

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

FCC 98- 115

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

**REPORT AND ORDER**

Adopted: June 9, 1998 ; Released: June 16, 1998

By the Commission:

**Table of Contents**

<u>Topic</u>	<u>Paragraph Number</u>
I. Introduction	1
II. Background	5
III. Discussion	
A. Cost-Based Fee Methodology	9
B. Relationship of Cost Service to Revenue Requirement	15
C. The 25% Ceiling on Fees	21
D. Application of Cost-Based Methodology to Determine Fee Amounts	
i. Adjustment of Payment Units	25
ii. Calculation of Revenue Requirements	26
iii. Calculation of Regulatory Costs	27
iv. Application of 25% Revenue Ceiling	28
v. Recalculation of Fees	29

vi. Proposed Changes to Fee Schedule	30
a. Commercial AM & FM Radio	31
b. CMRS	41
c. Space Stations and Bearer Circuits	
i. Geostationary Satellites	49
ii. Non-geostationary Satellites	54
iii. Bearer Circuits	57
d. Interstate Telephone Service Providers	64
E. Schedule of Regulatory Fees	68
F. Effect of Revenue Redistributions on Major Constituencies	69
G. Procedures for Payment of Regulatory Fees	
i. Installment Payments for Large Fees	70
ii. Annual Payments of Standard Fees	72
iii. Advance Payment of Small Fees	73
iv. Standard Fee Calculations and Payment Dates	74
v. Minimum Fee Payment Liability	76
IV. Ordering Clause	77
V. Authority and Further Information	78
Attachment A - Final Regulatory Flexibility Analysis	
Attachment B - Sources of Payment Unit Estimates	
Attachment C - Calculation of Revenue Requirements	
Attachment D - Calculation of Regulatory Costs	
Attachment E - Calculation of FY 1998 Regulatory Fees	
Attachment F - Schedule of Regulatory Fees	
Attachment G - Comparison between FY 1997 and FY 1998 Proposed & Final Regulatory Fees	

Attachment H - Detailed Guidance on Who Must Pay Regulatory Fees

Attachment I - Description of FCC Activities

Attachment J - Factors, measurements and calculations that go into determining station signal contours and associated population coverages

Attachment K - Parties Filing Comments and Reply Comments

Attachment L - FY 1998 AM/FM Regulatory Fees

## **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 has required it to collect for Fiscal Year (FY) 1998. See 47 U.S.C. § 159 (a).
2. Congress has required us to collect \$162,523,000 in 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 revising our fees in order to collect the increased amount as specified by Congress. Additionally, we are amending the Schedule in order to simplify and streamline the Fee Schedule, including clarification of feeable categories in the Commercial Mobile Radio Services (CMRS), renaming the LEO category as Space Stations Non-geostationary, and clarifying when those stations must begin paying regulatory fees. We have also revised our methodologies for assessing AM and FM radio fees. See 47 U.S.C. § 159(b)(3).
3. In revising the 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 such as the 25% cap on increases in the fees which is explained in more detail below. We are amending sections 1.1152 through 1.1156 to reflect the fee revisions. See 47 CFR 1.1152 through 1.1156. See also Rule Changes and Attachment F for our revised fee schedule for FY 1998.
4. Finally, we have included, as Attachment H, 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. In the following paragraphs, we describe in greater detail our methodology for establishing our FY 1998 regulatory fees.

## **II. Background**

5. Section 9(a) of the Communications Act of 1934, as amended, authorizes the Commission to assess and collect annual regulatory fees to recover the costs, as specified each year 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 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 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 for each of those fiscal years. Also, in our FY 1995, FY 1996, and FY 1997 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.

6. 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).

7. Section 9(b)(3), entitled "Permitted Amendments," requires us to 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 required 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).

8. Section 9(i) requires us to develop an accounting system to adjust our fees to reflect changes in the costs of regulating various services and for other purposes. See 47 U.S.C. § 9(i). We developed and implemented the cost accounting system in conjunction with FY 1997 fees. For FY 1998, we continue to rely on cost accounting data to identify our regulatory costs and to develop fees based upon these costs. Also, for FY 1998, we have 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. 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. Cost-Based Fee Methodology**

9. As noted above, Congress has required us to recover \$162,523,000 in FY 1998 regulatory fees, representing the costs applicable to our enforcement, policy and rulemaking, international,

and user information activities.<sup>1</sup> See 47 U.S.C. § 159(a).

10. In our FY 1998 NPRM we developed our proposed FY 1998 fee schedule using the same general methodology as we used in developing fees for FY 1997. We estimated payment units<sup>2</sup> for FY 1998 in order to determine the aggregate amount of revenue we would collect without any revision to our FY 1997 fees. Because the total was greater than \$162,523,000, we pro-rated the overage among all the existing fee categories reducing the revenue amounts to total \$162,523,000.

11. The NPRM provided notice that we would rely on the cost accounting system implemented in FY 1997 to assist us in determining our costs of regulation of those services subject to a fee for FY 1998. In response, several interested parties, including the Personal Communications Industry Association (PCIA), BellSouth Cellular Corp., BellSouth Wireless Data, L.P. (BellSouth), 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. PrimeCo 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, among others, argues 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.

12. The 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. The cost accounting system was designed to identify the actual costs of regulation by category of service and this information, combined with other data, yield fees more closely reflecting the cost of our regulation. The accounting system collects cost of service information on an employee-by-employee basis.

13. The NPRM provided sufficient detail concerning our manner of distributing costs of personnel directly assigned to regulatory activities, and other costs included in our determination of regulatory costs. 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, included as indirect costs are those costs

---

<sup>1</sup> 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 \$186.5 million for FY 1998. When offsetting regulatory fees are taken into consideration, only \$24 million must be appropriated from tax receipts to fund the Commission. Thus, taxpayers are spared the expense of funding almost 87% 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)

<sup>2</sup> Payment units are the number of subscribers, mobile units, pagers, cellular telephones, licenses, call signs, adjusted gross revenue dollars, etc. which represent the base units for which fees are calculated.

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 major category of service. Thus, 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)

14. Our cost accounting system was developed under contract by American Management Systems, Inc. (AMS) in FY 1995. 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. Because the methodology we employed in developing FY 1998 fees is the same as the one that was used to develop the FY 1997 fees, we adopt by incorporation ¶¶ 16-20 of the FY 1997 Report and Order which provides detailed information covering how our cost accounting system operates.

## **B. Relationship of Cost Service to Revenue Requirement**

15. PCIA and other commenters contend that the fees are unlawful because allegedly there is no basis for or relationship between the fees the Commission is proposing to collect from a particular class of licenses or regulatees and the amount of regulatory work or oversight associated with those regulatees. We 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 regulatory activities, even if they do not utilize these activities." *See* 60 FR 34000, (June 29, 1995), citing United States v. Sperry Corp., 493 U.S. 52, 63. Thus, there is no requirement that the fees we establish be designed to recover only the costs of those benefits directly received by an entity. Rather, we may adjust the fees by taking into consideration "factors that the Commission determines are in the public interest." 47 U.S.C. § 159(b)(1) (A).

16. As noted, we must collect in regulatory fees the amount specified by Congress. Direct costs, such as 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, are only part of the costs to be recovered from each licensee. Indirect costs, which 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, and support costs, including rent, utilities, equipment, and contractual costs attributable to regulatory oversight, must also be recovered.<sup>3</sup>

17. Regulatory fees also recover costs attributable to regulatees that Congress, has exempted from the fees, such as 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 non-profit groups, as well as costs attributable to licensees which have been granted waivers of the fees. 47 U.S.C. § 159(b)(d). 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, and licensees who have received waivers of the fees by allocating our regulatory costs attributable to them on a proportional basis across all fee categories so as not to unduly impact any particular category of fee payers.

18. PCIA points out that our NPRM did not provide actual FY 1997 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 the evaluation of the Commission's FY 1998 fee proposal and to insure that costs are properly allocated among all regulatees or licensees in a given service. We recognize that we did not provide a detailed listing of actual FY 1997 collections data in the NPRM. However, Attachment B, of the NPRM, contained a service-by-service explanation of the basis of our estimated FY 1998 payment units. Several of these are based on actual FY 1997 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 1997. These payment unit estimates used "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 1997 data provides us a much greater confidence level than would an estimate of payment units made prospectively.<sup>4</sup> Finally, from the inception of the regulatory fee collection

---

<sup>3</sup> One commenter questioned how the Commission's use of contractors affected its computation of Full Time Equivalency (FTE) employee numbers. While the Commission used FTE numbers in developing its FY 1995 and FY 1996 fee schedules it discontinued using FTE numbers after it adopted a cost accounting system in FY 1997. PCIA also questions the allocation of such overhead costs as office moves. As with all overhead, we allocate it to the functional area where the cost was incurred, if this is feasible.

<sup>4</sup> In this regard the Commission has been checking the payments received from broadcast licensees against the name of the licensees in the Commission's database. The Commission has written to each licensee requesting payment or evidence of payment or exempt status, in order to perfect its database and ensure that the numbers of licensees upon which fees are based is accurate.

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 1998 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 1998.

19. Finally, PCIA and other interested parties are concerned about the amount of the proposed increase in their revenue requirements and in their fee amounts for FY 1998 compared with those established for FY 1997. They question how estimates of actual costs for FY 1997 and FY 1998 could differ so significantly from one year to the next in certain fee categories. These differences can be attributed to the increase in the amount to be collected as specified by Congress, changes in the numbers of units subject to the fees, and changes in services. For example, in reassigning services from the CMRS Mobile category to the CMRS Messaging category, we adjusted the estimated payment units of both fee categories. Moreover, as we have noted, because each service must offset a portion of our overhead costs, and subsidize costs not related to its regulation, the resulting fee will invariably exceed the payer's direct regulatory costs, notwithstanding the efforts by Congress and the Commission to reduce the regulatory burden on our licensees.

20. 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 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. 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 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. We believe, however, that the 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.<sup>5</sup>

---

<sup>5</sup> For example, PCIA has requested that we establish a cost-increase benchmark at which point an explanation of the increase for any affected category must be included. A line-by-line explanation of all accounting data is not feasible, nor, do we believe, necessary in this item. Specific cost accounting data is available to interested parties upon request.

### **C. The 25% Ceiling on Fees**

21. After separately projecting the revenue requirements for each service category using data generated by our cost accounting system, we established a revenue ceiling no higher than 25 percent above the revenue that regulatees 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).

22. SBC Communications (SBC) argues that the 25 percent ceiling is increasing the difference between the fees and the costs of regulation for some regulatees. Comcast Cellular Communications, Inc. (Comcast) and Small Business in Telecommunications (SBT) argue that the 25% ceiling unfairly results in the subsidization of some fee payer classes by other services.

23. 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.<sup>6</sup> Congress in its original fee schedule, established fee amounts for each fee category that were to be used until the FCC could implement an agency-wide cost accounting system to track costs by fee category. The Congressional fee schedule inherently subsidized certain services at the expense of others. Furthermore, the Congressional mandate to collect significantly larger amounts in regulatory fees each year had made it more difficult to eliminate the imbalances first established in the statutory fee schedule. The full extent of these imbalances became clear when the Commission moved to a cost-based system in FY 1997. Thus, for FY 1997 we adopted a ceiling on fees in order to establish a mechanism that would smooth the transition to cost based fees.

24. As noted in our FY 1997 Report and Order, an important consideration in utilizing a revenue ceiling is the impact on other fee payers. We are required to collect a full \$162,523,000 in FY 1998 regulatory fees. The additional revenue that would have been collected from licensees subject to a revenue ceiling had there been no ceiling, needs to be collected instead from services where increases are less than 25%. Utilization of the 25% ceiling permits us to close the gap between regulatory fees and actual costs while minimizing the potential adverse impact of substantial fee increases. In sum, we believe that the public interest is best served again by adopting the 25% ceiling.

### **C. Application of Cost-Based Methodology to Determine Fee Amounts**

---

<sup>6</sup> 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.

## **i. Adjustment of Payment Units**

25. 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 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.<sup>7</sup> Attachment B provides a summary of how payment units were determined for each fee category.

## **ii. Calculation of Revenue Requirements**

26. 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 in FY 1998 without any change to the existing Schedule of Regulatory Fees. The amount of revenue we would collect 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 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 \$162,523,000 amount required by Congress for FY 1998. Attachment C provides detailed calculations showing how we determined the revised revenue amount for each service.

## **iii. Calculation of Regulatory Costs**

27. In order to utilize actual costs as derived from our accounting system we combined support costs and direct costs<sup>8</sup> and then adjusted the results to approximate the amount of revenue that Congress requires us to collect in FY 1998 (\$162,523,000).<sup>9</sup> 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, (FY 1997) among all the fee categories so that

---

<sup>7</sup> 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 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 fee 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.

<sup>8</sup> 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.

<sup>9</sup> 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.

total costs approximated \$162,523,000. For fee categories where fees are further differentiated by sub-categories, we distributed the revenue requirements to each sub-category. 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 1998. However, the fee schedule for AM and FM radio stations was differentiated by class of station and population served in such a manner as to further differentiate small stations from larger stations.

#### **iv. Application of 25 Percent Revenue Ceiling**

28. We applied the 25% ceiling 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.

#### **v. Recalculation of Fees**

29. 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.

#### **vi. Proposed Changes to Fee Schedule**

30. We examined the results of our calculations made in ¶¶ 25-27 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 adopting the following changes to our Fee Schedule:

##### **a. Commercial AM & FM Radio**

31. In FY 1997 we revised the methodology for assessing radio regulatory fees, by determining each station's daytime protected field strength signal contour which was then overlaid upon U.S. Census data to estimate the population coverage for each station.<sup>10</sup> Under the FY 1997 methodology, stations with larger populations within their protected service area were assessed higher fees than stations with smaller populations within their protected service area. The FY 1997 radio regulatory fees were also based on the ratio between the differences in fees assessed for different classes of stations in the Statutory Fee Schedule. 47 U.S.C. § 159(g). We will

---

<sup>10</sup> 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 used. Attachment J describes in detail the factors, measurements and calculations that go into determining station signal contours and associated population coverages.

modify these procedures to assess regulatory fees by calculating the populations within each station's narrower city strength service contour. We anticipate that this methodology will reduce the populations to be considered for fee purposes to the populations which most licensees consider to be within their "core" service area. We also will increase the differences between fee payments for different classes of stations with different populations, so that stations serving larger populations would pay a greater share of the regulatory fee burden.

32. We received complaints from licensees stating that the protected field strength contours used to calculate the fees, overstated actual market areas and populations served. In several instances licensees contended that rural stations whose contours intersected major metropolitan areas, were assigned populations far in excess of the populations within their primary or even their 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.

33. We also received complaints from licensees that they could not determine how the size of their regulatory fees were affected by their class of station, and that there was not a sufficient differentiation in fees between stations serving large populations and other stations. Several licensees argue that stations serving smaller populations have paid a disproportionate share of the regulatory fees. See letter from Heckler Broadcasting, Inc., received October 2, 1997; and Petition for Reduction of Regulatory Fee filed September 18, 1997 by Family Communications, Inc.

34. Comments filed by 19 State Broadcaster Associations, and by the NAB support reliance on city grade contours, a fee schedule which separated stations by class and population, and a fee schedule that increased the differentiation between the fees paid by stations serving larger markets and by stations serving smaller markets. The NAB also maintained that specifically dividing stations by class and population will provide a greater understanding to individual licensees concerning how their fees were calculated. Finally, the NAB argued that it is inequitable to base fees on the number of licensees who have paid their fees in the past and, therefore, shifting the fee payment obligation from the number of licensees that did not pay their fees. The NAB urges the Commission to adopt a broadcast fee schedule based on the total number of operating stations, excluding only those stations that have documented non-profit status.

35. In part, as a response to these concerns and comments, the NPRM proposed to modify the fee schedule for FY 1998 by utilizing the same general methodology for determining regulatory fees as we did in FY 1997, but by increasing the strength of the applicable signal contours to 5 mV/m for AM radio stations and 70 dBuV/m for FM radio stations, their city strength service contours. The city strength signal contours should reduce the populations used to assess fees to the populations within each station's primary local market area.

36. The FY 1998 NPRM proposed alternative fee schedules. In the first schedule, we determined the population in each station's city strength service contours, and then multiplied

each population served by the same ratios between the fees for individual classes and types of stations (AM or FM), as established in the original Statutory Fee Schedule to determine the weighted population for each station in the FY 1998 Fee Schedule. See 47 U.S.C. § 159(g). We then proposed to combine all of the AM and FM stations into a single schedule. We developed a range of fees for the schedule by selecting a minimum fee not lower than the AM Construction Permit fee which we determined to be \$235, and a maximum fee which would not place an undue burden on any licensee. Therefore, we proposed to set the lowest radio fee at \$250, and to increase the fees in \$250 increments to \$2,500 for stations serving the largest populations. We further proposed to retain the same number of actual fee classifications (ten) as in our FY 1997 Report and Order.<sup>11</sup>

37. We agree with the NAB and the State Broadcaster Associations that separately listing AM and FM stations by class of station, and by increasing the burden to be paid by the stations serving larger populations, is more equitable. Although that schedule would depart from the original ratios in the statutory fee schedule, we are authorized to modify the schedule and implement the following schedule which is responsive to the concerns expressed by our licensees. 47 U.S.C. § 159(b).

<b>Radio Station Regulatory Fees</b>						
<b>Population Served</b>	<b>AM Class A</b>	<b>AM Class B</b>	<b>AM Class C</b>	<b>AM Class D</b>	<b>FM Classes A, B1 &amp; C3</b>	<b>FM Classes B, C, C1 &amp; C2</b>
<b>&lt;=20,000</b>	\$400	\$300	\$200	\$250	\$300	\$400
<b>20,001 - 50,000</b>	\$750	\$600	\$300	\$400	\$600	\$750
<b>50,001 - 125,000</b>	\$1,250	\$800	\$400	\$600	\$800	\$1,250
<b>125,001 - 400,000</b>	\$1,750	\$1,250	\$600	\$750	\$1,250	\$1,750
<b>400,001 - 1,000,000</b>	\$2,500	\$2,000	\$1,000	\$1,250	\$2,000	\$2,500
<b>&gt;1,000,000</b>	\$4,000	\$3,250	\$1,500	\$2,000	\$3,250	\$4,000

38. As can be seen from the above chart, the same class stations in different size cities generally

---

<sup>11</sup> The number of stations is not exactly divisible by 10, leaving group 10 with five less stations than the other groups.

have different fees, with stations serving larger populations paying higher fees. In addition, different class stations in the same city generally have different fees, with stations which provide a higher class of service paying higher fees. The same class stations in the same city will have the same fee. Thus, the adopted fee schedule achieves the objectives of 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 in rural areas.

39. 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. See 47 CFR 1.1166.

40. We also agree with the NAB that the fee schedule should reflect the total number of non-exempt operating stations. We have identified those licensees who have not paid their regulatory fees and have requested that they pay the fee or submit evidence establishing that they have paid their fee or are entitled to an exemption from the regulatory fee. In addition, in Assessment and Collection of Regulatory Fees for Fiscal Year 1997, FCC 97-384, adopted October 17, 1997, we required licensees to submit evidence of their non-profit status. For FY 1998, we have made adjustments to the number of licensees subject to fee payment based on responses received pertaining to non-profit status. Further, for FY 1999, we will consider the number of licensees who have paid their fees, as adjusted to account for licensees that have established their exempt status, and to account for responses to our letters requesting fee payments. Moreover, it is our intention to follow up on the FY 1998 fee payments to again identify and collect fees from those licensees that have not paid their fees and to further adjust and perfect our station counts.

41. The Commission will again inform radio station licensees of 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 1998 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 L to this Report and Order.

#### **b. CMRS**

42. In the NPRM, we proposed for FY 1998 fees of \$.29 per unit for the CMRS Mobile Service and \$.04 per unit for the CMRS Messaging Service. In addition, we sought comment on how best to assign the various CMRS services between the two fee categories. For FY 1997, licensees authorized for operation on broadband spectrum were subject to payment of the CMRS Mobile Service fee and licensees authorized for operation on narrowband spectrum were subject to payment of the CMRS Messaging fee without regard to the nature of the services actually offered. We invited interested parties to comment on our proposal to continue the FY 1998 fee structure, and we specifically invited comments on whether licensees in the 900 MHz Specialized Mobile Radio (SMR) Service were properly included in the CMRS Mobile fee category. Further, we tentatively proposed to include the Wireless Communications Service in

the CMRS Wireless fee category.

43. Several interested parties filed comments, in particular, concerning the demarcation between the CMRS Mobile and CMRS Messaging fee categories. SBC Communications Inc. (SBC) urges us to adopt only a single CMRS fee covering all CMRS services contending that both Congress and the Commission intended in establishing SMRS to create regulatory symmetry among the CMRS services and, thereby, avoid any competitive advantage to narrowband PCS and SMR Services over Cellular and broadband PCS.<sup>12</sup> In contrast, Paging Network, Inc. (Pagenet) supports retention of the existing fee category structure, but recommends adoption of a subcategory for non-voice networks and services within the CMRS Mobile Service fee category which would be subject to the same fee payment as licensees within the CMRS Messaging fee category.

44. Bell South, a provider of mobile wireless data, supported by American Mobile Telecommunications Association (AMTA), suggests that 900 MHz SMR licensees should be classified in the CMRS Messaging Fee category not the CMRS Mobile Services Category. BellSouth WD argues that regulatory fees should be governed by how the service bands are predominantly used. BellSouth WD states that the Commission has allocated 5 MHz of spectrum in each geographic region for 900 MHz SMR systems and that, in practice, this spectrum is licensed in 20 blocks, each consisting of 10 two-way 12.5 KHz paths, or 0.25 MHz per ten-channel block.<sup>13</sup> Further, Bell South contends that 900 MHz SMRs do not have the capacity to compete with true broadband systems, lacking the amount of spectrum of those services included in the CMRS Mobile Fee category. Thus, Bell South WD suggests that we either include any license authorization providing 25 KHz or less spectrum in the CMRS Messaging Service category or that we establish a third CMRS fee payment category for systems that operate in the 900 MHz SMR band and other services that are allocated no more than 5 MHz of spectrum. Small Business in Telecommunications (SBT), representing several SMR licensees, argues that, because we classified narrowband PCS, which operates on 50 KHz paired channels, in the CMRS Messaging Service category<sup>14</sup>, we should clarify that all CMRS stations which are authorized with channel bandwidth not exceeding 50 KHz are within the CMRS Messaging Service category.

45. Moreover, SBT contends that we should clarify that SMR systems and Public Coast stations are within the CMRS Messaging Fees category since these stations are authorized with substantially less channel capacity than narrowband PCS stations. SBT also believes that SMR licensees, which are small businesses should receive discounts on their fees similar to the discounts given to small businesses in spectrum auctions. AMTA also supports relief for small businesses. SBC also contends that we incorrectly included the Rural Radio Service and the

---

<sup>12</sup> *Id.*

<sup>13</sup> See BellSouth WD Comments at 2.

<sup>14</sup> See FY 1997 Fees Order at ¶61.

Basic Exchange Telecommunications Radio Service (BETRS) in the CMRS fee category.

46. We decline to adopt suggestions to base our fees on the predominant use of assigned spectrum and on a licensee by licensee basis. We are aware of no existing records or other information that would permit development of a sub-category of CMRS Mobile Services for those CMRS licensees who use broadband spectrum to deliver CMRS Messaging Services. Thus, adoption of those proposals could impose upon the licensees themselves and our staff an undue expenditure of administrative resources in the course of preparing the fee payments and processing them.

47. Furthermore, we reject SBC's contention that all CMRS licensees should pay the same regulatory fee. The statutory fee schedule makes plain that Congress in enacting the regulatory fee program contemplated that our fee levels would recognize the benefit of the spectrum authorized to licensees in the various services. 47 U.S.C. § 159(g). Furthermore, interested parties should note that in the past our CMRS 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 have considered the nature of the services offered only to the extent that service offered on broadband spectrum and services offered on narrowband spectrum are subject to different categories of fee payment.

48. While, at this time, we lack an adequate record to modify classifications within the CMRS fee category, we intend to adopt shortly a Notice of Inquiry to seek comment on revisiting several of our regulatory fee categories, including CMRS. We encourage CMRS licensees to participate in that proceeding by submitting comments and supporting data.

49. Finally, we did not receive any comments opposing our tentative conclusion that the Wireless Communications Service (WCS) should be classified as a CMRS Mobile Service and, therefore, we will classify WCS as service within the CMRS Mobile Service fee category. Also, we agree with SBC that Section 20.7(a) of the Rules excludes licensees in the Rural Radio Service from CMRS. Therefore, licensees in this Service shall pay annual regulatory fees under the category, GMRS/Other Land Mobile. For FY 1998, the GMRS/Other Land Mobile fee is \$6 per license, payable in advance for the entire license term and at the time of application for a new, modification or reinstatement license. The total regulatory fee due is \$30 for a five-year license term.

### **c. Space Stations and Bearer Circuits**

#### **i. Geostationary Satellites**

50. For FY 1997 and prior years, we have adopted the statutory fee schedule's "per satellite" method for assessment of fees upon licensees of space stations. 47 U.S.C. § 159(g). In the NPRM, we proposed retaining this approach. See FY 1998 NPRM, Attachment F. Columbia asks that we modify our methodology to take into account the difference between transponder and bandwidth capacity that exists among different satellites. Columbia states that its satellites

are limited to just twelve C-band transponders, which, it contends, is only about one-third the capacity of the typical geostationary satellite. Further, it argues that satellite operators benefit from our regulation in close proportion to its capacity because a satellite's commercial capacity dictates the benefit it receives from our regulation, i.e., its ability to generate income. Thus, Columbia suggests that we base the space station fees on the transponder capacity of each satellite measured in 36 MHz equivalent circuits.

51. Both GE Americom and Lorel contend that the Commission engages in little oversight once a satellite is licensed and that application processing costs should not be included in the regulatory fee schedule. The costs attributed to the regulation of geostationary satellites are based on the Commission's cost accounting system which separates application processing costs from regulatory costs.

52. Finally, GE Americom and others contend that any costs related to the development of new services rather than existing services should be treated as overhead and recovered proportionately from all fee payers. They also state that high regulatory fees adversely affect the U.S. satellite industry's capability to compete with foreign licensed companies. We continue to believe that it would be inappropriate to transfer costs directly attributable to one industry group to other unrelated industries or groups. Benefits need not be received or used by a particular licensee to satisfy the "reasonably related" criteria. It is enough that the benefits are available to all. The FCC, by statute, may only regulate costs of domestic licensed companies and we do not believe that our regulatory fees substantially affect American companies ability to compete with foreign entities.

53. After a careful review of the arguments, we have concluded that due to the tight collection schedule we face at this point, as a practical matter, we have no viable alternative other than adoption of the fee as proposed in the NPRM. Our action today is not intended to prejudice any pending waiver applications regarding these fees. Moreover, since the calculation of annual regulatory fees for geostationary satellites has been a matter of dispute for several years, we will soon issue a Notice of Inquiry which will entertain suggestions for alternative approaches based on different criteria and information. We will also ask the satellite industry to specify the data upon which we can base each alternative approach and the most feasible method for obtaining this information.

## **ii. Non-geostationary Satellites**

54. In the NPRM, we proposed to revise the fee payment requirement for non-geostationary satellite systems by requiring a fee payment "upon the commencement of operation of a system's first satellite as reported annually pursuant to sections 25.142(c), 25.143(e) 25.145(g) or upon certification of operation of a single satellite pursuant to section 25.120(d)."<sup>15</sup> See NPRM at ¶ 32. In its comments, ORBCOMM contends that we should recover our non-geostationary space

---

<sup>15</sup> Section 25.120(d) has been renumbered to section 25.121(d).

station regulatory costs from all non-geostationary satellite licensees rather than only those that have launched their initial satellites because all licensees benefit from our policy, enforcement and information activities and services.

55. In the past, we have not assessed fees upon licensees of LEO systems that do not operate at least one in-orbit space station. Nevertheless, we believe that ORBCOMM's proposal to impose a fee on all licensees of LEO systems warrants consideration due to developments in satellite technology permitting the deployment of LEO systems containing large numbers of satellites. However, before further considering the proposal, we believe an opportunity for comments by the interested parties would be useful. Therefore, we adopt the fee as proposed in the NPRM. Nevertheless, we will include ORBCOMM's proposal in the Notice of Inquiry we will initiate to review various methodologies for assessing fees in various fee categories. This will provide an opportunity to fully explore this proposal with input from all affected parties.

56. Finally, we will adopt the NPRM's proposal to reclassify the LEO regulatory fee category as the "Space Stations (Non-geostationary)" fee category because advances in satellite technology have made possible medium and high orbit satellite systems operating in non-geostationary orbits. See NPRM at ¶ 33.

### **iii. Bearer Circuits**

57. For FY 1997, for the first time, we applied the international bearer circuit fee to satellite non-common carriers providing international bearer circuits to end users. See FY 1997 Report and Order at ¶¶ 66-72. Previously, we had assessed the bearer circuit fee only upon undersea cable operators and domestic and international common carriers. In the NPRM, we proposed to again assess the bearer circuit fee on both private and common carrier satellite providers of international bearer circuits to end users. See FY 1998 NPRM, Attachment F.

58. Columbia, Loral, and PanAmSat contend that assessment of the bearer circuit fee on private satellite providers of international bearer circuits is unlawful. These parties state that Section 9(g) of the Communications Act specifically limits the assessment of the bearer circuit fee to "carriers". 47 U.S.C. § 159(g). Because Section 3(10) of the Act defines "carriers" as "common carriers", they contend that we are limited to imposing the fee only on common carriers providing international bearer circuits. 47 U.S.C. § 153(10). In addition, according to Columbia, the intent of Congress in including the bearer circuit fee in its statutory fee schedule was to assure the recovery from common carriers of the cost of their Title II regulation. Because non-common carriers are not subject to Title II regulation, Columbia argues that imposition of the bearer circuit fee on non-common carriers would result in recovery of the costs of Title II regulation from entities not subject to our Title II jurisdiction.

59. As a separate matter, PanAmSat states that our justification underlying imposition of the FY 1997 bearer fee upon non-common carrier satellite providers was flawed because we mistakenly believed that non-common carrier satellite operators would offer interconnected PSTN services in competition with common carriers following our elimination of the de jure prohibition on non-

common carriers for the provision of these services. See FY 1997 Report and Order at ¶ 71. Instead, PanAmSat contends that the record in the pending Comsat Dominance proceeding demonstrates that the amount of PSTN traffic actually carried by non-common carrier satellites is so small as to be inconsequential from a competitive point of view. See 60-SAT-ISP-97. Thus, PanAmSat, supported by Columbia and Loral, argues that there has been no change in our regulation of non-common carriers to justify, pursuant to Section 9(b)(3), subjecting non-common carrier satellites providers to a new fee. 47 U.S.C. § 159(b)(3).

60. Finally, PanAmSat contends that to assess non-common carrier satellite operators the international bearer circuit fee will create a competitive disparity. PanAmSat states that under our DISCO II policies, foreign-licensed satellites now may be used to provide satellite service in the United States. Foreign satellite operators are not, however, required to pay regulatory fees. See 12 FCC Rcd 24094 (1997). As a result, the satellite systems against which U.S.-licensed non-common carriers actually compete will have a competitive advantage solely as a result of having used a foreign licensing administration. In sum, PanAmSat asks that we not impose the bearer circuit fee on non-common carrier satellite operators in order to avoid skewing competition in the telecommunications markets by unfairly discriminating against U.S.-licensed service providers.

61. We disagree with Columbia, Loral and PanAmSat that our assessment of the bearer circuit regulatory fee on them is unlawful. First, we disagree with their assertion that the intent of Congress in enacting Section 9 of the Communications Act, under which the Commission is required to collect annual regulatory fees, including the bearer circuit fee at issue here, was to recover the costs of regulating common carriers under Title II of the Act. Section 9(a) clearly states that the purpose of the regulatory fees is to recover the costs of the Commission's enforcement activities, policy and rulemaking activities, user information services and international activities. Section 9(a) does not mention carriers or non-carriers or impose different criteria for each. Rather, the section requires the Commission to collect fees designed to recover its costs for these four general activities and to collect those fees from all entities that either require the Commission to engage in those activities or who benefit from them. As we noted in our FY 1997 Report and Order the Commission's costs for Title II regulation are recovered from the application fees under Section 8 of the Communications Act.

62. We further disagree with the argument of PanAmSat that our argument for recovering bearer circuit fees from non-carrier providers of such circuits is flawed. We see nothing in Section 9 that would specifically exempt non-carriers from paying fees under Section 9. While we agree that the Schedule of Regulatory Fees included in Section 9(g) states that we should impose bearer circuit fees upon "carriers,"<sup>16</sup> and that Section 3(10) of the Act defines "carriers" to mean "common carriers,"<sup>17</sup> that is not the end of the issue. Section 9(b)(3) empowers the Commission

---

<sup>16</sup> 47 U.S.C. § 159(g).

<sup>17</sup> 47 U.S.C. § 153(10).

to amend the Schedule of Regulatory Fees if the Commission deems such amendment necessary in the public interest.<sup>18</sup> In our 1997 Report and Order we amended the schedule of regulatory fees to impose them upon non-carrier operators of international satellite systems under the terms of Section 9(g)(3). The basis for this amendment was that the non-carrier system operators had sought and obtained a significant expansion of the scope of services they are permitted to offer.<sup>19</sup> Our DISCO II Order also allowed them to provide unlimited domestic service,<sup>20</sup> thereby increasing their permitted service areas. Because of these changes in their operation the non-carrier operators of international satellite systems impose more burdens upon the Commission's regulatory staff and derive a greater benefit from such staff's activities, particularly its international representation functions. We concluded, therefore, that it would be appropriate to begin to collect regulatory fees from such operators.

63. The commenting parties do not directly challenge the conclusions of our FY 1997 Report and Order. At most, PanAmSat argues that we may have overestimated the number of circuits such entities interconnect to the public switched telephone network (PSTN) and that the number is actually "competitively inconsequential." Our decision, however, was not solely based upon the connection of circuits to the PSTN. The non-carrier international satellite operators have become substantial providers of international private-line circuits. Such circuits are international bearer circuits, whether or not they are interconnected to the PSTN. They offer substantial competition to carrier offerings of international bearer circuits. Commission staff has also spent considerable time representing non-carrier satellite operators in international forums. Therefore, we continue to believe that our regulation of these entities has sufficiently changed so that it is now appropriate for them to contribute to the recovery of Commission costs through payment of the bearer circuit fee. Finally, we find no merit in PanAmSat's argument that our imposition of bearer circuit fees on U.S.-licensed satellite systems discriminates in favor of foreign-owned systems. Congress requires the Commission to recover regulatory fees from firms who are subject to the Commission's regulatory jurisdiction. Foreign -licensed satellite systems do not fall within Commission jurisdiction. Therefore, they neither directly impose burdens on the Commission's staff nor receive benefits from Commission representation in international fora.

#### **d. Interstate Telephone Service Providers**

64. In the NPRM, we proposed to adopt the methodology for assessing fees upon Interstate Telephone Service Providers that we had employed in past years. Under this methodology, carriers calculate their fees based upon their proportionate share of interstate revenues using the methodology we developed for contribution to the TRS Fund. See Telecommunications Relay Services, 8 FCC Rcd 5300 (1993). However, in order to avoid imposing upon resellers a double

---

<sup>18</sup> 47 U.S.C. § 159(g)(3).

<sup>19</sup> *See* \_\_ FCC Rcd at \_\_\_\_.

<sup>20</sup> *See*

fee payment, we permit carriers to remove from their gross interstate revenue payments made to underlying carriers for telecommunications facilities and services, including payments for interstate access services.

65. SBC contends that our methodology imposes an undue burden upon the LECs because we permit interexchange carriers (IXCs) to deduct payments made to underlying common carriers from their gross revenues while local exchange carriers (LECs) do not have such payments to deduct. SBC suggests that use of end user revenues - the same contribution base used for Universal Service - to develop the annual fees would alleviate that burden and be more competitively neutral.

66. We find merit to SBC's proposal and, indeed, we have previously recognized administrative advantages to using end user revenues as opposed to net revenues when assessing carrier contributions.<sup>21</sup> However, SBC is mistaken in describing end user revenues as more competitively neutral than the mechanism we have proposed. Assuming that all fees are recovered from customers, including carrier customers that purchase their service for resale, retail customers would still pay the same rates. Further, to the extent that SBC provides services in competition with other carriers, those carriers would pay the same percentage amounts as SBC when providing the same services to the same customers. Since modifying the fee basis would not result in any material difference in the rates that consumers pay, we cannot conclude that the LEC's pay an undue share under our proposed methodology.

67. Interested parties should note that we are adopting our net revenue methodology as the fee basis for the Interstate Telephone Service Providers fee category again this year, in part, because we do not yet have adequate data to estimate total common carrier interstate end user revenue for FY 1997. While we could make such an estimate using data available for the first half of FY 1997 based on USF filings submitted on September 1, 1997, we believe that for FY 1998 we can make a better calculation of net revenues using historic data from regulatory fees as well as published gross revenue data based on TRS Fund filings. Thus, we expect to revisit SBC's proposal in the course of developing our regulatory fees for FY 1999.

#### **E. Schedule of Regulatory Fees**

68. The Commission's Schedule of Regulatory Fees for FY 1998 is contained in Attachment F of this Report and Order.

#### **F. Effect of Revenue Redistributions on Major Constituencies**

69. The chart below illustrates the relative percentages of the revenue requirements borne by major constituencies since inception of regulatory fees in FY 1994.

---

<sup>21</sup> *Federal-State Joint Board on Universal Service*, Report and Order, FCC 97-157, CC Docket No. 96-45, 12 FCC Rcd 8776, 9206-9209 (rel. May 8, 1997) (*Universal Service Order*).

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

## **G. Procedures for Payment of Regulatory Fees**

### **i. Installment Payments for Large Fees**

70. Generally, we are retaining 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 establishing three categories of fee payments, based upon the category of service for which the fee payment is due and the amount of the fee to be paid. The fee categories are (1) "standard" fees, (2) "large" fees, and (3) "small" fees.

71. We proposed in the NPRM 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. However, statutory constraints requiring notification to Congress prior to actual collection of the fees prevents us from allowing installment payments in FY 1998. The payment dates for each regulatory fee category will be

announced by Public Notice and published in the Federal Register following termination of this proceeding. However, regulatees otherwise eligible to make installment payments may pay their fees on the last date that fee payments may be submitted, as established in our Public Notice.

## **ii. Annual Payments of Standard Fees**

72. Standard fees are those regulatory fees that are payable in full on an annual basis. Payers of standard fees are not required to make advance payments for their full license term and are not eligible for installment payments. As in the past, all standard fees will be 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 by Public Notice and published in the Federal Register following termination of this proceeding.

## **iii. Advance Payment of Small Fees**

73. 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). Advance payments will be required from licensees of those services that we identified would be subject to advance payments in our FY 1994 Report and Order, and to those additional payers set forth herein.<sup>22</sup> Payers of small fees must 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 of the FY 1998 small fees will be announced by Public Notice and published in the Federal Register following termination of this proceeding.

## **iv. Standard Fee Calculations and Payment Dates**

74. As noted, the time for payment of standard fees will be published in the Federal Register. For licensees, permittees and holders of other authorizations in the Common Carrier, Mass Media and Cable Services, fees should be submitted for any authorization held as of October 1, 1997. As in the past, this is the date to be used for establishing liability for payment of these fees since it is the first day of the federal government's fiscal year.

75. In the case of other regulatees whose fees are based upon a subscriber, unit or circuit count,

---

<sup>22</sup> 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). In addition, applicants for Amateur Radio Vanity Call Signs will be required to submit an advance payment.

the number of a regulatees' subscribers, units or circuits on December 31, 1997, will be used to calculate the fee payment.<sup>23</sup> As in the past, we have selected the last date of the calendar year because many of these entities file reports with us as of that date. Others calculate their subscriber numbers as of that date for internal purposes. Therefore, calculation of the regulatory fee as of that date will facilitate both an entity's computation of its fee payment and our verification that the correct fee payment has been submitted.

#### **v. Minimum Fee Payment Liability**

76. Regulatees whose total fee liability amounts to less than \$10, including all categories of fees for which payment is due by an entity, are exempted from fee payment in FY 1998.

#### **IV. Ordering Clause**

77. Accordingly, it is ordered that the rule changes specified herein are adopted. It is further ordered that the rule changes made herein will become effective 60 days from date of publication in the Federal Register, except that changes to the Schedule of Regulatory Fees, made pursuant to section 9(b)(3) of the Communications Act, and incorporating regulatory fees for FY 1998, will become effective September 13, 1998, which is 90 days from the date of notification to Congress. Finally, it is ordered that this proceeding is TERMINATED.

#### **V. Authority and Further Information**

78. This action is taken pursuant to sections 4(i), 4(j), 9 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and (j) and 9 and 303(r).

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

#### **List of Subjects in 47 CFR Part 1**

Administrative practice and procedure, Communications common carriers, Radio, Telecommunications, Television

---

<sup>23</sup> 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 1996, rather than on a count as of December 31, 1996.

FEDERAL COMMUNICATIONS COMMISSION

*Magalie Roman Salas*  
Magalie Roman Salas *WFC*  
Secretary