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FCC 98 - 40

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

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DISPATCH

In the Matter of)
)
Assessment and Collection) MD Docket No. 98 - 36
of Regulatory Fees for)
Fiscal Year 1998)

NOTICE OF PROPOSED RULEMAKING

Adopted: March 13, 1998 ; Released: March 25, 1998

Comment Date: [insert date 20 days after publication in the FEDERAL REGISTER]

Reply Date: [Insert date 30 days after publication in the FEDERAL REGISTER]

By the Commission:

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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 collect 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) 1998. See 47 U.S.C. § 159 (a).
2. Congress has required that we collect \$162,523,000 through regulatory fees in order to recover the costs of our enforcement, policy and rulemaking, international and user information activities for FY 1998. See Public Law 105-119 and 47 U.S.C. § 159(a)(2). This amount is \$10,000,000 or nearly 7% more than the amount that Congress designated for recovery through regulatory fees for FY 1997. See Assessment and Collection of Regulatory Fees for Fiscal Year 1997, FCC 97-215, released June 26, 1997, 62 FR 37408 (July 11, 1997). Thus, we are proposing to revise our fees in order to collect the increased amount that Congress has required that we collect. Additionally, we propose to amend the Schedule in order to simplify and streamline the Fee Schedule. See 47 U.S.C. § 159(b)(3).
3. In proposing to revise our fees, we 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 are proposing changes to the fees pursuant to public interest considerations. The current Schedule of Regulatory Fees is set forth in sections 1.1152 through 1.1156 of the Commission's rules. See 47 CFR §§ 1.1152 through 1.1156.

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 a description of these activities. 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. See 47 U.S.C. § 159(b), (f)(1). Subsequently, in our FY 1995, FY 1996, and FY 1997 Fee Reports and Orders, 60 FR 34004 (June 29, 1995), 61 FR 36629 (July 12, 1996), and 62 FR 37408 (July 11, 1997), we modified the Schedule to increase by approximately 93 percent, 9 percent and 21 percent, respectively, the revenue generated by these fees in accordance with the amounts Congress required us to collect in FY 1995, FY 1996 and FY 1997. Also, in our FY 1995, FY 1996, and FY 1997 Fee Reports and Orders, 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. 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. See 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. See 47 U.S.C. § 159(b)(2).

6. Section 9(b)(3), entitled "Permitted Amendments," requires that we determine annually whether additional adjustments to the fees are warranted, taking into account factors that are reasonably related 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." See 47 U.S.C. § 159(b)(3).

7. Section 9(i) requires that we develop accounting systems necessary to adjust our fees pursuant to changes in the costs of regulation of the various services subject to a fee and for other purposes. See 47 U.S.C. § 9(i). For FY 1997, we relied for the first time on cost accounting data to identify our regulatory costs and to develop our FY 1997 fees based upon these costs. Also, for FY 1997, we limited the increase in the amount of the fee for any service in order to phase in our reliance on cost-based fees for those services whose revenue requirement would be more than 25 percent above the revenue requirement which would have resulted from the "mandatory adjustments" to the FY 1997 fees without incorporation of costs. This methodology enables us to develop regulatory fees which more closely reflect our costs of regulation and also allows us to make annual revisions to our fees based to the fullest extent possible, and consistent with the public interest, on the actual costs of regulating those services subject to a fee. Finally, section 9(b)(4)(B) requires that we notify Congress of any permitted amendments 90 days before those amendments go into effect. See 47 U.S.C. § 159(b)(4)(B).

III. Discussion

A. Summary of FY 1998 Fee Methodology

8. As noted above, Congress has required that the Commission recover \$162,523,000 for FY 1998 through the collection of regulatory fees, representing the costs applicable to our enforcement, policy and rulemaking, international, and user information activities. See 47 U.S.C. § 159(a).

9. In developing our proposed FY 1998 fee schedule, we first determined that we would continue to use the same general methodology as we used in developing fees for FY 1997.

We next estimated payment units¹ for FY 1998 in order to determine the aggregate amount of revenue we would collect without any revision to our FY 1997 fees. Next, we compared this revenue amount to the \$162,523,000 that Congress has required us to collect in FY 1998 and pro-rated the overage among all the existing fee categories.

10. We then separately projected revenue requirements in each service category using data generated by our cost accounting system and established 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 1998 fees had remained at FY 1997 levels (adjusted only for changes in volume and the increase required by Congress). This methodology, described in our FY 1997 Report and Order at paragraph 35, reduces fees for services whose regulatory costs have declined and increases fees for services experiencing higher regulatory costs in order to continue to eliminate disparities disclosed by our cost accounting system between a service's current costs and fees ascribed to these services in prior fiscal years. The 25 percent limitation minimizes the impact of unexpected substantial increases to fees which could affect the well-being of licensees.

11. Once we established our tentative FY 1998 fees, we evaluated proposals made by Commission staff concerning other adjustments to the Fee Schedule and to our collection procedures. These proposals are discussed in paragraphs 20-30 and are factored into our proposed FY 1998 Schedule of Regulatory Fees, set forth in Attachment F.

12. Finally, we have incorporated, as Attachment H, 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 1998.² In the following paragraphs, we describe in greater detail our proposed methodology for establishing our FY 1998 regulatory fees.

B. Development of FY 1998 Fees

1. Adjustment of Payment Units

13. As the first step in calculating individual service regulatory fees for FY 1998, we adjusted the estimated payment units for each service because payment units for many services have changed substantially since we adopted our FY 1997 fees. We obtained our

¹ 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.

² We also will incorporate a similar Attachment in the Report and Order concluding this rulemaking. That Attachment will contain updated information concerning any changes made to the proposed fees adopted by the Report and Order.

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. Attachment B provides a summary of how revised payment units were determined for each fee category.³

2. Calculation of Revenue Requirements

14. We next multiplied the revised payment units for each service by our FY 1997 fee amounts in each fee category to determine how much revenue we would collect without any change to the FY 1997 Schedule of Regulatory Fees. The amount of revenue we would collect without changes in the fee schedule is approximately \$171.5 million. This amount is approximately \$9 million more than the amount the Commission is required to collect in FY 1998. We then adjusted these 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 at the \$162,523,000 level required by Congress for FY 1998. Attachment C provides detailed calculations showing how we determined the revised revenue amount for each service.

3. Calculation of Regulatory Costs

15. In accordance with section 159(i) of the Act, the Commission utilizes a cost accounting system designed, in part, to provide data which helps to ensure that fees closely reflect our actual costs of regulation for each service category. The Commission's cost accounting system accumulates both personnel and non-personnel costs on a service-by-service basis and is described in detail in our FY 1997 Report and Order at paragraph 12.

16. In order to utilize actual costs for fee development purposes, we first add indirect support costs to direct costs⁴ and then adjust the results to approximate the amount of revenue that

³ It is important to also note that Congress' required revenue increase in regulatory fee payments of approximately seven percent in FY 1998 will not fall equally on all payers because payment units have changed in several services. When the number of payment units in a service increase from one year to another, fees do not have to rise as much as they would if payment units had decreased or remained stable. Declining payment units have the opposite effect on fees.

⁴ One feature of our 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.

Congress requires us to collect in FY 1998 (\$162,523,000).⁵ In effect, we proportionally adjusted the actual cost data pertaining to regulatory fee activities recorded for the period October 1, 1996 through September 30, 1997 (Fiscal Year 1997) among all the fee categories so that total costs approximated \$162,523,000. For fee categories where fees are further differentiated by market (e.g., Markets 1-10 under the general VHF and UHF Commercial Television fee categories), we distributed the costs to each market group by maintaining the same ratios between the market groups as between the revenue requirements in the FY 1997 fee schedule. 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 for FY 1998.

4. Establishment of 25% Revenue Ceilings

17. Our next step was to establish a ceiling of 25 percent on the increase in the revenue requirement of each fee category (over and above the Congressionally mandated increase in the overall revenue requirement and the difference in unit counts) using the same methodology we described in detail in our FY 1997 Report and Order. Capping each fee category's revenue requirement at no more than a 25 percent increase enables us to continue the process of reducing fees for services with lower costs and increasing fees for services with higher costs in order to close the gap between actual costs and fees designed to recover these costs.⁶

18. As noted in our FY 1997 Report and Order, an important consideration in utilizing a revenue ceiling is the impact on other fee payers. Because the Commission is required to collect a full \$162,523,000 in FY 1998 regulatory fees, the additional revenue (\$34,456,724) that would have been collected from licensees subject to a revenue ceiling had there been no ceiling, needs to be collected instead from licensees not subject to the ceiling. This results in a certain amount of subsidization between fee payer classes.⁷ We believe, however, that the

⁵ Congress' estimate of costs to be recovered through regulatory fees is generally determined ten to twelve months before the end of the fiscal year to which the fees actually apply. As such, year-end actual activity costs for FY 1997 will not equal exactly the amount Congress has designated for collection for FY 1998.

⁶ We are not suggesting that fee increases are limited to a 25 percent increase over the FY 1997 fees. The 25 percent increase is over and above the revenue which would be required after adjusting for projected FY 1998 payment units and the proportional share of the 6.56 percent increase in the amount that Congress is requiring us to collect. Thus, FY 1998 fees may increase more than 25 percent over FY 1997 fees depending upon the number of payment units. We are also not suggesting that this methodology will always result in a continuous closing of an existing gap between costs and fees designed to recover these costs. Since actual costs for a fee category may increase or decrease in consecutive years, the gap could either close or widen depending upon whether or not actual costs go down or up and by how much.

⁷ Revenues from current fee payers already offset 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

public interest is best served by this methodology. To do otherwise would subject payers in some fee categories to unexpected major fee increases which could severely impact the economic well being of certain licensees. Attachment E displays the step-by-step process we used to calculate adjusted revenue requirements for each fee category for FY 1998, including the reallocation of revenue requirements resulting from the application of our revenue ceilings.⁸

5. Recalculation of Fees

19. Once we determined the amount of fee revenue that it is necessary to collect from each class of licensee, we divided the revenue requirement by the number of 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.

6. Proposed Changes to Fee Schedule

20. We examined the results of our calculations made in paragraphs 15-19 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 are proposing the following changes to our Fee Schedule:

a. Commercial AM & FM Radio

21. For FY 1997 we established a revised methodology for determining AM & FM radio regulatory fees. This new methodology relies upon a radio station's calculated field strength signal contour overlaid upon U.S. Census data to obtain an estimate of population coverage for each station.⁹ The calculated population coverages are then used along with a station's

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.

⁸ 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 (cost-based) revenue requirement (for those categories at or below the 25% ceiling) or, in the case 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 three iterations (rounds), all the revenue requirements were at or below the revenue ceiling. See Attachment E.

⁹ In FY 1997 we determined that the signal contour for AM radio stations would be based upon a calculated signal strength of 0.5 mV/m from the transmitter location. For Class B FM stations the contour was based upon a signal strength of 54 dBuV/m from the transmitter location and for Class B1 FM stations the contour was based upon a signal strength of 57 dBuV/m. For all other FM Classes, a 60 dBuV/m contour was

class to develop a range of fees for both AM and FM radio stations.

22. Although the calculated contours used in FY 1997 are consistent with Commission radio station signal protection policies and rules, we received several complaints from licensees stating that the contours exaggerated actual market areas and populations served. In several instances licensees complained that small, rural stations whose contours, at the fringe, intersected major metropolitan areas, were attributed with populations far in excess of what they considered to be their primary or even secondary market areas. See, for example, letters from KTXC, dated September 10, 1997; Music Express Broadcasting Corporation of Northeast Ohio, dated August 28, 1997; and Martin Broadcasting Company, dated August 26, 1997. To alleviate this disparity and to ensure that radio stations are assigned population coverage figures more in line with their actual market areas, we are proposing for FY 1998 to utilize the same general methodology for determining regulatory fees as we introduced in FY 1997, but to change the applicable signal contours to 5 mV/m for AM radio stations and 70 dBuV/m for FM radio stations. These reduced contours are generally consistent with the city grade contours of radio stations and should limit population coverage to only those populations actually within a station's primary local market area. We seek comment on this proposal. It should be noted that population coverage is only one factor used to determine radio station regulatory fees. For example, the number of stations claiming non-profit exemption from fees impacts the number of stations which may be assessed regulatory fees. Additionally, the overall amount that Congress requires the Commission to collect and the actual costs attributable to radio station regulation also influence the final determination of fee amounts. The following paragraphs explain in detail the development of our proposed fee schedule for AM and FM radio stations.

23. We calculated the revenue requirements for each category of station (e.g., AM, FM or construction permit) 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 the population served by the same ratio between the individual classes as compared to the original FY 1994 Schedule 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.

24. Our next step was to sort the data by compiling a list of every AM and FM station in descending order by class-weighted population. Next, we determined actual fees for each station. We designed a schedule which would place stations in wide bands based upon the classes of station and total populations served, with different fees for each band. We established the ranges for the schedule by first proposing a minimum and a maximum fee amount. In setting a minimum fee, we are proposing that it should be no less than the AM Construction Permit fee which we calculated in Attachment E to be \$235. Therefore, we set the lowest radio fee at \$250. In order to prevent the fee from becoming too great a burden

used. Attachment J describes in detail the factors, measurements and calculations that go into determining station signal contours and associated population coverages.

for any licensee, we are proposing to limit the maximum fee to \$2,500. At the same time, we are proposing to retain the number of actual fee classifications at ten as in our FY 1997 Report and Order. This allowed us to establish fee classifications in \$250 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.¹⁰ The resulting schedule of regulatory fees for radio stations (both AM and FM) would read:

CLASSIFICATION GROUP	NUMBER OF STATIONS	FEE
1	878	\$2,500
2	878	\$2,250
3	878	\$2,000
4	878	\$1,750
5	878	\$1,500
6	878	\$1,250
7	878	\$1,000
8	878	\$750
9	878	\$500
10	873	\$250

25. This schedule, which we propose 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 proposed fee schedule achieves the objectives of both 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.

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

b. Alternative Proposed Schedule for AM and FM Radio Stations

26. We also received a number of complaints that licensees could not easily see how their station class was used in determining their regulatory fee for FY 1997. Further, several licensees expressed the view that there was not enough difference between the fees imposed on stations in the largest population centers and those below. See, for example, letter from Heckler Broadcasting, Inc. received October 2, 1997; and Petition for Reduction of Regulatory Fee filed September 18, 1997, from Family Communications, Inc. The alternative schedule shown below addresses both of these concerns. However, it should be noted that although the ratios between the classes in the alternative schedule would no longer match the original schedule adopted by Congress, which was implemented in our FY 1994 Report and Order, it addresses licensee complaints that the differentiations between the size of service and fee assessed in our existing schedule are inequitable. We invite public comment on whether this alternative schedule for AM and FM Radio should be implemented instead of the one proposed in paragraph 24.

AM Radio Station Regulatory Fees				
Population Served	Class A	Class B	Class C	Class D
<=20,000	\$500	\$400	\$250	\$300
20,001 - 50,000	\$1,000	\$750	\$400	\$500
50,001 - 125,000	\$1,500	\$1,000	\$500	\$750
125,001 - 400,000	\$2,000	\$1,500	\$750	\$1,000
400,001 - 1,000,000	\$3,000	\$2,500	\$1,250	\$1,750
>1,000,000	\$4,250	\$3,500	\$2,000	\$2,500

FM Radio Station Regulatory Fees		
Population Served	Classes A, B1 & C3	Classes B, C, C1 & C2
<=20,000	\$400	\$500
20,001 - 50,000	\$750	\$1,000
50,001 - 125,000	\$1,000	\$1,500
125,001 - 400,000	\$1,500	\$2,000
400,001 - 1,000,000	\$2,500	\$3,000
>1,000,000	\$3,500	\$4,250

7. Effect of Revenue Redistributions on Major Constituencies

27. The following chart illustrates the relative percentage of the overall revenue requirements borne by the major constituencies since inception of regulatory fees in FY 1994.

PERCENTAGE OF REVENUE COLLECTED BY CONSTITUENCY					
	FY 1994 (Actual)	FY 1995 (Actual)	FY 1996 (Actual)	FY 1997 (Actual)	FY 1998 (Proposed)
Cable TV Operators (Inc. CARS Licenses)	41.4	24.0	33.4	21.8	18.1
Broadcast Licensees	23.8	13.8	14.6	14.1	15.3
Satellite Operators (Inc. Earth Stations)	3.3	3.6	4.0	5.0	5.0
Common Carriers	25.0	44.5	40.9	49.8	47.8
Wireless Licensees	6.5	14.1	7.1	9.3	13.8
TOTAL	100.0	100.0	100.0	100.0	100.0

C. Other Issues

1. Distinguishing between CMRS Fee Categories

28. We have received several comments from CMRS fee payers concerning the difficulty some of them have had in distinguishing between CMRS Mobile Services fees and CMRS Messaging Services fees. In our FY 1997 Report and Order (see paragraphs 58-62) we stated that 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. Thus, we propose that 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 would 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 would be subject to the CMRS Messaging Services fee, regardless of the services offered on that spectrum. See also Attachment H, paragraphs 14 and 15. We also tentatively conclude that the Wireless Communications Service should be classified as CMRS Mobile Services. We request comments on these matters. We also believe a further clarification of which entities should be paying which CMRS fee would be beneficial to licensees and other fee payers. Separately, we propose to incorporate a clarification as to what is meant by CMRS "units" and who is responsible for paying regulatory fees for various kinds of CMRS units. See also Attachment H, paragraph 16.

29. The following categories of CMRS licensees would be covered by the CMRS Mobile Services regulatory fee:

- Rural Radio Service
- Air-ground Radiotelephone Service
- Cellular Radiotelephone Service
- Offshore Radiotelephone Service
- Broadband Personal Communications Services
- Wireless Communications Service
- Specialized Mobile Radio Service
- Public Coast Service

30. The following categories of CMRS licensees would be covered by the CMRS Messaging Services regulatory fee:

- Paging and Radiotelephone Service
- Narrowband Personal Communications Services
- 220 - 222 MHz Band
- Interconnected Business Radio Services

31. Licensees in the Specialized Mobile Radio Service have requested reconsideration of our determination that FY 1997 CMRS regulatory fees should be based upon whether a licensee operates on broadband or narrowband spectrum. See FY 1997 Report and Order at para. 60. We expect to address these concerns in our action on petitions for reconsideration of the FY 1997 Report and Order. Interested parties may comment in this proceeding on the appropriate fee structure for CMRS licensees and, in particular, may present alternatives to the methodology we established for FY 1997. Commenters should be aware that we do not believe that a case-by-case determination of the appropriate fee for a particular SMR licensee would serve the public interest due to the heavy resource burden it would require.

2. Clarification of Operational LEO System

32. In our FY 1997 Report and Order at paragraph 75, we reiterated our requirement that licensees of low earth orbit satellite systems (LEOS) pay the LEO regulatory fee upon their certification of operation of a single satellite pursuant to section 25.120(d). We stated that we require payment of the LEO fee following commencement of operations of a system's first satellite in order to assure that we recover our regulatory costs related to LEO systems from licensees of these systems as early as possible so that regulatees in other services are not burdened with these costs any longer than necessary. However, because section 25.120(d) applies to both geostationary and non-geostationary satellite systems, we believe that we need to clarify our existing definition of an operational LEO satellite. Non-geostationary satellite licensees, including licensees of LEO systems, are required to submit reports pursuant to Sections 25.142(c), 25.143(e), and 25.145(g) of the Commission's rules. These reports, annual and filed upon completion of milestones, report the status of a [the] system and indicate compliance under Section 25.120(d). In our FY 1997 Report and Order at paragraph 75, we reiterated our requirement that licensees of low earth orbit satellite systems (LEOS) pay the LEO regulatory fee upon their certification of operation of a single satellite pursuant to section 25.120(d). We stated that we require payment of the LEO fee following commencement of operations of a system's first satellite in order to assure that we recover our regulatory costs related to LEO systems from licensees of these systems as early as possible so that regulatees in other services are not burdened with these costs any longer than necessary. However, because section 25.120(d) applies to both geostationary and non-geostationary satellite systems, we believe that we need to clarify our existing definition of an operational LEO satellite to prevent misunderstanding of our intent as stated in paragraph 75 of our FY 1997 Report and Order. As such, we propose to add the following to our guidance (see Attachment H) relative to determining whether or not a LEO satellite is operational for fee assessment purposes:

Licensees of Non-Geostationary Satellite Systems will be assessed the LEO regulatory fee upon the commencement of operation of a system's first satellite as reported annually pursuant to section 25.142(c), 25.143(e), 25.145(g) or upon certification of operation of a single satellite pursuant to section 25.120(d).

3. Renaming of LEO Fee Category

33. "Non-Geostationary" satellite orbits were first introduced in the early 90's with the filing of applications for non-voice, non-geostationary satellite service operating below 1 GHz. These satellites proposed to operate satellites in a "low earth" orbit, or a non-geostationary orbit. The term, "low earth orbit" was then synonymous with "non-geostationary". As new technologies have evolved, we have received applications proposing to operate in "medium" and "high" earth orbit technologies, also non-geostationary orbits[, have been filed with the FCC]. Thus, we propose to change the name of the "Low Earth Orbit Satellite Systems" fee category to the "Non-Geostationary Satellite Systems" fee category in order to clarify that

non-geostationary satellites, whether operating in low, medium or high orbits, are covered under this regulatory fee. This is consistent with current industry use, as well as with Commission rules, which refer to non-geostationary, not low earth, orbits and satellites. This name change will have no adverse impact on any entity covered by regulatory fees in FY 1998.

D. Procedures for Payment of Regulatory Fees

34. 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 payer." See 47 U.S.C. § 159(f)(1). Consistent with section 9(f), we are again proposing to establish 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.

1. Annual Payments of Standard Fees

35. As we have in the past, we are proposing to treat regulatory fee payments by certain licensees as "standard fees" which 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 terminating this proceeding or by public notice in the Federal Register pursuant to authority delegated to the Managing Director.

2. Installment Payments for Large Fees

36. While we are mindful that time constraints may preclude an opportunity for installment payments, we propose that regulatees in any category of service with a liability of \$12,000 or more be eligible to make installment payments and that eligibility for installment payments be based upon the amount of either a single regulatory fee payment or combination of fee payments by the same licensee or regulatee. We propose that regulatees eligible to make installment payments may submit their required fees in two equal payments (on dates to be announced) or, in the alternative, in a single payment on the date that their final installment payment is due. Due to statutory constraints concerning notification to Congress prior to actual collection of the fees, however, it is unlikely that there will be sufficient time for installment payments, and that regulatees eligible to make installment payments will be required to pay these fees on the last date that fee payments may be submitted. The dates for installment payments, or a single payment, will be announced either in the Report and Order terminating this proceeding or by public notice published in the Federal Register pursuant to authority delegated to the Managing Director.

3. Advance Payments of Small Fees

37. As we have in the past, we are proposing to treat regulatory fee payments by certain licensees as "small" fees subject to advance payment consistent with the requirements of section 9(f)(2). We propose that advance payments will be required from licensees of those services that we decided would be subject to advance payments in our FY 1994 Report and Order, and to those additional payers set forth herein.¹¹ We are also proposing that 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 payer 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 effective date for payment of small fees established in this proceeding will be announced in our Report and Order terminating this proceeding or by public notice published in the Federal Register pursuant to authority delegated to the Managing Director.

4. Minimum Fee Payment Liability

38. As we have in the past, we are proposing that regulatees whose total regulatory fee liability, including all categories of fees for which payment is due by an entity, amounts to less than \$10 will be exempted from fee payment in FY 1998.

5. Standard Fee Calculations and Payment Dates

39. As noted, the time for payment of standard fees and any installment payments will be published in the Federal Register pursuant to authority delegated to the Managing Director. 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, unit, or circuit count, we are proposing that fees be submitted for any authorization held as of October 1, 1997. October 1 is the date to be used for establishing liability for payment of standard fees.

40. In the case of regulatees whose fees are based upon a subscriber, unit or circuit count, the number of a regulatees' subscribers, units or circuits on December 31, 1997, will be used

¹¹ 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, Marine (Ship) Service, Marine (Coast) Service, Private Land Mobile (Other) Services, Aviation (Aircraft) Service, Aviation (Ground) Service, General Mobile Radio Service (GMRS).

to calculate the fee payment.¹²

E. Schedule of Regulatory Fees

41. The Commission's proposed Schedule of Regulatory Fees for FY 1998 is contained in Attachment F of this NPRM.

IV. Procedural Matters

A. Comment Period and Procedures

42. Pursuant to procedures set forth in sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before [insert date 20 days after publication in the FEDERAL REGISTER], and reply comments on or before [insert date 30 days after publication in the FEDERAL REGISTER]. 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 at the same address or may e-mail their comments to mcontee@fcc.gov. 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

43. 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 CFR §§ 1.1202, 1.1203 and 1026(a).

C. Initial Regulatory Flexibility Analysis

44. As required by the Regulatory Flexibility Act, see 5 U.S.C. § 603, the Commission has

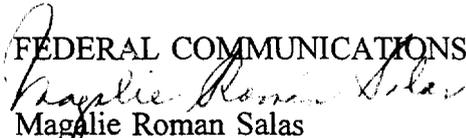
¹² Cable system operators are to compute their subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Cable system operators may base their count on "a typical day in the last full week" of December 1997, rather than on a count as of December 31, 1997.

prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible impact on small entities of the proposals suggested in this document. The IRFA is set forth as Attachment A. Written public comments are requested with respect to the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the rest of the NPRM, but they must have a separate and distinct heading, designating the comments as responses to the IRFA. The Office of Public Affairs, Reference Operations Division, shall send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

D. Authority and Further Information

45. 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(i)-(j), 159, & 303(r). IT IS ORDERED that this NPRM IS ADOPTED. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

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

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

INITIAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by the Regulatory Flexibility Act (RFA),¹³ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the present Notice of Proposed Rulemaking, In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1998. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the IRFA provided above in paragraph 42. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. See 5 U.S.C. § 603(a). In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register. See id.

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

2. This rulemaking proceeding is initiated to obtain comments concerning the Commission's proposed amendment of its Schedule of Regulatory Fees. For Fiscal Year 1998, we intend to collect regulatory fees in the amount of \$162,523,000, the amount that Congress has required the Commission to recover. The Commission seeks to collect the necessary amount through its proposed revised fees, as contained in the attached Schedule of Regulatory Fees, in the most efficient manner possible and without undue burden to the public.

II. Legal Basis:

3. This action, including publication of proposed rules, is authorized under Sections (4)(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and (j), 159, and 303(r).

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

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.¹⁴ The RFA generally defines the term "small entity" as having the same meaning as the terms

¹³ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 et. seq., has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

¹⁴ 5 U.S.C. § 603(b)(3).

"small business," "small organization," and "small governmental jurisdiction."¹⁵ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.¹⁶ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).¹⁷ A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."¹⁸ Nationwide, as of 1992, there were approximately 275,801 small organizations.¹⁹ "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."²⁰ As of 1992, there were approximately 85,006 such jurisdictions in the United States.²¹ This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.²² The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the proposed rules, if adopted.

CABLE SERVICES OR SYSTEMS

5. The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating \$11 million or less in revenue annually.²³ This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992,

¹⁵ *Id.* § 601(6).

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

¹⁷ Small Business Act, 15 U.S.C. § 632 (1996).

¹⁸ 5 U.S.C. § 601(4).

¹⁹ 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

²⁰ 5 U.S.C. § 601(5).

²¹ U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

²² *Id.*

²³ 13 C.F.R. § 121.201, SIC code 4841.

there were 1,788 total cable and other pay television services and 1,423 had less than \$11 million in revenue.²⁴

6. The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide.²⁵ Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995.²⁶ Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators.

7. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."²⁷ The Commission has determined that there are 66,000,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 660,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate.²⁸ Based on available data, we find that the number of cable operators serving 660,000 subscribers or less totals 1,450.²⁹ We do not request nor do we collect information concerning whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000,³⁰ and thus are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act. It should be further noted that recent industry estimates project that there will be a total

²⁴ 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D, SIC code 4841 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

²⁵ 47 C.F.R. § 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of \$100 million or less. Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393 (1995), 60 FR 10534 (February 27, 1995).

²⁶ Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for December 30, 1995).

²⁷ 47 U.S.C. § 543(m)(2).

²⁸ Id. § 76.1403(b).

²⁹ Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

³⁰ We do receive such information on a case-by-case basis only if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.1403(b) of the Commission's rules. See 47 CFR § 76.1403(d).

66,000,000 subscribers, and we have based our fee revenue estimates on that figure.

8. **Other Pay Services.** Other pay television services are also classified under Standard Industrial Classification (SIC) 4841, which includes cable systems operators, closed circuit television services, direct broadcast satellite services (DBS),³¹ multipoint distribution systems (MDS),³² satellite master antenna systems (SMATV), and subscription television services.

COMMON CARRIER SERVICES AND RELATED ENTITIES

9. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its Telecommunications Industry Revenue report, regarding the Telecommunications Relay Service (TRS).³³ According to data in the most recent report, there are 3,459 interstate carriers.³⁴ These carriers include, inter alia, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

10. The SBA has defined establishments engaged in providing "Radiotelephone Communications" and "Telephone Communications, Except Radiotelephone" to be small businesses when they have no more than 1,500 employees.³⁵ Below, we discuss the total estimated number of telephone companies falling within the two categories and the number of small businesses in each, and we then attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

11. Although some affected incumbent local exchange carriers (ILECs) may have 1,500 or fewer employees, we do not believe that such entities should be considered small entities within the meaning of the RFA because they are either dominant in their field of operations or are not independently owned and operated, and therefore by definition not "small entities" or "small business concerns" under the RFA. Accordingly, our use of the terms "small entities" and "small businesses" does not encompass small ILECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will separately consider

³¹ Direct Broadcast Services (DBS) are discussed with the international services, infra.

³² Multipoint Distribution Services (MDS) are discussed with the mass media services, infra.

³³ FCC, Telecommunications Industry Revenue: TRS Fund Worksheet Data, Figure 2 (Number of Carriers Paying Into the TRS Fund by Type of Carrier) (Nov. 1997) (Telecommunications Industry Revenue).

³⁴ Id.

³⁵ 13 CFR § 121.201, Standard Industrial Classification (SIC) codes 4812 and 4813. See also Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987).

small ILECs within this analysis and use the term "small ILECs" to refer to any ILECs that arguably might be defined by the SBA as "small business concerns."³⁶

12. Total Number of Telephone Companies Affected. The U.S. Bureau of the Census ("Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.³⁷ This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, personal communications services providers, covered specialized mobile radio providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small ILECs because they are not "independently owned and operated."³⁸ For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It is reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small ILECs that may be affected by the proposed rules, if adopted.

13. Wireline Carriers and Service Providers. The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992.³⁹ According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons.⁴⁰ All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small ILECs. We do not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 2,295 small telephone communications companies other than radiotelephone companies are small entities or small

³⁶ See 13 CFR § 121.201, SIC code 4813. Since the time of the Commission's 1996 decision, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499, 16144-45 (1996), 61 FR 45476 (August 29, 1996), the Commission has consistently addressed in its regulatory flexibility analyses the impact of its rules on such ILECs.

³⁷ U.S. Department of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size, at Firm Size 1-123 (1995) (1992 Census).

³⁸ See generally 15 U.S.C. § 632(a)(1).

³⁹ 1992 Census, *supra*, at Firm Size 1-123.

⁴⁰ 13 CFR § 121.201, SIC code 4813.

ILECs that may be affected by the proposed rules, if adopted.

14. **Local Exchange Carriers.** Neither the Commission nor the SBA has developed a definition for small providers of local exchange services (LECs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.⁴¹ According to the most recent Telecommunications Industry Revenue data, 1,371 carriers reported that they were engaged in the provision of local exchange services.⁴² We do not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 1,371 providers of local exchange service are small entities or small ILECs that may be affected by the proposed rules, if adopted.

15. **Interexchange Carriers.** Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.⁴³ According to the most recent Telecommunications Industry Revenue data, 143 carriers reported that they were engaged in the provision of interexchange services.⁴⁴ We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 143 small entity IXCs that may be affected by the proposed rules, if adopted..

16. **Competitive Access Providers.** Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is for telephone communications companies other than except radiotelephone (wireless) companies.⁴⁵ According to the most recent Telecommunications Industry Revenue data, 109 carriers reported that they were engaged in the provision of competitive access services.⁴⁶ We do not

⁴¹ Id.

⁴² Telecommunications Industry Revenue, Figure 2.

⁴³ 13 CFR § 121.201, SIC code 4813.

⁴⁴ Telecommunications Industry Revenue, Figure 2.

⁴⁵ 13 CFR § 121.201, SIC code 4813.

⁴⁶ Telecommunications Industry Revenue, Figure 2.