

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

FCC 00-240

In the Matter of)
)
Assessment and Collection) MD Docket No. 00-58
of Regulatory Fees for)
Fiscal Year 2000)

REPORT AND ORDER

Adopted: June 30, 2000 ; **Released:** July 10, 2000

By the Commission: Commissioner Furchtgott-Roth approving in part, dissenting in part and issuing a statement.

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I. Introduction

1. By this Report and Order, the Commission concludes 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) 2000.¹
2. Congress has required that we collect \$185,754,000 through regulatory fees in order to recover the costs of our enforcement, policy and rulemaking, international and user information activities for FY 2000.² This amount is \$13,231,000 or approximately 7.67% more than the amount that Congress designated for recovery through regulatory fees for FY 1999.³ Thus, we are revising our fees to collect the increased amount that Congress has specified. Additionally, we are amending the Schedule in order to simplify and streamline it.
3. In revising our fees, we adjusted the payment units and revenue requirement for each service subject to a fee, consistent with section 9(b)(2). The current Schedule of Regulatory Fees is set forth in §§ 1.1152 through 1.1156 of the Commission's rules.⁴
4. We also note that Congress has before it for consideration a Supplemental Appropriation Act "[u]nder the heading 'Federal Communications Commission, salaries and Expenses' in title V of H.R. 3421 of the 106th Congress, as enacted by section 1000(a)(1) of Public Law 106-113," which proposes to increase the amount we must collect in FY 2000 regulatory fees by \$5.8 million to an aggregate total of \$191,554,000. This would be an increase of approximately 3.12 percent over the \$185,754,000 the Congress originally requested. If this additional increase or (any other increase) is enacted by the Congress, we will adjust the Schedule of Regulatory Fees adopted in this Report and Order by first applying the increase percentage to the expected revenues contained in this decision. Then, we will divide the new expected revenues by the estimated number of payment units detailed in this decision and adjust for rounding as required by section 9(b)(2). 47 U.S.C. 159(b)(2). We delegate to the Managing Director authority to issue a subsequent order amending the Schedule of Regulatory Fees for FY2000 to reflect the change in the law, should it be enacted.

¹ 47 U.S.C. 159 (a) and Assessment and Collection of Regulatory Fees for Fiscal Year 2000, FCC 00-117, released April 3, 2000, 65 FR 19580 (Apr. 11, 2000).

² Public Law 106-113 and 47 U.S.C. 159(a)(2).

³ Assessment and Collection of Regulatory Fees for Fiscal Year 1999, FCC 98-200, released June 18, 1999, 64 FR 35831 (Jul. 1, 1999).

⁴ 47 CFR 1.1152 through 1.1156.

II. Background

5. Section 9(a) of the Communications Act of 1934, as amended, authorizes the Commission to assess and collect annual regulatory fees to recover the costs, as determined annually by Congress, that it incurs in carrying out enforcement, policy and rulemaking, international, and user information activities.⁵ See Attachment G for a description of these activities. In our FY 1994 Fee Order,⁶ we adopted the Schedule of Regulatory Fees that Congress established, and we prescribed rules to govern payment of the fees, as required by Congress.⁷ Subsequently, we modified the fee Schedule to increase the fees in accordance with the amounts Congress required us to collect in each succeeding fiscal year. We also amended the rules governing our regulatory fee program based upon our prior experience administering the program.⁸

6. As noted, 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.⁹ Section 9(b)(2), entitled "Mandatory Adjustments," requires that we revise the Schedule of Regulatory Fees to reflect the amount that Congress requires us to recover through regulatory fees.¹⁰

7. 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 in the public interest, as well as issues that are reasonably related to the payer of the fee. These amendments permit us to "add, delete, or reclassify services in the Schedule to reflect additions, deletions or changes in the nature of its services."¹¹

8. Section 9(i) requires that we develop accounting systems necessary to adjust our fees pursuant to changes in the costs of regulation of various services that are subject to a fee, and for other purposes.¹² For FY 1997, we relied for the first time on cost accounting data to identify our

⁵ 47 U.S.C. 159(a).

⁶ 59 FR 30984 (Jun. 16, 1994).

⁷ 47 U.S.C. 159(b), (f)(1).

⁸ 47 CFR 1.1151 *et seq.*

⁹ 47 U.S.C. 159(b)(2), (b)(3).

¹⁰ 47 U.S.C. 159(b)(2).

¹¹ 47 U.S.C. 159(b)(3).

¹² 47 U.S.C. 159(i).

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, which we continued to use for FY 1998, enabled us to develop regulatory fees which we believed would be more reflective of our costs of regulation, and allowed us to make revisions to our fees based on the fullest extent possible, while still consistent with the public interest, on the actual costs of regulating those services that are subject to a fee. However, we found that developing a regulatory fee structure based on cost information did not produce the desired results. We were anticipating that our regulatory costs would level off or, perhaps, decline causing these adjustments to decrease from the 25 percent towards zero. Since our regulatory costs have continued to rise, this methodology was discontinued. Therefore, we chose to base the FY 1999 fees only on the basis of "Mandatory Adjustments". Finally, section 9(b)(4)(B) requires us to notify Congress of any permitted amendments 90 days before those amendments go into effect.¹³

III. Discussion

A. Summary of FY 2000 Fee Methodology

9. As noted, Congress has required that the Commission recover \$185,754,000 for FY 2000 through the collection of regulatory fees, representing the costs applicable to our enforcement, policy and rulemaking, international, and user information activities.¹⁴

10. In developing our FY 2000 fee schedule, we first determined that we should continue to use the same general methodology for "Mandatory Adjustments" to the Fee Schedule that we used in developing the FY 1999 fee schedule. Our regulatory costs continue to rise, and using cost information produced by our current cost accounting system to determine a regulatory fee schedule does not produce the desired result of collecting the amount required by Congress. Therefore, we estimated the number of payment units¹⁵ for FY 2000 in order to determine the aggregate amount of revenue we would collect without any revision to our FY 1999 fees. Then we compared this revenue amount to the \$185,754,000 that Congress has required us to collect in FY 2000 and prorated the difference among all the existing fee categories.

¹³ 47 U.S.C. 159(b)(4)(B).

¹⁴ 47 U.S.C. 159(a).

¹⁵ 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.

11. Once we established our tentative FY 2000 fees, we evaluated proposals made by Commission staff concerning changes to the Fee Schedule and our collection procedures. These proposals are discussed in paragraphs 15-19 and are factored into our FY 2000 Schedule of Regulatory Fees, set forth in Attachment D.

12. Finally, we have incorporated, as Attachment F, a section entitled "Guidance" that contains 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 2000.¹⁶ In the following paragraphs, we describe in greater detail our methodology for establishing our FY 2000 regulatory fees.

B. Development of FY 2000 Fees

i. Adjustment of Payment Units

13. In calculating FY 2000 regulatory fees for each service, we adjusted the estimated payment units for each service because payment units for many services have changed substantially since we adopted our FY 1999 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. Attachment B provides a summary of how revised payment units were determined for each fee category.¹⁷

ii. Calculation of Revenue Requirements

14. We next multiplied the revised payment units for each service by the FY 1999 fees for each category to determine how much revenue we would collect without any change to the FY 1999 Schedule of Regulatory Fees. The amount of revenue which we would collect without changes to the Fee Schedule is approximately \$191.6 million. This amount is approximately \$5.9 million more than the amount the Commission is required to collect in FY 2000. We then adjusted the revenue requirements for each category on a proportional basis, consistent with Section 9(b)(2) of the Act, to obtain an estimate of the revenue requirements for each fee category so that the Commission could collect \$185,754,000 as required by Congress. Attachment C provides detailed calculations

¹⁶ Attachment F contains updated information concerning any changes made to the proposed fees adopted by this Report and Order.

¹⁷ It is important to also note that Congress' required revenue increase in total regulatory fee payments of approximately 7.67 percent in FY 2000 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. Further, distribution of various overhead costs and rounding of fees will also affect the final percentage increase or decrease.

showing how we determined the revised revenue amounts to be raised for each service.

iii. Recalculation of Fees

15. Once we determined the revenue requirement for each service and class of licensee, we divided the revenue requirement by the number of estimated 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)(2) of the Act. See Attachment C.

iv. Discussion of Issues and Changes to Fee Schedule

16. We examined the results of our calculations 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).¹⁸ Further, we have reviewed the comments received in this proceeding. As a result of this review, we are making the following "Mandatory Adjustments" and adjustments to our Fee Schedule and Guidance:

a. INTELSAT Satellites

17. In our NPRM, we reversed the approach taken in our prior fee orders¹⁹ of treating Comsat as exempt from section 9 geostationary space station fees. We proposed that: "it is clear, that, for FY 2000, Comsat as the United States Signatory to INTELSAT is subject to regulatory fees." Assessment and Collection of Fees for Fiscal Year 2000, FCC 00-117 (Apr. 3, 2000) at ¶ 17. We cited the decision of the United States Court of Appeals for the District of Columbia Circuit in Panamsat Corp. v. FCC, 198 F.3d 890 (D.C. Cir. 1999), which set aside and remanded our 1998 fee order, which did not assess a fee against Comsat. We also cited Congress' enactment on March 17, 2000 of the Open Market Reorganization for the Betterment of International Telecommunications Act (ORBIT). Act of March 17, 2000, Pub. L. 106-180, 114 Stat. 48 (2000). That legislation provides that:

(c) PARITY OF TREATMENT – Notwithstanding any other law or executive agreement, the Commission shall have the authority to impose similar regulatory fees on the United States signatory [i.e., Comsat] which it imposes on other entities providing similar services.

¹⁸ In FY 1997 and FY 1998 we limited increases to 25%. For FY 1999 and FY 2000, none of the proposed fee increases exceed 25%.

¹⁹ See Assessment and Collection of Fees for Fiscal Year 1994, 9 FCC Rcd 5333 (1994); Assessment and Collection of Fees for Fiscal Year 1995, 10 FCC Rcd 13512 (1995); Assessment and Collection of Fees for Fiscal Year 1996, 11 FCC Rcd 18774 (1996); Assessment and Collection of Fees for Fiscal Year 1997, 12 FCC Rcd 17161 (1997); Assessment and Collection of Fees for Fiscal Year 1998, 13 FCC Rcd 19820 (1998); Assessment and Collection of Fees for Fiscal Year 1999, 14 FCC Rcd 9868 (1999).

18. Comsat contends in its comments that no justification exists for assessing a regulatory fee against it. According to Comsat, the geostationary space station fee contained in the rules since 1993 does not apply to INTELSAT space stations because: (1) they are not licensed by the Commission; (2) they are not regulated under 47 C.F.R. Part 25; and (3) they are non-U.S. facilities outside of United States jurisdiction.²⁰ Moreover, Comsat asserts that neither Panamsat nor ORBIT establishes any new fee uniquely applicable to Comsat, and that Comsat already pays the fees applicable to similarly situated parties. Finally, Comsat urges that any fee imposed on it should be discounted to reflect that: (1) Comsat utilizes only 17.01 percent of INTELSAT'S transponder capacity, and (2) ORBIT was not enacted until March 17, 2000, 2 ½ months after the October 1, 1999 cut-off for determining liability for FY 2000 regulatory fees. Panamsat Corporation and GE American Communications, Inc. support the analysis set forth in the NPRM. They assert that they will unfairly bear the costs associated with Comsat's participation in INTELSAT unless Comsat assumes its proportionate share of the space station fees.

19. We disagree with Comsat and agree in substance with the views of Panamsat and GE Americom.²¹ Our analysis of Comsat's arguments is guided by the mandate of the court of appeals in Panamsat, as well as by the will of Congress as embodied in ORBIT. Panamsat holds that:

. . . the statute [*i.e.*, section 9] does not require – and may not permit – Comsat's exemption from space station regulatory fees. Nor would the legislative history [*see* note 2, *supra*] change the result, assuming the statute to be ambiguous enough to allow its consideration.

Panamsat, 198 F.3d at 895. Further, Panamsat rejects the view, now argued by Comsat, that Comsat's operation of INTELSAT space stations is not licensed or within Commission jurisdiction, as arguably required to make Comsat subject to the space station fee. As the court of appeals noted (198 F.3d at 896), Comsat must seek Commission authorization under Title III for its participation in the operation of INTELSAT satellites. *See also Communications Satellite Corp.*, 46 FCC 2d 338 (1974) (establishing procedures for Comsat to obtain Commission authorization to participate in the construction and operation of INTELSAT facilities, pursuant to Title III and section 214 of the Communications Act, and section 201(c) of the Communications Satellite Act).²² Comsat has

²⁰ Comsat relies on the following language contained in H.R. Rep. No. 207, 102ND Cong., 1st Sess. 1991, incorporated by reference in H.R. Rep. No. 213, 103rd Cong., 1st Sess. 1993:

The Committee intends that fees in this category [space stations] be assessed on operators of U.S. facilities, consistent with FCC jurisdiction. Therefore, these fees will apply only to space stations directly licensed by the Commission under Title III of the Communications Act. Fees will not be applied to space stations operated by international organizations subject to the International Organizations Immunities Act, 22 U.S.C. Section 288 et seq. [*e.g.*, INTELSAT].

²¹ Because our analysis largely overlaps those of Panamsat and GE Americom, we will not summarize their arguments at length.

²² The Communications Satellite Act expressly designates Comsat as a common carrier fully subject to the provisions of Title II and Title III of the Communications Act. 47 U.S.C. § 741.

received such authorizations whether or not the satellite in question served North America. The court concludes:

. . . it seems perfectly reasonable to say under these circumstances that the Commission “licenses” Comsat’s operation of Intelsat satellites. Thus, the legislative history’s embrace of fees for satellites “directly licensed by the Commission under Title III” seems reasonably to encompass Comsat.

Panamsat, 198 F.3d at 896. The court further noted that Comsat pays Title III space station application fees under section 8 in connection with its satellite authorizations. Panamsat, 198 F.3d at 895. In view of the foregoing, Comsat cannot be heard to argue -- based on the same language considered by the court of appeals -- that its INTELSAT operations are not licensed or that they are “foreign” within the relevant meaning of those terms.²³

20. In this regard, we see no merit to Comsat’s suggestion that the Commission may not impose regulatory fees on Comsat unless it imposes the same fees on the users of foreign-licensed satellites and on direct access users of INTELSAT’s system. We do not grant Title III authorizations to direct access users, who are merely customers of INTELSAT. Comsat is the U.S. Signatory to INTELSAT. As such, it is the largest and the sole U.S. investor in the system receiving a return on its investment. It also is the U.S. entity that participates in INTELSAT commercial decisions involving procurement and operation of satellites and development and pricing of services provided by INTELSAT. Comsat, therefore, is the U.S. entity responsible for operation of the INTELSAT satellites. This unique status, established by the Communications Satellite Act, makes Comsat subject to obtaining Title III authorization. Neither the investors in foreign-licensed systems nor direct access users of INTELSAT’s system (now codified by ORBIT) have similar status.

21. Comsat also makes a related argument, noting that the pertinent fee is described as follows: “Space Station (per operational station in geosynchronous orbit) (47 C.F.R. Part 25).” 47 U.S.C. § 159(g). Comsat maintains that the parenthetical reference to Part 25 indicates that the fee only applies to space stations that are licensed subject to the technical and other regulations contained in Part 25. INTELSAT’s facilities are not subject to the licensing provisions of Part 25. In this regard, the court in Panamsat left open the question of whether “. . . there is some ambiguity in the coverage of the ‘space station’ category in § 9, such that the Commission might ‘permissibly’ read the statute as allowing a Comsat exemption.” Panamsat, 198 F.3d at 896.²⁴

22. We find that adopting the interpretation of section 9 proposed by Comsat would be contrary to the intent of Congress. Section 9’s primary mandate is for the Commission to recover the costs of its regulatory activities, including international activities, through the collection of fees assessed against those who benefit from the Commission’s activities. 47 U.S.C. § 159(a)(1), (b)(1)(A). In

²³ We recognize that this analysis departs from our treatment of this issue in past fee orders. Panamsat, however, establishes the applicable law, and we are bound by its teachings.

²⁴ Elsewhere, however, the Court states: “The plain terms of § 9 . . . clearly do not require an exemption for Comsat, and there is no obvious hook in the language on which to hang an exemption.” Panamsat, 198 F.3d at 895.

enacting section 9, Congress established an initial schedule of fees, which the Commission may modify under appropriate circumstances. It would unreasonably frustrate the intent of Congress to suppose that it framed the fee schedule in a way that made a category of costs either unrecoverable or not chargeable against the party most directly related to them, without creating an express exemption. This leads us to conclude that section 9's reference to Part 25 is essentially clerical, *i.e.*, that it simply calls attention to the section of the rules most relevant to the fee, but does not reflect a substantive limitation. To hold otherwise would elevate form over substance. It is reasonable to infer that Congress intended to relate the fee to the costs of effectuating all of our statutory satellite responsibilities and not simply those that happen to have been codified as Part 25. For example, we have held that the section 9 regulatory fee applies to DBS satellites although they are regulated under Part 100 rather than Part 25. See Assessment and Collection of Regulatory Fees for Fiscal Year 1996, 11 FCC Rcd 18774, 1811 (1996); Direct Broadcast Satellites, 90 FCC 2d 676 (1982) (establishing interim rules for DBS).²⁵ Moreover, Part 25 is, in part, a manifestation of some of the statutory responsibilities set forth in the Communications Satellite Act. See 47 U.S.C. § 721(c)(11); 47 CFR § 25.101(a). Thus, for example, when we place Comsat's applications on public notice, we apply the pleading requirements of 47 CFR § 25.154, although Comsat's applications are not, strictly speaking, "Part 25 applications." See, *e.g.*, Applications Accepted for Filing, Rep. No. SPB-109 (Oct. 28, 1997).

23. We further find that the foregoing analysis is consistent with and reinforced by the "Parity of Treatment" provision of ORBIT. Indeed, we agree with Comsat that in pertinent respects a degree of "redundancy" exists between ORBIT and Panamsat. Comments of Comsat Corporation at 18 n.9. As Comsat points out, the Parity of Treatment provision is a carryover from a previous satellite privatization bill (H.R. 1872, 105th Cong., 2nd Sess.). In 1998, when the provision was first introduced, the United States Court of Appeals for the District of Columbia Circuit had recently decided Comsat Corp. v. FCC, 114 F.3d 223 (D.C. Cir. 1997), which had struck down a Commission attempt to impose a novel "signatory fee" against Comsat.²⁶ In our view, the provision codifies the proposition, also reflected in Panamsat, that the invalidity of the signatory fee does not mean that Comsat is exempt from the space station fee. The House Report accompanying H.R. 1872 states:

²⁵ Since its establishment in 1982, the Part 100 DBS service has referred to satellite systems operating on the Ku-band at frequencies and orbital positions different from satellites authorized under Part 25. See Policies and Rules for the Direct Broadcast Satellite Service, 13 FCC Rcd 6907, 6909 ¶ 2 (1998) (proposing to make Part 25 applicable to DBS); Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992, 8 FCC Rcd 1589, 1589-90 ¶¶ 3-4 (1993). See also Satellite Communications Services, 56 Fed. Reg. 24014, 24016 (May 28, 1991) (amending the rules to add: "§ 25.109 Cross-reference. The space radiocommunications stations in the following services are not licensed under this part: . . . Direct Broadcasting Satellite Service, see 47 CFR part 100 . . .")

²⁶ The court held that the signatory fee, which was not among those initially specified by Congress in section 9, could not be added consistent with the section's requirement that new fees must reflect additions, deletions, or changes in the nature of service.

The Committee believes that the Commission currently has the statutory authority to impose such fees [i.e., fees similar to the regulatory fees imposed on other entities providing similar services] but wishes to make explicit here that the Commission does indeed have such authority. This subsection should not be interpreted to imply that the Commission does not currently have the authority to enact such regulatory fees.

H.R. Rep. No. 494, 105th Cong., 2nd Sess. 1998. We reject Comsat's attempt to avoid the implications of this provision. ORBIT, like Panamsat, makes clear that Comsat is not exempt from the space station fee as regards INTELSAT facilities. To accept Comsat's interpretation, that it is not subject to the space station fee despite ORBIT, would give the relevant provision of ORBIT no effect at all. Thus, we reject Comsat's argument that ORBIT's reference to "similar services" as opposed to "similar facilities" applies only to Comsat's international bearer circuits, as to which there has been no dispute over Comsat's liability.²⁷ We also reject Comsat's baseless suggestion that ORBIT establishes a requirement that the space station fee would be applicable to Comsat only if its satellites were "similarly situated" to other satellites. Each of these arguments, if accepted, would nullify the parity provision of ORBIT.

24. In sum, we conclude that Comsat should pay a proportionate share of the fees applicable to holders of Title III authorizations to launch and operate geosynchronous space stations. As we concluded in years past, the costs attributable to space station oversight include costs directly related to INTELSAT signatory activities. See Assessment and Collection of Regulatory Fees for Fiscal Year 1996, 11 FCC Rcd 18774, 18790 ¶¶ 45-46 (1996). These costs are distinct from those recovered by other fees that Comsat pays, such as application fees, fees applicable to international bearer circuits, fees covering Comsat's non-Intelsat satellites, and earth station fees. If Comsat does not pay its share, these costs will be borne by other holders of Title III authorizations.

25. We disagree with Comsat's suggestion that imposing a fee pursuant to ORBIT would have an improper retroactive effect. We see no significance to the fact that ORBIT was not enacted until March 17, 2000, after the October 1, 1999 cut-off established pursuant to our rules for authorizations that will be subject to annual regulatory fees for fiscal year 2000. See Assessment and Collection of Fees for Fiscal Year 2000, FCC 00-117 (Apr. 3, 2000) at ¶ 27. As discussed above, we find that ORBIT merely reaffirms Comsat's liability for fees under section 9 and does not create any new liability. Thus, the date of its enactment has no significance with respect to the fees chargeable to Comsat. In any event, we do not in this proceeding contemplate retroactively imposing, pursuant to ORBIT, any fees due prior to ORBIT's enactment.²⁸ The fees at issue here are due prospectively in September 2000. We note further that irrespective of the date of ORBIT's enactment, Comsat held the authorizations relevant to the fee as of October 1, 1999. Thus, while

²⁷ Additionally, we note that Comsat's own literature indicates that it provides "satellite capacity services" as "the U.S. owner of the INTELSAT satellite system. . . ." COMSAT Corporation: Satellite Capacity Services, available at <http://www.comsat.com/sat_cap/> (visited May 10, 2000).

²⁸ We will consider elsewhere to what extent the court's decision in Panamsat may require the adjustment of past fees.

the cut-off would normally bar applying fees to authorizations issued or acquired after October 1, 1999, no such action is contemplated here.

26. We also find no basis to discount the fees based on the level of Comsat's usage of INTELSAT's system. We have previously rejected proposals to base the space station fee on the number of transponders used rather than the number of space segments. See Assessment and Collection of Regulatory Fees for Fiscal Year 1995, 10 FCC Rcd 13512, 13550-51 ¶ 111 (1995). Comsat has furnished no justification for us to adopt a utilization-based approach generally. In this regard, our decision in Columbia Communications Corp., 14 FCC Rcd 1122 (1999), should not be read as endorsing a utilization-based approach to the space station fee. In that case, we granted Columbia a partial waiver of the fee based on the unique circumstances present. Specifically, Columbia leased transponder capacity on two NASA Tracking Data and Relay Satellites (TDRSS). Under the terms of the lease, NASA could preempt Columbia's usage on minimal notice. Moreover, Columbia already paid 70 percent of its revenues to the United States Government under the lease. Because the usefulness of Columbia's license had been impaired by another governmental body, and because Columbia already paid the government for the use of the satellites, we found that a partial waiver was appropriate.

27. We note that Comsat has also requested a reduction in any fees that may be assessed. We express no view in this rulemaking proceeding whether such a reduction in fees should be granted. Waivers and reductions in fees are granted on a case-by-case basis under section 1.1166 of our rules. Comsat is free to submit such a request in accordance with the requirements of that section.

b. Interstate Telephone Service Providers

28. The Commission is required under the Communications Act of 1934, as amended,²⁹ to establish procedures that will finance interstate telecommunications relay services (TRS), universal service support mechanisms, administration of the North American Numbering Plan (NANPA), and shared costs of the local number portability (LNPA) program. In a series of separate proceedings, the Commission has already established procedures that permits the administrators of these programs to collect contributions from all providers of telecommunications services in support of the above mandates.³⁰ In 1999, as part of its paperwork streamlining efforts, the Commission amended its rules and required contributors to file only a single form FCC Form 499-A, Telecommunications Reporting Worksheet, and eliminated FCC Form 431, TRS Fund Worksheet.³¹

²⁹ 47 U.S.C. 151, 225, 251, 254.

³⁰ These contributions are separate and apart from regulatory fees collected to fund the Commission's operations.

³¹ 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Report and Order, FCC 99-175, CC Docket No. 98-171 (rel. July 14, 1999), 64 FR 41320 (July 30, 1999)(Contributor Reporting Requirements Order).

Previously, Form 431, TRS Fund Worksheet, was used to obtain base revenue data from which telephone services regulatory fees were calculated. Because of this form change, it is no longer feasible to obtain base telephone services revenue data using adjusted gross interstate revenues as derived from data previously provided on FCC Form 431, TRS Fund Worksheet. Therefore, beginning in FY 2000, we are requiring that the interstate telephone services regulatory fee be derived from interstate and international end-user revenues data submitted on FCC Form 499-A, Telecommunications Reporting Worksheet, rather than from data provided on Form 431, TRS Fund Worksheet. A copy of the form and instructions can be downloaded at: <http://www.fcc.gov/formpage.html>.

29. All providers of telecommunications services within the United States, with very limited exceptions, must file a FCC Form 499-A, Telecommunications Reporting Worksheet. For this filing, the United States is defined as the contiguous United States, Alaska, Hawaii, American Samoa, Baker Island, Guam, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Island, Navassa Island, the Northern Mariana Islands, Palmyra, Puerto Rico, the U.S. Virgin Islands, and Wake Island. Each legal entity that provides interstate telecommunications service for a fee, including each affiliate or subsidiary of an entity, must complete and file separately a copy of the Telecommunications Reporting Worksheet.

30. In determining who must file Form 499-A, the term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. For the purpose of filing the Telecommunication Reporting Worksheet, the term "interstate telecommunications" includes, but is not limited to, the following types of services: wireless telephony including cellular and personal communications services (PCS); paging and messaging services; dispatch services; mobile radio services; operator services; access to interexchange service; special access; wide area telecommunications services (WATS); subscriber toll-free services; 900 services; message telephone services (MTS); private line; telex; telegraph; video services; satellite services; and resale services. For example, all local exchange carriers provide access services and, therefore, provide interstate telecommunications. Included are entities that offer interstate telecommunications services to the public for a fee, even if only a narrow or limited class of users could use the services. Also included are entities that provide interstate telecommunications services to entities other than themselves for a fee on a private, contractual basis. In addition, owners of pay telephones, sometimes referred to as "pay telephone aggregators," must file the worksheet. Most telecommunications carriers must file the worksheet even if they qualify for the *de minimis exemption* under the commission's rules for universal service.³²

31. With the introduction of a new form, FCC Form 499-A, it is no longer feasible to base the interstate telephone services regulatory fee on the adjusted gross interstate revenues because this data was derived from a previously used form (FCC 431) to contribute to the Telecommunication Relay Services Fund. Therefore, beginning in FY 2000, we are requiring that the interstate and international telephone services regulatory fee be derived from interstate and international end-user

³² 47 CFR 54.708.

revenues as submitted by providers on FCC Form 499-A, Telecommunications Reporting Worksheet, as part of the telecommunications provider reporting requirements. The following providers are exempt from paying the interstate telephone service provider regulatory fees: interstate service providers that have mobile service or satellite service revenue, but no local or non-satellite toll service;³³ government entities within the meaning of the term 47 CFR 1.1162; and carriers whose payment obligation would be less than \$10.³⁴ Note, the interstate telephone service provider fee is based on interstate and international end-user revenues for local and most toll services only. Filers are not allowed to deduct any expenses from subject interstate and international end-user revenues.

32. There have been no comments received regarding the proposal to rely on the FCC Form 499-A data as the basis for computing the interstate telephone service provider regulatory fee. Therefore, we are adopting the proposal. We are, however, making a minor adjustment in our revenue estimate as a result of more current data from the April 2000 filing. The most current estimate is \$74,124,558,460; however, the fee factor remains unchanged at 0.00117 per revenue dollar.

c. Commercial Radio and Television

33. The National Association of Broadcasters (“NAB”) commented on several aspects of how the radio and television station fees were developed and collected. NAB suggests that the fees should be based on the cost of regulating a particular class of License. The Commission’s Cost Accounting System does not provide cost detail at that level. NAB recommends that the number of payment units within a class and population should determine the amount of fees paid by each category group. In fact, that is exactly what is done for AM and FM radio fees. NAB argues that costs of regulating the new non-commercial low power FM operations should be separated from the costs for regulating full-power radio stations and applied as overhead to all feeable services. Our cost accounting system is not capable of adequately performing this recommendation. A new cost accounting system is being planned for future development, and this concept will be discussed and considered at the appropriate time. Finally, NAB criticizes the accuracy of posting of fee payments and the level of research performed before taking collections actions against suspected non-payers. The Commission is dedicated to improving its processes and will carefully consider recommendations from the NAB or other interested parties of additional sources of reliable information about radio and television payees.

34. Sunbelt Communications Company and Ruby Mountain Broadcasting Company (collectively, “Sunbelt”) argue that small television stations located near large designated market areas (DMA) are assessed disproportionately high fees because the A.C. Nielsen ratings include them in the DMA but they do not serve households in the DMA. Fees for television stations are based on market size as determined by Nielsen. This is the only consistent source the Commission has for determining which market a station serves. Sunbelt asserts that it is not in the public interest to force small, local

³³ However, these service providers may be subject to payment of regulatory fees under other categories, e.g. space stations.

³⁴ See 47 U.S.C. 159(h); see also para 29, *infra*.

television stations out of the market. Sunbelt further suggests that a provision should be made for small television stations to pay a reduced fee comparable to the satellite television fee, or alternatively a fee based on the number of households (rather than DMA). It is certainly not the Commission's intent to force anyone out of the market. As Sunbelt acknowledges in its comments, the Commission has an established procedure for a case-by-case determination of requests for waiver or reduction of a regulatory fee. See 47 CFR 1. The Commission has previously addressed the issues raised by Sunbelt and set standards for determining, on a case-by-case basis, whether fees for a small station may be reduced below the fees assessed for an assigned DMA and whether fees may be reduced because their payment will create financial hardship. See Implementation of Section 9 of the Communications Act, 10 FCC Rcd 12759, 12761-63 (1995). Finally, the Commission is unaware of the existence of any reliable published source that can identify which television stations are serving small markets at the fringe of larger DMA's. We would encourage interested parties to submit a copy of or reference to such a publication that may enable us to predetermine small market television stations for the FY 2001 regulatory fee cycle.

d. Non-Geostationary Orbit Space Station Systems

35. Space Imaging LLC ("Space Imaging") is constructing a non-geostationary orbit (NGSO) space station system that is not currently subject to regulatory fees because it is not operational. However, Space Imaging revives an issue, which we have previously addressed asking that we create a small constellation fee for systems of less than five satellites. As we have stated before, our regulatory costs are constant without respect to the number of satellites in a constellation. We believe that endless controversy will ensue in determining the appropriate number of satellites for determining the cut-off point. Finally, there simply are not enough systems in operation, and subject to a fee, to warrant creation of multiple categories for FY 2000. In fact, one feasible system has ceased operation leaving only two operational systems.

36. As referenced in the preceding paragraph, Iridium LLC has ceased providing services to its customers and is in bankruptcy. Space Systems License, Inc., Motorola Pacific Communications, Inc., and Motorola Satellite Communications, Inc. (collectively, "Motorola") argue that "it would not be equitable, consistent with prior Commission policy, or otherwise in the public interest to require Motorola to pay the fiscal year 2000 regulatory fees associated with the satellite and Earth station authorizations for the Iridium system."³⁵ Procedures for requesting a waiver or reduction of regulatory fees are specified in section 1.1166 of the Commission's Rules.³⁶ Therefore, no waiver or reduction decision will be made in this Report and Order.

e. Commercial Mobile Radio Services (CMRS)

37. The Cellular Telecommunications Industry Association (CTIA) questions our methodology and calculations used to determine the FY 2000 regulatory fees. CTIA argues that the CMRS industry is being levied a 42 percent increase versus the 7.67 percent increase imposed by the Congress. The

³⁵ Motorola comments at p. 4.

³⁶ 47 CFR 1.1166

7.67 percent figure represents the increase in the aggregate amount that we must collect rather than the increases for specific industries or services within them. In the NPRM it is clearly stated that the percentage will not fall equally on all payers due to a variety of factors.³⁷ CTIA further argues that fees should be based on the number of units and the costs associated with a particular sector, rather than across all telecommunications sectors. We agree, however, in its current state, our cost accounting system contains certain anomalies that require us to make adjustments in the public interest. Specifically, our cost data indicates that the CMRS Mobile Services sector has incurred costs in excess of \$30 million, which has been reduced by our methodology to approximately \$25 million. Further, this adjustment resulted in a reduction in the fee from \$0.32 in FY 1999 to our NPRM estimate of \$0.31 per unit for FY 2000. However, figures released by CTIA in April 2000 indicate that wireless subscribers reached 86 million by the end of 1999. Using such publicly available documents as news releases, cellular industry surveys including surveys conducted by CTIA, and filings with the Securities and Exchange Commission, we adjusted our estimate to 86 million payment units which reduced the CMRS Mobile Services fee to \$0.30 per unit.

38. Several parties which include: BellSouth Corporation ("BellSouth"), Council of Independent Communications Suppliers ("CICS") and the USMSS, Inc. ("USMSS"), and the American Mobile Telecommunications Association ("AMTA") have expressed concern that we may have reversed our decision from FY 1999 that small specialized mobile radio (SMR) systems be treated as CMRS Messaging Service for purposes of assessing regulatory fees. This is not true. Specific language stating that small SMR systems possessing less than 10 MHz of bandwidth are to be considered in the CMRS Messaging Services fee category was inadvertently omitted from the text of the Guidelines in Attachment F of the NPRM. That oversight has been corrected in this Report and Order.

C. Procedures for Payment of Regulatory Fees

39. Generally, we are retaining the procedures that we have previously 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)(2). 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.

i. Annual Payments of Standard Fees

40. As we have in the past, we are treating 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

³⁷ NPRM at footnote 18.

category will be announced either in this Report and Order terminating this proceeding or by public notice in the Federal Register pursuant to authority delegated to the Managing Director.

ii. Installment Payments for Large Fees

41. As we noted in the NPRM, time constraints will preclude an opportunity for installment payments. Due to statutory constraints concerning notification to Congress prior to actual collection of the fees, there will not be sufficient time for installment payments, and 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 a single payment will be announced either in this Report and Order terminating this proceeding or by public notice published in the Federal Register pursuant to authority delegated to the Managing Director.

iii. Advance Payments of Small Fees

42. As we have in the past, we are treating 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 decided would be subject to advance payments in our FY 1994 Report and Order, and to those additional payers set forth herein.³⁸ 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 this Report and Order terminating this proceeding or by public notice published in the Federal Register pursuant to authority delegated to the Managing Director.

iv. Minimum Fee Payment Liability

43. As we have in the past, we are establishing 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 2000.

³⁸ 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), 218-219 MHz Service (if any applications should be filed), Rural Radio Service, and Amateur Vanity Call Signs.

v. Standard Fee Calculations and Payment Dates

44. As noted, the time for payment of standard fees and any installment payments will be announced in this Report and Order terminating this proceeding or 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, fees must be paid for any authorization issued on or before October 1, 1999. Regulatory fees are due and payable by the holder of record of the license or permit of the service as of October 1, 1999. A pending change in the status of a license or permit that is not granted as of that date is not effective, and the fee is based on the classification that existed on that date. Where a license or authorization is transferred or assigned after October 1, 1999, the licensee or holder of the authorization on the date that payment is due must pay the fee.

45. In the case of regulatees whose fees are based upon a subscriber, unit or circuit count, the number of a regulatee's subscribers, units or circuits on December 31, 1999, will be used to calculate the fee payment.³⁹ Regulatory fees are due and payable by the holder of record of the license or permit of the service as of December 31, 1999. A pending change in the status of a license or permit that is not granted as of that date is not effective, and the fee is based on the classification that existed on that date. Where a license or authorization is transferred or assigned after December 31, 1999, the licensee or holder of the authorization on the date that payment is due must pay the fee.

vi. Improved Fee Collection Systems

46. The Commission is taking several steps to improve its fee collection program. Development of a new fee collection system has begun by which it is expected will provide a single improved internal source of information for all of the Commission's financial transactions. In addition, we are implementing procedures that will require assignment of a unique identifier (FCC Registration Number) to each entity doing business with the FCC to enable it to track payments and other transactions made by the entity, even when its name or ownership changes. These enhancements will assist the FCC in identifying all feeable entities and ensuring that proper payments are received and recorded accurately.

³⁹ 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 1999, rather than on a count as of December 31, 1999.

vii. Late or Insufficient Regulatory Fee Payment

47. As a reminder, in accordance with section 1.1164 of the Commission's Rules, regulatees will be subject to a 25 percent penalty for late or insufficient regulatory fee payment. All payments not received by the due date shall be assessed the penalty.

D. Schedule of Regulatory Fees

48. The Commission's Schedule of Regulatory Fees for FY 2000 is contained in Attachment D of this Report and Order.

IV. Procedural Matters**A. Ordering Clause**

49. Accordingly, it is ordered that the rule changes specified herein be adopted. It is further ordered that the rule changes made herein will become effective September 10, 2000, which is no less than 60 days from the date of publication in the Federal Register. A Final Regulatory Flexibility Analysis (FRFA) has been performed and is found in Attachment A, and it is ordered that the Federal Communications Commission's Consumer Information Bureau, Reference Information Center, send this to Small Business Administration (SBA). Finally, it is ordered that this proceeding is TERMINATED.

B. Authority and Further Information

50. This action is taken pursuant to 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).

51. Further information about this proceeding may be obtained by contacting the Fees Hotline at (888) 225-5322.

List of Subjects in 47 CFR Part 1

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

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary