make up about 80% of the Commission's overall costs, the agency's cost accounting system also accumulates non-personnel costs. These are the costs of office rental, equipment, travel, information technology, supplies, contracts and telecommunications services. Non-personnel costs are generally accrued on an actual basis at the time the Commission obligates itself to pay for these materials and services. Some costs, such as annual and sick leave costs, and other obligations such as rental of space and telecommunications, are not logically chargeable to a specific fee category at the time they are incurred. In these situations, they are allocated at month-end to all fee categories based on how direct costs were incurred during the reporting period. For example, costs for annual and sick leave are allocated on a pro-rated basis to fee categories incurring direct costs during the accounting period. In an effort to report costs as accurately as possible, the allocation is limited to the organizations where the leave was taken, rather than across all organizations. Costs for office space rental and telecommunications, on the other hand, are allocated to each fee category --FCC-wide-- that incurred direct costs during the month. At the end of each accounting period, the cost accounting system combines the non-personnel costs with the Commission's salary and benefits (payroll) costs and then distributes various overhead costs to specific fee categories based on pre-determined allocation formulas.^{10 11}

⁹ The Commission's cost accounting system also accumulates detailed FTE data. Prior to implementation of the cost accounting system, FTEs used in budget and fee development were estimated by agency program managers.

¹⁰ Overhead costs include a number of components: (a) the time of employees whose functional activities cannot logically be designated or allocated to a single or even several fee categories (e.g., Commissioners and their immediate staffs, staff supporting all Commission organizations); and (b) subsidized activities specifically excluded from fee assessment (e.g., amateur radio, public safety and government licensee oversight, non-commercial radio and TV licensees, CB, ship and aircraft radio users and non-profit organizations). Together these costs are estimated to total nearly 40% of the Commission activity costs covered by regulatory fees. As noted elsewhere in this Report and Order, additional allocations are made proportionally to all the fee categories in order to bring total accumulated costs up to the total amount Congress requires us to collect. Additionally, actual costs at any point in time, including the end of a fiscal year, will not exactly equal the amount Congress requires us to collect because Congress' estimate of costs to be recovered through regulatory fees is generally determined at least twelve months before the end of the fiscal year to which the fees actually apply. As such, year-end actual activity costs will not equal exactly the amount Congress designates for collection in a particular fiscal year.

C. Relationship of Cost of Service to Revenue Requirement

21. PCIA and other commenters contend that there is no basis for or relationship between the revenue that the Commission is proposing to collect from a particular fee group and the amount of regulatory work or oversight associated with that fee group. As discussed in Paragraph 2, the Commission, by statute, must collect annually from its licensees and regulatees the amount specified by Congress. Further, in Paragraph 14, we stated that the direct costs of our regulatory oversight comprise only a portion of the overall costs we are required to recover through regulatory fees. Direct costs include salary and expenses for (a) staff directly assigned to our operating Bureaus and performing regulatory activities and (b) staff assigned outside the operating Bureaus to the extent that their time is spent performing regulatory activities pertinent to an operating Bureau. Indirect costs include costs of support personnel assigned to overhead functions such as field and laboratory staff and certain staff assigned to the Office of Managing Director. Support costs, for both direct and indirect staff, also must be recovered. These costs include rent, utilities, equipment and contractual costs attributable to regulatory oversight.

22. Our fees also recover costs attributable to regulatees that Congress, in Section 9(h) of the Act, has exempted from payment of a fee and those regulatees that obtain a waiver or reduction of their fee payment pursuant to Section 9(d) of the Act. 47 U.S.C. Section 159(d),(h). Fee payers must also offset other costs attributable to regulatees whose fees have been eliminated or reduced through permitted amendments in accordance with Section 9(b)(3) of the Act. For example, Citizen's Band Radio and most recreational ship and aircraft radio station operators, amateur radio licensees, governmental entities, licensees in the public safety radio services, and all non-profit groups are not required to pay a fee. The costs of regulating these entities is borne by those regulatees subject to a fee requirement, with no direct measurable benefit accruing to such fee payers. We recover our costs of regulation for exempt entities by allocating our regulatory costs attributable to them on a proportional basis across all fee categories so as to not unduly impact any particular category of fee payers.

23. Thus, in direct response to PCIA, our fees are designed to recover the amount that Congress has required us to collect and, although based upon the cost of service of each category of regulatee, include costs that are not directly related to those entities subject to a fee. Therefore, a particular fee and resulting revenue collection will invariably exceed the service's direct regulatory costs because the revenue requirement for any of our services, and thus the fees assessed upon fee payers in those services, will be higher than their actual cost

¹¹ Leave costs, indirect costs related to centralized services and bureau-specific support costs are distributed among the various fee categories that a particular organization supports. The costs are distributed on a pro-rata basis to only those fee categories that incurred direct costs during the accounting period. As a final step, executive direction and related support costs are distributed FCC-wide to all fee categories incurring direct costs during the accounting period.

of service, notwithstanding that actions by Congress and the Commission to deregulate would appear to warrant a lower fee.

24. Several commenters also allude to our proposal to use actual FY 1996 regulatory costs as the basis for determining FY 1997 costs and question whether FY 1997 costs will approximate FY 1996 costs. For example, PCIA contends that we have not demonstrated that our FY 1996 costs are sufficiently related to our FY 1997 costs to rely on our FY 1996 costs to establish our fees for FY 1997.

25. Clearly, the Commission cannot determine actual FY 1997 costs until well after the close of FY 1997, several weeks after the collection of FY 1997 fees must be completed. Moreover, even though we could have estimated our FY 1997 costs per service in our NPRM, that estimate would have been based on only three months of FY 1997 data. Also, any method for estimating future FY 1997 costs would become a point of controversy and contention because it is difficult, if not impossible, to predict with any certainty the regulatory costs per service in view of today's dynamic telecommunications regulatory environment. Under our proposal to base our fees on the previous year's actual costs of regulation, we eliminated the need to rely on estimated costs. Because we foresee no lessening in the dynamic pace of technological development and innovation in the communications regulatory environment, we are reluctant to continue to rely on estimated future costs when actual costs for a prior year are available. Therefore, we shall not rely on estimates of future costs, and, henceforth, will develop our fees based on historic cost data. We note that even if FY 1997 costs were ultimately to differ from those based on FY 1996 data, our proposed methodology would effectively adjust FY 1998 fees to take into account actual FY 1997 costs.

26. Several of the parties contend that their fees bear little or no relationship to their costs of regulation or to the benefits they receive from our regulation. These parties contend that our fees should be calculated to recover an amount reflecting the cost of the services performed and the value conferred on the payor pursuant to Section 9(b)(1)(A) of the Act. 47 U.S.C. § 159(b)(1)(A).

27. We again reject the arguments that our proposed fees are inconsistent with the statute or otherwise unlawful because they are not completely cost-based or do not reflect the benefits received by entities subject to a fee payment. Section 9(a) requires that we recover our costs "in the total amounts required in Appropriations Acts." 47 U.S.C. § 159(a). Section 9(a) does not require that we base our fees solely on benefits to regulatees or that the fees recover from an entity only its particular cost of regulation. In our FY 1995 Report and Order, we stated that we are not limited to setting regulatory fees only in the amount that reflects services received by regulated entities. 10 FCC Rcd at 13521, citing Skinner v. Mid-America Pipe Line Co., 490 U.S. 212, 224 (1989). Rather, once Congress, as in Section 9, has made a proper delegation of authority to raise funds, "so long as the fees in question are within the scope of Congress' lawful delegation of authority in Section 9, they are constitutional." Id. Thus, as we noted in our FY 1995 Report and Order, we "can collect fees from regulatees for their use of frequencies and for the potential benefits of [our] regulatory activities, even if

they do not utilize these activities." See 60 FR 34008, (June 29, 1995), citing United States v. Sperry Corp., 493 U.S. 52, 63. Moreover, no requirement exists that the fees we establish be designed to recover only the costs of those benefits directly received by an entity.

28. Arch and PCIA point out that our NPRM did not provide actual FY 1996 fee collection data, including the number of actual payment units and the actual amount of fees collected in certain fee categories. These commenters contend that such information is essential to its evaluation of Commission fee proposals for FY 1997. We recognize that we did not provide a detailed listing of actual FY 1996 collections data in the NPRM. However, Attachment B of the NPRM contained a service-by-service explanation of the basis for our estimated FY 1997 payment units. Several of these are based on actual FY 1996 payments. Others are based on estimates obtained from Commission program experts or from regulated industries. In any case, as we noted in the NPRM, we consider as one factor in estimating payment units the actual number of payment units recorded in our fees collection system for FY 1996. These payment unit estimates use "as of" dates corresponding to the beginning of the current fiscal year or, for some fee categories, at the end of the previous calendar year. We believe that this reliance upon actual "historical" or retrospective FY 1996 data provides us a much greater confidence level than would an estimate of payment units made prospectively. Finally, from the inception of the regulatory fee collection program, actual historical payment units and collection amounts for the various categories of services have been routinely available for inspection to interested persons upon request. In sum, we cannot find that there is a basis for concluding that these commenters could not fairly evaluate our proposed fees for FY 1997 given the information pertaining to payment units contained in the NPRM and detailed collections data readily available from the Commission. Additionally, we note that no interested party proposed alternative payment units for any category of service for FY 1997.

29. Finally, PCIA, Century, Columbia and other interested parties are concerned about the amount of our proposed increase in their revenue requirements and in their fee amounts for FY 1997 compared with those established for FY 1996. They question how estimates of actual costs for FY 1996 and FY 1997 could differ so significantly from one year to the next in certain fee categories. The most obvious reason for major differences, as we have noted elsewhere, is that Congress has increased the total amount we are to collect by more than 20% in FY 1997 compared to FY 1996. Also, we must recover our indirect and overhead costs as well as direct costs of regulating services and also must recover our regulatory costs generated by regulatees not subject to a regulatory fee. Our fees for FY 1996 were developed using existing FY 1995 fee amounts adjusted for changes in payment units. These fees were developed without the benefit of actual cost data and were essentially based on (a) the Congressionally established relationships between fees contained in Section (g) of the Act, and (b) subsequent adjustments based on estimated changes in FTE levels and payment units. By contrast, for FY 1997, we proposed to rely upon actual cost accounting data as the basis for determining revenue requirements and fee amounts. Thus, there are few, if any, grounds for comparison between FY 1996 fees and revenue requirements and corresponding fees and revenue requirements for FY 1997. Accordingly, the amount that FY 1997 fees rise or fall

relative to FY 1996 fees is essentially unrelated to any change in actual costs, but instead to the application of different methodologies and an increasing revenue requirement mandated by the Congress.

30. After taking into consideration the comments received in this proceeding concerning our regulatory costs and our cost accounting system, we have decided to adopt the overall cost-based methodology proposed in the NPRM for developing FY 1997 fees. As discussed in the preceding paragraphs, we believe adoption of this methodology will best insure the fairest allocation of costs and resultant fees among the Commission's regulatees in FY 1997.

D. Application of Cost-Based Methodology To Determine Fee Amounts

1. Adjustment of Payment Units

31. As the first step in calculating individual service regulatory fees for FY 1997, we adjusted the estimated payment units for each service because payment units for many services have changed substantially since we adopted our FY 1996 fees. We obtained our estimated payment units through a variety of means, including our licensee data bases, actual prior year payment records, and industry and trade group projections. Whenever possible, we verified these estimates from multiple sources to ensure the accuracy of these estimates.¹² Attachment B provides a summary of how payment units were estimated for each fee category.

2. Calculation of Revenue Requirements

32. We next multiplied the revised payment units for each service by our FY 1996 fee amounts in each fee category to determine how much revenue we would collect in FY 1997 without any change to the existing Schedule of Regulatory Fees. The amount of revenue we would collect is approximately \$137.3 million¹³. This amount is approximately \$15.2 million less than the amount the Commission is required to collect in FY 1997. We therefore adjusted the revenue requirements for each fee category on a proportional basis, consistent with Section 9(b)(2) of the Act, to obtain an estimate of revenue requirements for each fee category necessary to collect the \$152,523,000 amount required by Congress for FY 1997. Attachment C provides detailed calculations showing how we determined the revised revenue amount for each service.

¹² Certain payment unit estimates have been revised since release of the NPRM due to additional or updated information obtained by the Commission. This may result in changed fee amounts from those proposed in the NPRM. It is also important to note that Congress' required revenue increase in regulatory fee payments of approximately 21 percent in FY 1997 will not fall equally on all fee payers due to differences in payment unit estimates between FY 1996 and FY 1997.

¹³ This revenue amount has changed since release of the NPRM due to changed estimates of payment units.

3. Calculation of Regulatory Costs

33. On October 1, 1995, the Commission implemented, in accordance with 47 U.S.C. § 159(i), a cost accounting system designed, in part, to provide us with useful data, in combination with other information, to help ensure that fees closely reflected our actual costs of regulation.

34. In order to utilize actual costs derived from our cost accounting system for fee development purposes, indirect support costs contained in the cost accounting system have to be added to direct costs¹⁴ and the results adjusted further to approximate the amount of revenue that Congress requires us to collect in FY 1997 (\$152,523,000).¹⁵ Thus, we proportionally adjusted the actual cost data related to regulatory fee activities recorded for the period October 1, 1995 through September 30, 1996 among the fee categories so that total costs approximated \$152,523,000. The results of these calculations are shown in detail in Attachment D and represent our best estimate of actual total attributable costs relative to each fee category and sub-category for FY 1997. For fee categories differentiated by class or market (e.g., VHF and UHF Commercial Television), we distributed the costs to the class or market group by maintaining the relationships between class or market revenue requirements shown on Attachment C.^{16 17}

¹⁴ One feature of the cost accounting system is that it separately identifies direct and indirect costs. Direct costs include salary and expenses for (a) staff directly assigned to our operating Bureaus and performing regulatory activities and (b) staff assigned outside the operating Bureaus to the extent that their time is spent performing regulatory activities pertinent to an operating Bureau. These costs include rent, utilities and contractual costs attributable to such personnel. Indirect costs include support personnel assigned to overhead functions such as field and laboratory staff and certain staff assigned to the Office of Managing Director. The combining of direct and indirect costs is accomplished on a proportional basis among all fee categories as shown on Attachment D.

¹⁵ Congress' estimate of costs to be recovered through regulatory fees is generally determined at least twelve months before the end of the fiscal year to which the fees actually apply. As such, year-end actual activity costs will not equal exactly the amount Congress designates for collection in a particular fiscal year.

¹⁶ While some might argue that the Commission's cost accounting system should further distinguish our work activities to the television market or radio class level, it would not be practical to record employee work time in such small incremental breakouts.

¹⁷ In the NPRM we erroneously distributed these costs by maintaining the relationship between fees contained in the FY 1996 Fee Schedule. As commenters pointed out, we should have made these distributions by maintaining the relationship between FY 1996 revenue requirements for these fee categories. The following example illustrates the allocation process:

Under the FM Radio fee classification, the actual costs attributable to FM radio are \$8,465,118. This amount is allocated to FM Classes C,C1,C2,B; Classes A,B1,C3; and FM Construction Permits (CP) as follows:

(1) First we determine the relationships between the three categories (see Attachment C) by dividing the smallest of the pro-rated FY 1997 FM revenue requirements into the sum of the pro-rated FY 1997 FM revenue

4. Establishment of 25 Percent Revenue Ceiling

35. Our next step was to determine whether reliance on actual costs to develop FY 1997 regulatory fees would result in fees which were too disparate from corresponding FY 1996 fees. As a result of this analysis, we proposed establishing a ceiling of 25 percent on the increase in the revenue requirement of any service over and above the Congressionally mandated overall increase in the revenue requirement and after taking into consideration changes in payment unit counts.¹⁸

36. Because Congress has increased our overall fee collection requirement, we are already required to collect substantially more than we collected in FY 1996. Nevertheless, capping each service's revenue requirement at no more than a 25 percent increase would enable us to begin the process of realigning fees to account for differences in regulatory costs. As we noted in the NPRM, we are not suggesting that FY 1997 fee increases be limited to a 25 percent increase over FY 1996 fees. The 25 percent increase would be over and above the revenue which would be required after adjusting for the projected FY 1997 payment units and the proportional share of the 21 percent increase in the amount that Congress requires us to collect. Thus, FY 1997 fees could increase by more than 25 percent over FY 1996 fees. Under this methodology, fees could actually increase by as much as 40% or more.

requirements to determine the appropriate ratios for allocation of the revenue requirement.

(a) Pro-rated FY 1997 FM CP revenue requirement = \$235,258
Pro-rated FY 1997 FM Classes A, B1, and C3 revenue requirement = \$2,546,006
Pro-rated FY 1997 FM Classes C, C1, C2, and B revenue requirement = \$3,621,944
Sum = \$6,403,208

(b) FM CP percentage is \$235,258 divided by \$6,403,208 = 0.0367
FM Classes A, B1, and C3 percentage is \$2,546,006 divided by \$6,403,208 = 0.3976
FM Classes C, C1, C2, and B percentage is \$3,621,944 divided by \$6,403,208 = 0.5656

(2) Finally, we determine the new revenue requirement for each of the three by multiplying the cost-based revenue requirement for all of FM by each of the percentages calculated in (1)(b).

FM CP revenue requirement = 0.0367 times \$8,465,118 = \$310,670
FM Classes A, B1, and C3 revenue requirement = 0.3976 times \$8,465,118 = \$3,365,731
FM Classes C, C1, C2, and B revenue requirement = 0.5656 times \$8,465,118 = \$4,787,871

(3) The revenue requirements calculated in (2) are inserted in Attachment D for the three FM categories.

¹⁸ For example, the regulatory cost associated with the Aviation (Aircraft) service is \$934,905. If no change were made to this service's FY 1996 regulatory fee (\$3 per year), the total revenue collected from licensees in this service would be only \$70,634 in FY 1997, a shortfall of \$864,271. Application of the proposed 25 percent revenue ceiling to this service results in a capped revenue ceiling of \$88,293 (\$70,634 x 125%).

37. An important consideration in establishing a revenue ceiling is the impact on other fee payers. Because the Commission is required to collect \$152,523,000 in FY 1997 regulatory fees, the additional revenue that would have been collected from classes of licensees subject to a revenue ceiling, instead needs to be collected from licensees not subject to the ceiling. This results in a certain amount of subsidization between fee payer classes.¹⁹ We believe, however, that the public interest would best be served by adopting a revenue ceiling because, otherwise, several entities would be subjected to unexpected, substantial increases which could severely impact the economic well being of these licensees.²⁰

38. SBC Communications Inc. and Ameritech submit that the subsidization resulting from application of the 25% revenue ceiling is unfair and that the phased-in methodology proposed by the Commission has the effect of moving revenues further from actual costs than they would be without the ceiling, contrary to the goal of eventually having revenue requirements approximate actual costs. Both suggest that the Commission abandon the revenue ceiling concept, with SBC proposing that the Commission merely apply a uniform 21% increase to all regulatees' fees.

39. Regulation of interstate telephone service providers accounts for approximately 36% of all Commission costs. Therefore, any methodology which employs a subsidization feature, such as our proposed revenue ceiling, will impact these regulatees to a greater extent than others, at least in the short term. As other fee payers' fees approach amounts that bring their revenues closer to actual costs, as our phased-in revenue ceiling technique would do, the amount of subsidization required of fee payers below their revenue ceilings (such as those common carriers providing interstate telephone service) will steadily decrease. Thus, in the long term, subsidization will decrease and revenue requirements for all services will approach actual costs (assuming other factors, such as the total amount that Congress requires us to collect, remain constant).

¹⁹ Revenues from current fee payers already offset significant costs attributable to regulatees exempt from payment of a fee or otherwise not subject to a fee pursuant to Section 9(h) of the Act or the Commission's rules. For example, CB and ship radio station users, amateur radio licensees, governmental entities, licensees in the public safety radio services, and all non-profit groups are not required to pay a fee. The costs of regulating these entities is borne by those regulatees subject to a fee requirement.

²⁰ For example, the following illustrate the annual fees that would be in effect if fees were cost-based without application of a revenue ceiling:

LEOS - \$2,412,025
International Public Fixed Radio Stations - \$6,750
MDS/MMDS - \$1,025
International Bearer Circuits - \$25
Marine Coast & Ship Stations - \$30 (Total upfront payment=\$300)
Aircraft - \$45 (Total upfront payment=\$450)

40. Additionally, although SBC and Ameritech are correct that the revenue requirement proposed for FY 1997 for telephone companies providing interstate toll services is higher than the total costs attributable to these companies, revenues are only up 6.5% from what they would be if FY 1996 fees remained in place. Further, proposed revenues from these carriers would increase 23% over the applicable FY 1996 revenue requirement for these entities, comparing well with the overall 21% increase in fee collections ordered by the Congress for FY 1997. Additionally, SBC's proposal to set fees at amounts 21% over FY 1996 fee amounts is not mathematically sound. As we note elsewhere in this item, changes to payment units from FY 1996 to FY 1997 must be taken into consideration when determining the amount of revenue that would be collected from one year to the next. Overall increases to payment unit estimates from one year to the next, even without changes to previous year fee amounts, provides additional revenue, offsetting to some extent, any required increase to overall collections. On the other hand, any reduction in payment units requires higher fees to offset the resultant loss of revenue. The application of a percentage increase to either prior year fee amounts or prior year revenue requirements, as proposed by SBC, would therefore not provide any benefit and is rejected as non-workable in concept.

41. For the reasons discussed above, we will adopt the 25% revenue ceiling proposed in the NPRM. Attachment E contains a description of the step-by-step process we used to calculate adjusted revenue requirements for each fee category for FY 1997, including the reallocation of revenue requirements resulting from the application of our revenue ceiling.²¹

5. Calculation Of Fees

42. Once we determined the amount of fee revenue needed to be collected from each class of licensee, we divided the individual revenue requirements by the number of associated payment units (and by the license term, if applicable, for "small" fees) to obtain actual fee amounts for each fee category. These calculated fee amounts were then rounded in accordance with Section 9(b)(3) of the Act. See Attachment E.

E. Other Changes

43. In our NPRM, we proposed several adjustments to our fees and/or changes to payment procedures based upon the public interest and other criteria established in 47 U.S.C. 159(b)(3). Additionally, we received several comments and suggestions unrelated to our specific proposals contained in the NPRM.

²¹ Application of the 25% ceiling was accomplished by choosing a "target" fee revenue requirement for each individual fee category. This "target" was either the actual calculated revenue requirement (for those categories at or below the 25% ceiling) or, in cases where the calculated revenue exceeded the ceiling, an amount equal to the ceiling. The shortfall created by reducing the revenue requirement of those whose revenue requirement exceeded the revenue ceiling was proportionately spread among those fee categories whose revenue requirements were below the ceiling. This computation required more than one round of adjustment because the allocation of this revenue, in a few instances, caused the new revenue requirement amount to exceed the 25% ceiling. After two iterations (rounds), all the revenue requirements were at or below the revenue ceiling. See Attachment E.

1. Consolidation of Private Microwave and Domestic Public Fixed Fee Categories

44. In our prior fee schedules, we required Private Microwave licensees to pay "small" regulatory fees, in advance, for an entire license term at the time of filing an initial, renewal or reinstatement application. Congress established this requirement in its statutory fee schedule. 47 U.S.C § 159(g). In contrast, our fee schedules and the statutory fee schedule have required licensees in the Domestic Public Fixed Service category to file an annual "standard" regulatory fee. Private Microwave licensees include systems authorized under Part 101 of the Commission's rules to provide point-to-point telecommunications services to private parties. The Domestic Public Fixed Service comprises several commercial microwave services, including microwave multiple address, microwave common carrier fixed, microwave digital electronic message, and microwave local TV transmission.²²

45. In our NPRM at Paragraph 23, we stated that many microwave licensees had expressed confusion concerning whether to submit a small fee or a standard fee. We noted that the operational and technical characteristics of private microwave and commercial microwave systems are similar. Thus, we proposed to consolidate these fee categories into a single Microwave category for FY 1997. Only one interested party, IXC Carrier, Inc. (IXC), commented on our proposal. IXC supports our proposal, stating that not only are these services similar in their operational and technological characteristics, but that our regulatory oversight of these services is identical.

46. Accordingly, we are adopting our proposal to establish in our fee schedule a single fee category covering licensees in both the Domestic Public Fixed Service and the Private Microwave service. As we have noted, these services are operationally and technologically similar, and we agree with IXC that our regulation is essentially the same for these services. Thus, these payers would be subject to payment of a single "small" fee, payable in advance for the entire term of their license when filing an initial, renewal, or reinstatement application. Those licensees that paid the standard "annual" regulatory fee per station in FY 1996 are not subject to a fee payment for FY 1997 unless they file a new, renewal or reinstatement application. The regulatory fee for Microwave licensees for FY 1997 will be \$10 per license. This new fee is calculated as follows:

(a) From Attachments C and E:

- (1) 5,350 private microwave stations (units) (Revenue requirement = \$535,000)
- (2) 18,845 commercial microwave/public fixed stations (units) (Revenue requirement = \$94,225)

²² Although the Multipoint Distribution Service (MDS) and the Multichannel Multipoint Distribution Service (MMDS) were originally grouped with Domestic Public Fixed services, we have, since FY 1995, listed them separately in our Fee Schedule.

(b) Converting from annual payment ("standard fee") to license term payment ("small fee"):

(1) 18,845 commercial microwave units divided by 10 year license term = 1,885 commercial microwave units to be licensed each year.

(c) Calculation of new microwave fee: The sum of the two revenue requirements divided by the sum of the units to be licensed and divided by the license term as follows:

(1) $((\$535,000 + \$94,225) \text{ divided by } (5,350 + 1,885)) \text{ divided by } 10 \text{ years} = \$8.70.$

(d) Round fee to the nearest five dollars = \$10 (47 U.S.C § 159(b)(2)).

2. Commercial AM/FM Radio

47. In our NPRM to establish regulatory fees for FY 1996, we stated that we "were particularly interested in a proposal which would associate population density and service area contours with license data" and we requested interested parties to propose alternatives for assessment of AM and FM fees. Assessment and Collection of Regulatory Fees for Fiscal Year 1996, FCC 96-153, at Paragraphs 20-21 (April 9, 1996), 61 FR 16432 (April 15, 1996). In response, the Montana Broadcaster's Association (Montana) filed comments proposing an AM and FM fee structure based on class of station and relative market size. However, we decided not to take any action on Montana's proposal until we had an opportunity to more extensively evaluate its impact on AM and FM licensees. Assessment and Collection of Regulatory Fees for Fiscal Year 1996, FCC 96-295, at Paragraphs 23-29, July 5, 1996, 61 FR 36629 (July 12, 1996).

48. We issued a Notice of Inquiry (NOI) to determine if it would be feasible to utilize both market size and class of station to assess annual regulatory fees on commercial AM and FM broadcast radio stations. See Amendment of Part 1 of the Commission's Rules Pertaining to the Schedule of Annual Regulatory Fees for Mass Media Services, FCC 96-422, released November 6, 1996, 61 FR 59397 (November 22, 1996). In response to the NOI, Montana filed a proposal which would group radio markets by Arbitron market size, with the fee for each market group predicated on the ratios that Congress initially established in Section 9(g) of the Act (47 U.S.C. § 159(g)) for assessing fees for licensees of television stations serving different sized markets. The National Association of Broadcasters ("NAB") also submitted a proposal under which stations would pay a fee determined not only by class, but by population served, irrespective of the market in which they are located. However, we identified several problems with each proposal that needed to be resolved, and our FY 1997 NPRM invited interested parties to comment on the NAB and Montana proposals, as well as on any alternative method for assessing radio station fees. All relevant comments received by the Commission in response to the NPRM support the NAB or Montana proposal or some variation thereof. As discussed below, the fee mechanism we are adopting utilizes the best features of the NAB proposal, while correcting its defects.

49. Neither the Montana nor the NAB proposal provide an ideal method of assessing radio station fees. For example, the Arbitron rankings, relied on by Montana, are incomplete for several markets. Markets are only ranked if a sufficient number of stations located within the market subscribe to the Arbitron service, and a station may be placed in a market if it competes with market stations even though it may not be physically located in a major metropolitan area within the market, or it may be placed in a market based on data collected during a promotional programming period which is not reflective of normal operations. Similarly, NAB's proposal is flawed because the database on which NAB's fee schedule is based contains more than 800 errors, omissions, erroneous station classes, duplicate records, non-profit or non-commercial stations (which are exempt from payment of regulatory fees), incorrect call letters, "silent" stations, and Canadian stations.

50. Nevertheless, we fully agree that using population to assess radio station fees is an improvement over the current method for assessment of AM and FM fees, assuming a systematic schedule can be developed using accurate population class of station data. The NAB proposal to use population within a station's area of coverage offers greater specificity and flexibility than our current method of assessing these fees.²³ To obtain an accurate data base to implement such an improved fee methodology, we corrected NAB's database, using the Commission's own records, including official station files. The resulting compilation of stations, based on official Commission records and the population coverage data provided to the Commission by NAB, provided an accurate starting point for developing the improved AM/FM fee schedule.

51. We next calculated the individual revenue requirements and resultant fees for each class of station (e.g., AM Class A or FM Classes C, C1, C2 & B) under our existing methodology for assessing radio station fees as shown in Attachment E. In order to consider both population and class of station, we then multiplied that fee by the population served to determine the weighted population. The weighted approach also streamlines the schedule by allowing us to combine AM and FM stations into a single "radio" category. The following table is a representative illustration of how we determined the weighted population for each station.

²³ DataWorld MediaXpert Service prepared for NAB a calculation of the signal coverage for each station, and overlaid this data onto 1990 decennial census population data to estimate the population contained within each station's signal coverage area. For each AM station, estimated soil conductivity data was retrieved for each of 360 radial azimuths around the transmitter site, the standard horizontal plane radiation pattern was calculated and any pertinent pattern augmentations applied, and the distance to the 1 mV/m field strength contour for each of the 360 radials was calculated using the appropriate propagation curves and the FCC equivalent distance method. For each FM station, terrain averages were calculated from the USGS/DMA 3 arc second terrain database for each of 360 radial azimuths, the HAAT was calculated using the height of the center of radiation AMSL and processed with FM contour calculation software, pertinent directional antenna information was applied, and the distance to the 60 dBuV/m contour was calculated using the appropriate FCC F[50,50] curves. For both AM and FM, the distance to contour data was applied to population counting software using 1990 census data to determine the total population within each station's coverage area.

(a) STATION	(b) COMPUTED FY 1997 FEE (From Attachment E)	(c) 1990 CENSUS POPULATION COVERAGE (Not Actual Data --For Illustration Only)	(d) WEIGHTED POPULATION (b) times (c)
#1--AM Class A	\$1,725	1,000,000	1,725,000,000
#2--AM Class A	\$1,725	50,000	86,250,000
#3--AM Class B	\$950	1,000,000	950,000,000
#4--AM Class C	\$390	50,000	19,500,000
#5--AM Class D	\$480	100,000	48,000,000
#6--FM Group I	\$1,725	5,000,000	8,625,000,000
#7--FM Group II	\$1,150	7,500,000	8,625,000,000
#8--FM Group II	\$1,150	5,000	5,750,000

52. Our next step was to sort the data by compiling a list of every AM and FM station in descending order by weighted population. The following illustration indicates how the stations represented by each group in the above chart would be ranked by weighted average:

(a) STATION	(b) COMPUTED FY 1997 FEE (From Attachment E)	(c) 1990 CENSUS POPULATION COVERAGE (Not Actual Data --For Illustration Only)	(d) SORTED WEIGHTED POPULATION (b) times (c)
#6--FM Group I	\$1,725	5,000,000	8,625,000,000
#7--FM Group II	\$1,150	7,500,000	8,625,000,000
#1--AM Class A	\$1,725	1,000,000	1,725,000,000
#3--AM Class B	\$950	1,000,000	950,000,000
#2--AM Class A	\$1,725	50,000	86,250,000
#5--AM Class D	\$480	100,000	48,000,000
#4--AM Class C	\$390	50,000	19,500,000
#8--FM Group II	\$1,150	5,000	5,750,000

53. Next, we determined actual fees for each station. The simplest method appeared to be one which used a "per population" average cost applied to the weighted populations. To test this approach, we divided the sum of all the individual revenue requirements (from Attachment E as applied to each station like the ones in column (b) in the table above) by the sum of all the individual populations. This "per pop" cost factor was then multiplied by each weighted population to calculate a unique fee for each station. Unfortunately, this particular methodology resulted in an unwieldy and unacceptable range of fees. On a pure per weighted population basis, fees would range from a high of \$34,435 for a Class B FM station in New York, with the highest weighted population, to a low of \$0.06 for a Class A FM station in Ludlow, CA, with the lowest weighted population.

54. Therefore, as an alternative to a pure weighted population fee assessment methodology, we designed a schedule, similar to the Montana and NAB proposals, which would place stations in wide bands with different fees for each band. We established the ranges for the schedule by first deciding on minimum and maximum fee amounts. In setting a minimum fee, we decided that it should be no less than the AM Construction Permit fee which we calculated in Attachment E to be \$195. Therefore, we set the lowest radio fee at \$200. In setting a maximum fee, we compared the maximum radio fee contained in Public Law 103-66 for FY 1994 (\$900) and the total revenue requirement for FY 1994 (\$60.4 million) to the current FY 1997 revenue requirement (\$152.5 million), and calculated that a station which paid \$900 in 1994 would now be subject to a fee of \$2,272. Because this would represent an unacceptably large increase in fees for many fee payers, we decided to limit the maximum fee to \$2,000. At the same time, we decided to expand the number of actual fee classifications from the existing six (four AM and two FM) to ten. This allowed us to establish fee classifications in \$200 increments, with each increment containing the same number of stations, resulting in a more equitable fee schedule while keeping the size of the schedule relatively manageable.²⁴ The resulting schedule of regulatory fees for radio stations (both AM and FM) is:

²⁴ The number of stations is not exactly divisible by 10, leaving group 10 with one less station than the other groups.

CLASSIFICATION GROUP	NUMBER OF STATIONS	FEE
1	1019	\$2,000
2	1019	\$1,800
3	1019	\$1,600
4	1019	\$1,400
5	1019	\$1,200
6	1019	\$1,000
7	1019	\$800
8	1019	\$600
9	1019	\$400
10	1018	\$200

55. This schedule, which we adopt today, results in: (1) same class stations in different size cities generally having different fees, (2) different class stations in the same city generally having different fees, and (3) same class stations in the same city generally having the same fee. In addition, it is generally true that in using this methodology: (1) larger stations and those located in larger metropolitan areas tend to be assessed higher fees and (2) small stations and those located in rural areas tend to be assessed lower fees. This fee schedule we have adopted thus achieves the objectives of both the NAB and Montana proposals by assessing fees based on class of station and populations served, thereby providing a fair and equitable means of distinguishing between stations located in metropolitan areas and those located in rural areas. Moreover, if a licensee believes that it has been improperly placed in a particular fee classification group or that it will suffer undue financial hardship from the fee assessment, our rules provide for waiver, reduction or deferral of a fee as described in § 1.1166 of our rules. 47 U.S.C § 1.1166.

56. This methodology also requires that the Commission inform radio station licensees as to their exact fee obligation. A Public Notice listing each station's call letters, location, population, and the required fee will be mailed to each licensee. The same information will also be available at our internet web site (<http://www.fcc.gov>). Interested parties may also obtain their applicable fee amount for FY 1997 by calling the FCC's National Call Center at 1-888-225-5322. We have also provided detailed payment information for each radio station

as Attachment K to this Report and Order and will publish this list in the Federal Register upon completion of this rulemaking.

3. Personal Communications Service (PCS)

57. Our FY 1996 Report and Order deferred assessing a regulatory fee upon licensees in the Personal Communications Service ("PCS") because PCS was in a very early start-up phase of operations. See FY 1996 Report and Order at Appendix F, Paragraph 15. However, in our NPRM, at Paragraph 38, we proposed to initiate the PCS fee since sufficient PCS systems are now in operation to justify inclusion of PCS licensees among those licensees assessed a Commercial Mobile Radio Services (CMRS) fee for FY 1997. We received no comments specifically addressing whether or not PCS licensees should be subject to a regulatory fee for FY 1997. Since PCS systems now are in operation, we have decided to require PCS licensees to submit regulatory fees in FY 1997, as described below.

4. Commercial Mobile Radio Services (CMRS)

58. In our FY 1996 Report and Order, we discussed a proposal submitted by Destineer, Inc., a PCS licensee, that we establish a CMRS Messaging Service fee category to replace our CMRS One-Way Paging fee category. See FY 1996 Report and Order at Paragraph 22. Destineer stated that, with the exception of two-way paging services, our CMRS Mobile Services fee category includes only broadband services which provide two-way interactive voice communications. Destineer recommended establishing a CMRS Messaging Service to include all narrowband services, including two-way paging services. We invited interested parties to file comments on Destineer's proposal or to propose alternative methods to assess CMRS fees for FY 1997. We were particularly interested in the number of estimated payment units associated with any alternative proposal and the impact the proposed change would have on projected revenues. See FY 1997 NPRM at Paragraph 39.

59. In its comments, RAM Mobile Data USA Limited Partnership (RMD) supports establishing a new CMRS Messaging Service fee category and urges that the distinction between our CMRS fee categories rest on whether the licensee provides voice services or non-voice services. Paging Network, Inc. (PageNet) also supports establishing a CMRS Messaging Service, recommending that narrowband PCS services be included in the new fee category along with paging and similar services. The Personal Communications Industry Association (PCIA), supported by Arch Communications Group, Inc. (Arch), requests that two-way paging and other services similar to paging services be assessed the same regulatory fee as one-way paging. No party submitted estimates of the number of payment units subject to a CMRS fee.

60. We are persuaded from the comments that a revision of our CMRS fee categories to distinguish broadband mobile services from narrowband services would serve the public interest. Therefore, we will amend our fee schedule to replace our CMRS One-Way Paging fee category with a new CMRS Messaging Services fee category. The distinguishing

characteristic between the CMRS Mobile Services fee category and the CMRS Messaging Services fee category will be the amount of bandwidth that we have authorized. Our bandwidth distinction is consistent with the fee schedule enacted by Congress and by our own prior fee schedules that assess fees based upon the quality of the channels provided to licensees. See 47 U.S.C. 159(g).

61. Specifically, Congress in its statutory fee schedule distinguished between licensees that we authorized to provide exclusive use services and those we authorized to provide only shared use services. Section (g) assesses a higher fee upon licensees of exclusive use spectrum than upon licensees of less valuable shared use spectrum. Similarly, the statutory fee schedule established fees for broadcast licensees that consider the type of service and class of service authorized. Moreover, since we established the fee program, our fee schedules have adhered to Congress' principle that our fee categories are to be based on the authorization provided to a licensee rather than the use a particular licensee makes of its authorized spectrum. As such, our fee schedule for CMRS will not consider the particular use made of a licensee's spectrum and will consider the nature of services offered only to the extent that services offered on broadband spectrum and services offered on narrowband spectrum will be subject to different categories of fee payment. Thus, licenses authorizing operations on broadband spectrum will be subject to the CMRS Mobile Services fee, regardless of the services offered on that spectrum by the licensee. Further, licenses authorizing the provision of services on narrowband spectrum will be subject to the CMRS Messaging Services fee, regardless of the services offered on that spectrum. It should also be noted that our NPRM inadvertently placed CMRS licensees operating in the 220-222 MHz and interconnected Business Radio Services in the CMRS Mobile Services fee category. Both should be included in the CMRS Messaging Services fee category. See Attachment H, paragraph 15.

62. In implementing this revision, we must recompute the revenue requirements and fees attributable to the two CMRS categories. Revenue required from narrowband services (PCS and two-way paging) must be subtracted from the CMRS Mobile Services category and added to the one-way paging category (to be renamed the CMRS Messaging Services category). The required calculations to achieve this result are shown below:

- (1) Determination of revised payment unit estimates
 - (a) CMRS Mobile Services payment units (from Attachment C) = 47,300,000
 - Subtract: Reclassified Narrowband PCS/Two-way Paging payment units = 150,000²⁵
 - Equals: Revised CMRS Mobile Services payment units = 47,150,000

²⁵ Based on Commission estimates.