

Federal Communications Commission

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

MAR 28 2002

FCC - MAILROOM

In the Matter of)
)
 Assessment and Collection) MD Docket No. 02-64
 of Regulatory Fees for)
 Fiscal Year 2002)

NOTICE OF PROPOSED RULEMAKING

Adopted: March 22, 2002 ; **Released:** March 27, 2002

Comment Date: April 23, 2002
 Reply Comment Date: May 3, 2002

By the Commission:

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I. Introduction

1. By this Notice of Proposed Rulemaking, the Commission begins a proceeding to revise its Schedule of Regulatory Fees to collect the amount of regulatory fees that Congress, pursuant to section 9(a) of the Communications Act, as amended, has required us to collect for Fiscal Year (FY) 2002.¹

2. Congress has required that we collect \$218,757,000 through regulatory fees to recover the costs of our competition, enforcement, spectrum management, and consumer information activities for FY 2002². This amount is \$18,611,000 or approximately 9.3% more than the amount that Congress designated for recovery through regulatory fees for FY 2001.³ We are proposing to revise our fees in order to collect the amount that Congress has specified, as illustrated in a new fee schedule in Attachment D.

3. In proposing to revise our fees, we adjusted the payment units and revenue requirement for each service subject to a fee, consistent with section 159(b)(2). The current Schedule of Regulatory Fees is set forth in §§ 1.1152 through 1.1156 of the Commission's rules.⁴

II. Background

4. Section 9(a) of the Communications Act of 1934, as amended, authorizes the Commission to assess and collect annual regulatory fees to recover 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 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 in administering the

¹ 47 U.S.C. 159(a).

² Public Law 107-77 and 47 U.S.C. 159(a)(2).

³ Assessment and Collection of Regulatory Fees for Fiscal Year 2001, 66 FR 36177 (2001).

⁴ 47 CFR 1.1152 through 1.1156.

⁵ 47 U.S.C. 159(a).

⁶ 59 FR 30984 (1994).

⁷ 47 U.S.C. 159(b), (f)(1).

program.⁸

5. 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 (b)(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

6. Section 9(b)(3), entitled "Permitted Amendments," requires that we determine annually whether additional adjustments to the fees are warranted, taking into account factors that are 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

7. Section 9(i) requires that we develop accounting systems necessary to adjust our fees pursuant to changes in the cost of regulating various services that are subject to a fee, and for other purposes.¹² The Commission is in the process of planning a new cost accounting system, which we anticipate to be operational after sufficient testing in FY 2004. For FY 1997, we relied for the first time on cost accounting data to identify our regulatory costs and to develop our FY 1997 fees based upon these costs. Also, in FY 1997, we found that some fee categories received disproportionately high cost allocations. We adjusted for these high cost allocations by redistributing the costs, and maintained a 25% limit on the extent in which service fee categories can be increased. We believed that this 25% limit would enable cost-based service fees to be implemented more gradually over time. We thought that this methodology, which we continued to use for FY 1998, would enable us to develop a regulatory fees schedule that reflected our cost of regulation. Over time, as the cost of regulation increases or decreases, this methodology would enable us to revise the fee schedule to reflect those services whose regulatory costs had changed.

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).

8. However, we found that developing a regulatory fee structure based on available flawed cost information sometimes did not permit us to recover the amount that Congress required us to collect. In some instances, the large increases in the cost of regulation did not normalize to an acceptable level. We concluded that it would be best to discontinue attempts to base the entire schedule on our available but flawed cost data. Instead, we chose to base the FY 1999 through FY 2001 fees on the basis of "Mandatory Adjustments" only. We have found no reason to deviate from this policy for FY 2002. However, we are proposing to apply the "Mandatory Adjustments" as we did in FY 2001 to better incorporate changes in payment units. As noted above, however, we expect to have a new cost accounting system in place in FY 2004. 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 2002 Fee Methodology

9. As noted above, Congress has required that the Commission recover \$218,757,000 for FY 2002 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 proposed FY 2002 fee schedule, we first estimated the number of payment units¹⁵ for FY 2002. Then we compared the FY 2001 revenue estimate amount to the \$218,757,000 that Congress has required us to collect in FY 2002 and pro-rated the difference among all the existing fee categories. Finally, we divided the FY 2002 payment unit estimates into the pro-rated FY 2002 revenue estimates to determine the new FY 2002 fees. See Attachment C.

11. Once we established our tentative FY 2002 fees, we evaluated proposals made by Commission staff concerning "Permitted Amendments" to the Fee Schedule and to our collection procedures. Collection procedure matters are discussed in paragraphs 17-23.

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.

12. Finally, we have incorporated, as Attachment F, proposed Guidance containing detailed descriptions of each fee category, information on the individual or entity responsible for paying a particular fee and other important information designed to assist potential fee payers in determining the extent of their fee liability, if any, for FY 2002.¹⁶ In the following paragraphs, we describe in greater detail our proposed methodology for establishing our FY 2002 regulatory fees.

B. Development of FY 2002 Fees

i. Adjustment of Payment Units

13. In calculating FY 2002 regulatory fees for each service, we adjusted the estimated payment units for each service to reflect substantial changes in payment units for many services since adopting our FY 2001 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 accuracy of these estimates. Attachment B summarizes how revised payment units were determined for each fee category.¹⁷

ii. Calculation of Revenue Requirements

14. We compared the sum of all estimated revenue requirements for FY 2001 to the amount that Congress has required us to collect for FY 2002 (\$218,757,000), which is approximately 9.3% more total revenue than in FY 2001. We increased each FY 2001 fee revenue category estimate by 9.3% to provide a total FY 2002 revenue estimate of \$218,757,000. Attachment C provides detailed calculations 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 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.

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

¹⁶ We also will incorporate a similar Attachment in the FY 2002 Report and Order concluding this rulemaking. That Attachment will contain updated information concerning any changes made to the proposed fees that will be adopted in the FY 2002 Report and Order.

¹⁷ It is important to note also that Congress required a revenue increase in regulatory fee payments of approximately 9.3 percent in FY 2002, which will not fall equally on all payers because payment units have changed in several services. When the number of payment units in a service increases 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.

established in 47 U.S.C. 159(b)(3). Unless otherwise noted herein, nothing else in this proceeding is intended to change any policies or procedures established or reaffirmed in the FY 2001 Order (66 FR 36177).

C. Procedures for Payment of Regulatory Fees

17. With one exception, we propose to retain the procedures that we have established for the payment of regulatory fees. See paragraphs 18, 19, and 20. Section 9(f) requires that we permit "payment by installments in the case of fees in large amounts, and in the case of small amounts, shall require the payment of the fee in advance for a number of years not to exceed the term of the license held by the payer." See 47 U.S.C. 159(f)(1). Consistent with section 9(f), we are again proposing to establish three categories of fee payments, based upon the category of service for which the fee payment is due and the amount of the fee to be paid. The fee categories are: (1) "standard" fees, (2) "large" fees, and (3) "small" fees.

i. Annual Payments of Standard Fees

18. As we have in the past, we are proposing to treat regulatory fee payments by certain licensees as "standard fees" which are those regulatory fees that are payable in full on an annual basis. Payers of standard fees are not required to make advance payments for their full license term and are not eligible for installment payments. All standard fees are payable in full on the date we establish for payment of fees in their regulatory fee category. The payment dates for each regulatory fee category will be announced either in the Report and Order terminating this proceeding or by public notice in the Federal Register pursuant to authority delegated to the Managing Director.

ii. Installment Payments for Large Fees

19. While time constraints may preclude an opportunity for installment payments, we propose that regulatees in any category of service with a liability of \$12,000 or more be eligible, if practicable, to make installment payments. Eligibility for installment payments will be based upon the amount of either a single regulatory fee payment or a combination of fee payments by the same licensee or regulatee. We propose that regulatees eligible to make installment payments may submit their required fees in two equal payments (on dates to be announced) or, in the alternative, in a single payment on the date that their final installment payment is due. However, because of time constraints in collecting and recording the fees, it is unlikely that there will be sufficient time for installment payments. Therefore, regulatees who may be eligible to make installment payments may be required, if time constraint permits, to pay these fees on the last date that fee payments may be submitted. The dates for installment payments, or a single payment, will be announced either in the Report and Order terminating this proceeding or by public notice published in the Federal Register pursuant to authority delegated to the Managing Director.

iii. Advance Payments of Small Fees

20. As we have in the past, we are proposing to treat regulatory fee payments by certain licensees as

"small" fees subject to advance payment consistent with the requirements of section 9(f)(2). We propose that advance payments will be required from licensees of those services that we decided would be subject to advance payments in our FY 1994 Report and Order, and to those additional payers noted.¹⁸ We are also proposing that payers of advance fees will submit the entire fee due for the full term of their licenses when filing their initial, renewal, or reinstatement application. Regulatees subject to a payment of small fees shall pay the amount due for the current fiscal year multiplied by the number of years in the term of their requested license. In the event that the required fee is adjusted following their payment of the fee, the payer would not be subject to the payment of a new fee until filing an application for renewal or reinstatement of the license. Thus, payment for the full license term would be made based upon the regulatory fee applicable at the time the application is filed. The effective date for payment of small fees established in this proceeding will be announced in our Report and Order terminating this proceeding or by public notice published in the Federal Register per authority delegated to the Managing Director.

iv. De minimis Fee Payment Liability

21. As we have in the past, we are proposing that regulatees whose total regulatory fee liability, including all categories of fees for which payment is due by an entity, amounts to less than \$10 will be exempted from fee payment in FY 2002.

v. Standard Fee Calculations and Payment Dates

22. The time for payment of standard fees and any installment payments will be announced in our Report and Order terminating this proceeding or will be published in the Federal Register pursuant to authority delegated to the Managing Director. For licensees and permittees of Mass Media services, we propose that the responsibility for payment of regulatory fees rests with the holder of the permit or license on October 1, 2001. However, in instances where a Mass Media service license or authorization is transferred or assigned after October 1, 2001, and arrangements to pay have not been made between the two parties, the fee is still due and we propose that the fee shall be paid by the licensee or holder of the authorization on the date that the fee payment is due. For licensees, permittees and holders of other authorizations in the Common Carrier and Cable Services whose fees are not based on a subscriber, unit, or circuit count, we are proposing that fees be paid for any authorization issued on or before October 1, 2001. A pending change in the status of a license or permit that is not granted as of that date is not taken into account, and the fee is based on the authorization that existed on October 1, 2001.

23. For regulatees whose fees are based upon a subscriber, unit or circuit count, such as cable subscriber services and Commercial Mobile Radio Service (CMRS) cellular, mobile, and messaging services, the number of a regulatees' subscribers, units or circuits on December 31, 2001, will be used to calculate the

¹⁸ 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.

fee payment.¹⁹ 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, 2001, the fee shall be paid by the licensee or holder of the authorization on the date that the payment is due. For facilities-based common carriers with active international bearer circuits, the fee is based on the circuit count as of December 31, 2001.

24. Because of the time constraint in paying regulatory fees, the Commission highly recommends that entities submitting more than twenty-five (25) Form 159-C's use the electronic fee filer program when sending in their regulatory fee payment. This will not only reduce errors that can result, but also reduce the amount of paperwork that is received by the Commission. Furthermore, as was the practice last year, the Commission will, for the convenience of payers, accept fee payments made in advance of the normal formal window for the payment of regulatory fees.

vi. Mandatory Use of FCC Registration Number (FRN)

25. As a result of a Commission proceeding adopted on August 24, 2001 and effective December 3, 2001, the use of the FCC Federal Registration Number (FRN) is now mandatory by anyone doing business with the Commission, including those subject to the regulatory fee program.²⁰ Failure to follow the directions regarding the use of the FRN will result in a delay in crediting the payment to the proper account, which may result in the initiation of a delinquent collection effort against the entity.

vii. Population Count of AM and FM Radio Stations

26. The population count for radio stations is not derived merely by a census count of the surrounding community, but from a formula that incorporates various indices such as power, tower size, class size, and other technical attributes. The methodology for calculating the population count is listed in *Attachment H of the Assessment and Collection of Regulatory Fees, Notice of Proposed Rulemaking, and Report and Order*. Because a number of components are used to calculate the population city grade of each station, it is possible that in some instances the calculation of the population count and related fee may inadvertently be incorrectly stated in the Mass Media Regulatory Fees Public Notice that identifies the radio station call signs and their respective fees. Therefore, we propose that if a licensee has paid the fee listed in the Mass Media Regulatory Fees Public Notice and it is later determined that the population calculation for the station is incorrect, and a letter verifying the correct population count is provided from the supplier of the population calculation, the Commission will refund the fee amount overpaid. Similarly, we also propose that if it is determined that the population calculation and related fee for the station has been understated, and the Commission obtains verification of the correct population calculation from the supplier of the

¹⁹ 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 2001, rather than on a count as of December 31, 2001.

²⁰ 66 FR 47890 (September 14, 2001).

population calculation, the Commission will bill the licensee for the difference in fees that should have been paid.

27. We further propose that we will make corrections for such population calculation errors, whether by refunding or billing for corrected fee amounts, only for three (3) fiscal years after the error appears in the Mass Media Regulatory Fees Public Notice. For example, in the case of a population calculation error resulting in an overstated fee amount, if the Mass Media Regulatory Fees Public Notice for FY 2002 contains a population calculation and related fee error and the licensee provides the appropriate verification of the error before September 30, 2005, the Commission will refund the amount overpaid. Similarly, in a case where a population calculation error results in an understated fee amount, if the Fiscal Year 2002 population calculation error is discovered and verified before September 30, 2005, the Commission will bill the licensee for the difference between the correct fee and the fee listed in the Fiscal Year 2002 Mass Media Regulatory Fees Public Notice. We believe that three years provides a reasonable time for a licensee or the Commission to discover and seek to rectify population calculation errors, and that limiting the time for correction of fees will protect both licensees and the Government from being subject to indefinite potential obligations to make corrective payments.

viii. Technical Changes

28. Presently, regulatory fee payments may be made by Visa and MasterCard credit cards. When paying by credit card, regulatees have two options: 1) Regulatees may submit their payment by using the Commission's FeeFiler (an electronic payment system), or 2) Regulatees may provide the requested credit card information on the FCC Form 159, (Remittance Advice), and mail it to the address described in the Public Notice. Refunds of regulatory fees paid by credit cards are made by check payable to the regulatory fee payor. No refunds are issued to the card processor. To expand the use of other types of credit cards, the Commission proposes to accept American Express and Discover credit cards in addition to Visa and MasterCard credit cards.

29. It has come to our attention that we did not make corresponding revisions to certain descriptive portions of sections 1.1152 and 1.1157 of our rules when the regulatory fees for wireless radio services were amended to include standard annual regulatory fees based on payment units for Commercial Mobile Radio Service (CMRS) and CMRS messaging. We propose to make the necessary changes to these descriptive portions of sections 1.1152 and 1.1157 of our rules to reflect that it is no longer the case that all regulatory fee payments for wireless radio services are paid in advance when applications are filed.

30. The Commission incurs transaction costs when processing refunds. The Commission has determined that, in some instances, the transaction costs outweigh the dollar amount of the refund. Therefore, in terms of more efficient money management, the Commission proposes that payments in excess of an application or regulatory fee will be refunded only if the overpayment is \$10 or more.

D. Schedule of Regulatory Fees

31. The Commission's proposed Schedule of Regulatory Fees for FY 2002 is contained in Attachment D of this NPRM.

E. Enforcement

32. As required in 47 U.S.C. 159(c), an additional charge shall be assessed as a penalty for late payment of any regulatory fee. A late payment penalty of 25 percent of the amount of the required regulatory fee will be assessed on the first day following the deadline date for filing of these fees. Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including the provisions set forth in the Debt Collection Improvement Act of 1996 ("DCIA"). The Commission assesses administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the related debt pursuant to the DCIA and section 1.1940(d) of the Commission's Rules. These administrative processing charges will be assessed on any delinquent regulatory fee, in addition to the 25 percent late charge penalty. Partial or underpayment of regulatory fees are treated in the following manner. The licensee will be given credit for the amount paid, but if it is later determined that the fee paid is incorrect or was submitted after the deadline date, the 25 percent late charge penalty will be assessed on the portion that is submitted after the filing window. See 47 CFR 1.1164. Failure to pay regulatory fees can result in the initiation of a proceeding to revoke any and all authorizations held by the delinquent payor. See 47 CFR 1.1164.

IV. Procedural Matters

A. Comment Period and Procedures

33. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before April 23, 2002, and reply comments on or before May 3, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.²¹

34. Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by e-mail via the Internet. To receive filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address.>" A sample form and directions will be sent in reply.

35. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be

²¹ Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (May 1, 1998).

sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Acting Secretary, William F. Caton, at 236 Massachusetts Avenue, N.E., Suite 110, Washington D.C. 20002. The filing hours at this location will be 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Acting Secretary, William F. Caton, Office of the Secretary, Federal Communications Commission.

36. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Terry Johnson, Office of Managing Director, Federal Communications Commission, 445 12th Street, S.W., 1-C807, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Microsoft™ Word 97 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case, MD Docket No. 02-64), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy - Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554. Alternative formats (computer diskette, large print, audio recording, and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 voice, (202) 418-7365 TTY, or bmillin@fcc.gov. This NPRM can also be downloaded in Microsoft Word and ASCII formats at <http://www.fcc.gov/ccb/cpd>.

37. The public may view the documents filed in this proceeding during regular business hours in the FCC Reference Center, Federal Communications Commission, Room CY-A257, 445 12th Street, S.W., Washington, D. C. 20554, and through the Commission's Electronic Comment Filing System (ECFS) http://www.gullfoss2.fcc.gov/prod/ecfs/comsrch_v2.cgi.

B. Ex Parte Rules

38. This is a permit-but-disclose notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's rules.²²

²² 47 CFR 1.1203 and 1.1206(b).

C. Initial Regulatory Flexibility Analysis

39. As required by the Regulatory Flexibility Act,²³ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible impact on small entities of the proposals suggested in this document. The IRFA is set forth as Attachment A. Written public comments are requested with respect to the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the rest of the NPRM, and must have a separate and distinct heading, designating the comments as responses to the IRFA. The Consumer Information Bureau, Reference Information Center, shall send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

D. Authority and Further Information

40. Authority for this proceeding is contained in sections 4(i) and (j), 8, 9, and 303(r) of the Communications Act of 1934, as amended.²⁴ It is ordered that this NPRM is adopted. It is further ordered that the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

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

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

²³ See 5 U.S.C. 603.

²⁴ 47 U.S.C. 154(i)-(j), 159, & 303(r).

INITIAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by the Regulatory Flexibility Act (RFA),²⁵ an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities was incorporated in the Notice of Proposed Rulemaking, In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2002.²⁶ Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the IRFA provided in the comment period section of the NPRM. The Commission will send a copy of the NPRM, including IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register. This present Initial Regulatory Flexibility Analysis (IRFA) conforms to the RFA.²⁷

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

2. This rulemaking proceeding is initiated to obtain comments concerning the Commission's proposed amendment of its Schedule of Regulatory Fees in the amount of \$218,757,000, the amount that Congress has required the Commission to recover. The Commission seeks to collect the necessary amount through its revised fees, as contained in the attached Schedule of Regulatory Fees, in the most efficient manner possible and without undue burden on the public.

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

3. The IRFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.²⁸ The IRFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."²⁹ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.³⁰ A small business concern is one which: (1) is

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

²⁶ 66 FR 19681 (April 16, 2001).

²⁷ 5 U.S.C. 604.

²⁸ 5 U.S.C. 603(b)(3).

²⁹ 5 U.S.C. 601(6).

³⁰ 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to

independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).³¹ A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."³² Nationwide, as of 1992, there were approximately 275,801 small organizations.³³ "Small governmental jurisdiction"³⁴ generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."³⁵ As of 1992, there were approximately 85,006 governmental entities in the United States.³⁶ This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96%, have populations of fewer than 50,000.³⁷ The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96%) are small entities. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the proposed rules, if adopted.

CABLE SERVICES OR SYSTEMS

4. The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating \$11 million or less in revenue annually.³⁸ This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,788 total cable and other pay television services and 1,423 had less than \$11 million in revenue.³⁹

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

³¹ Small Business Act, 15 U.S.C. 632 (1996).

³² 5 U.S.C. 601(4).

³³ 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

³⁴ 47 CFR 1.1162

³⁵ 5 U.S.C. 601(5).

³⁶ U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

³⁷ *Id.*

³⁸ 13 CFR 121.201, North American Industry Classification System (NAICS) codes 51321 and 51322.

³⁹ 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D, NAICS codes 51321 and 51322 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

5. The Commission has developed its own definition of a small cable system operator for purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide.⁴⁰ Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995.⁴¹ Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators.

6. The Communications Act of 1934, as amended, also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."⁴² The Commission has determined that there are 68,980,000 subscribers in the United States.⁴³ Therefore, we estimate that an operator serving fewer than 689,800 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate.⁴⁴ Based on available data, we estimate that the number of cable operators serving 689,800 subscribers or less totals 1,450.⁴⁵ We do not request nor collect information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000,⁴⁶ and therefore are unable at this time to estimate more accurately the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

7. **Other Pay Services.** Other pay television services are also classified under the North American Industry Classification System (NAICS) codes 51321 and 51322, which includes cable systems operators, closed circuit television services, direct broadcast satellite services (DBS),⁴⁷ multipoint distribution

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

⁴¹ Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

⁴² 47 U.S.C. 543(m)(2).

⁴³ Annual Assessment of the Status on Competition in the Market for the Delivery of Video Programming, CS Docket No. 00-132, Seventh Annual Report, FCC 01-1 (released January 8, 2001), Table C-1.

⁴⁴ Id. 47 CFR 76.1403(b).

⁴⁵ FCC Announces New Subscriber Count for the Definition of Small Cable Operator, Public Notice, DA-01-0158 (released January 24, 2001).

⁴⁶ We do receive such information on a case-by-case basis only if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.1403(b) of the Commission's rules. See 47 CFR 76.1403(d).

⁴⁷ Direct Broadcast Services (DBS) are discussed with the international services, infra.

systems (MDS),⁴⁸ satellite master antenna systems (SMATV), and subscription television services.

COMMON CARRIER SERVICES AND RELATED ENTITIES

8. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide appears to be data the Commission publishes annually in its Telecommunications Provider Locator report, which encompasses data compiled from FCC Form 499-A Telecommunications Reporting Worksheets.⁴⁹ According to data in the most recent report, there are 5,679 interstate service providers.⁵⁰ These providers include, *inter alia*, incumbent local exchange carriers, competitive access providers (CAPS)/competitive local exchange carriers (CLECs), local resellers and other local exchange carriers, interexchange carriers, operator service providers, prepaid calling card providers, toll resellers, and other toll carriers.

9. We have included small incumbent local exchange carriers (LECs)⁵¹ in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."⁵² The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.⁵³ We have therefore included small incumbent LECs in this IRFA analysis, although we emphasize that this IRFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

10. **Total Number of Telephone Companies Affected.** The Census Bureau reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.⁵⁴ This number contains a variety of different categories of carriers, including local exchange

⁴⁸ Multipoint Distribution Services (MDS) are discussed with the mass media services, *infra*.

⁴⁹ FCC, Common Carrier Bureau, Industry Analysis Division, Telecommunications Provider Locator, Table 1 (November 2001).

⁵⁰ FCC, Telecommunications Provider Locator at Table 1.

⁵¹ See 47 U.S.C. 251(h) (defining "incumbent local exchange carrier").

⁵² 5 U.S.C. 601(3).

⁵³ Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 CFR 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. See, *e.g.*, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket, 96-98, First Report and Order, 11 FCC Rcd 15499, 16144-45 (1996), 61 FR 45476 (Aug. 29, 1996).

⁵⁴ U.S. Department of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities:

carriers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, and resellers. It seems certain that some of these 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated."⁵⁵ It seems reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the proposed rules, if adopted.

11. Wireline Carriers and Service Providers. The SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992.⁵⁶ According to the SBA's definition, a small business telephone company other than a radiotelephone (wireless) company is one employing no more than 1,500 persons.⁵⁷ All but 26 of the 2,321 non-radiotelephone (wireless) companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Even if all 26 of the remaining companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone (wireless) companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Therefore, we estimate that fewer than 2,295 small telephone communications companies other than radiotelephone (wireless) companies are small entities or small incumbent LECs that may be affected by the proposed rules, if adopted.

12. Local Exchange Carriers (LECS), Competitive Access Providers (CAPs), Interexchange Carriers (IXCs), Operator Service Providers (OSPs), Payphone Providers, and Resellers. Neither the Commission nor the SBA has developed a definition for small LECs, competitive access providers (CAPs), interexchange carriers (IXCs), operator service providers (OSPs), payphone providers, or resellers. The closest applicable definition for these carrier-types under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.⁵⁸ The most reliable source of information that we know regarding the number of these carriers nationwide appears to be the data that we collect annually in connection with the FCC 499-A Telecommunications Reporting Worksheets.⁵⁹ According to our most recent data, there are 1,329 incumbent and other LECs, 532 CAPs and competitive local exchange carriers (CLECs), 229 IXCs, 22 OSPs, 936 payphone providers, 32 prepaid calling card

Establishment and Firm Size, at Firm Size 1-123 (1995) (1992 Census).

⁵⁵ See generally 15 U.S.C. 632(a)(1).

⁵⁶ 1992 Census, *supra*, at Firm Size 1-123.

⁵⁷ 13 CFR 121.201, NAICS codes 51331, 51333, and 51334.

⁵⁸ 13 CFR 121.201, NAICS codes 51331, 51333, and 51334.

⁵⁹ See Telecommunications Provider Locator at Table 1.

providers, 38 other toll carriers, and 710 local and toll resellers.⁶⁰ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under the SBA's definition. Therefore, we estimate that there are fewer than 1,329 small entity incumbent and other LECs, 532 CAPs/CLECs, 229 IXC's, 22 OSPs, 936 payphone providers, and 710 local and toll resellers, 32 prepaid calling card providers, and 38 other toll carriers that may be affected by the proposed rules, if adopted.

INTERNATIONAL SERVICES

13. The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC).⁶¹ This definition provides that a small entity is expressed as one with \$11.0 million or less in annual receipts.⁶² According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than \$10.0 million.⁶³ The Census report does not provide more precise data.

14. **International Broadcast Stations.** Commission records show that there are approximately 19 international high frequency broadcast station authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of international high frequency broadcast stations that would constitute a small business under the SBA definition. However, the Commission estimates that only six international high frequency broadcast stations are subject to regulatory fee payments.

15. **International Public Fixed Radio (Public and Control Stations).** There is one licensee in this service subject to payment of regulatory fees, and the licensee does not constitute a small business under the SBA definition.

16. **Fixed Satellite Transmit/Receive Earth Stations.** There are approximately 4,303 earth station authorizations, a portion of which are Fixed Satellite Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and are unable to estimate the number of the earth stations that would constitute a small business under the SBA definition.

⁶⁰ Telecommunications Provider Locator at Table 1. The total for resellers includes both toll resellers and local resellers.

⁶¹ An exception is the Direct Broadcast Satellite (DBS) Service, infra.

⁶² 13 CFR 121.201, NAICS codes 48531, 513322, 51334, and 51339.

⁶³ 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D, NAICS codes 48531, 513322, 51334, and 513391 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

17. **Fixed Satellite Small Transmit/Receive Earth Stations.** There are approximately 4,303 earth station authorizations, a portion of which are Fixed Satellite Small Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and are unable to estimate the number of fixed small satellite transmit/receive earth stations that would constitute a small business under the SBA definition.
18. **Fixed Satellite Very Small Aperture Terminal (VSAT) Systems.** These stations operate on a primary basis, and frequency coordination with terrestrial microwave systems is not required. Thus, a single "blanket" application may be filed for a specified number of small antennas and one or more hub stations. There are 485 current VSAT System authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of VSAT systems that would constitute a small business under the SBA definition.
19. **Mobile Satellite Earth Stations.** There are 21 licensees. We do not request nor collect annual revenue information, and are unable to estimate the number of mobile satellite earth stations that would constitute a small business under the SBA definition.
20. **Radio Determination Satellite Earth Stations.** There are four licensees. We do not request nor collect annual revenue information, and are unable to estimate the number of radio determination satellite earth stations that would constitute a small business under the SBA definition.
21. **Space Stations (Geostationary).** There are presently an estimated 71 Geostationary Space Station authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of geostationary space stations that would constitute a small business under the SBA definition.
22. **Space Stations (Non-Geostationary).** There are presently six Non-Geostationary Space Station authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of non-geostationary space stations that would constitute a small business under the SBA definition.
23. **Direct Broadcast Satellites.** Because DBS provides subscription services, DBS falls within the SBA-recognized definition of "Cable and Other Pay Television Services."⁶⁴ This definition provides that a small entity is one with \$11.0 million or less in annual receipts.⁶⁵ Currently, there are nine DBS authorizations, though there are only two DBS companies in operation at this time. We do not request nor collect annual revenue information for DBS services, and are unable to determine the number of DBS operators that would constitute a small business under the SBA definition.

⁶⁴ 13 CFR 121.201, NAICS codes 51321 and 51322.

⁶⁵ 13 CFR 121.201, NAICS codes 51321 and 51322.

MASS MEDIA SERVICES

24. **Commercial Radio and Television Services.** The proposed rules and policies will apply to television broadcasting licensees and radio broadcasting licensees.⁶⁶ The SBA defines a television broadcasting station that has \$10.5 million or less in annual receipts as a small business.⁶⁷ Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.⁶⁸ Included in this industry are commercial, religious, educational, and other television stations.⁶⁹ Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.⁷⁰ Separate establishments primarily engaged in producing taped television program materials are classified under another NAICS number.⁷¹ There were 1,509 television stations operating in the nation in 1992.⁷² That number has remained fairly constant as indicated by the approximately 1,686 operating television broadcasting stations in the nation as of September 30, 2001.⁷³ For 1992,⁷⁴ the number of television

⁶⁶ While we tentatively believe that the SBA's definition of "small business" greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small television and radio stations, for purposes of this NPRM we utilize the SBA's definition in determining the number of small businesses to which the proposed rules would apply. We reserve the right to adopt, in the future, a more suitable definition of "small business" as applied to radio and television broadcast stations or other entities subject to the proposed rules in this NPRM, and to consider further the issue of the number of small entities that are radio and television broadcasters or other small media entities. See Report and Order in MM Docket No. 93-48 (Children's Television Programming), 11 FCC Rcd 10660, 10737-38 (1996), 61 FR 43981 (Aug. 27, 1996), citing 5 U.S.C. 601(3).

⁶⁷ 13 CFR 121.201, NAICS code 51312.

⁶⁸ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92-S-1, Appendix A-9 (1995) (1992 Census, Series UC92-S-1).

⁶⁹ Id.; see Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987), at 283, which describes "Television Broadcasting Stations" (SIC code 4833, now NAICS code 51312) as:

Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

⁷⁰ 1992 Census, Series UC92-S-1, at Appendix A-9.

⁷¹ Id., NAICS code 51211 (Motion Picture and Video Tape Production); NAICS 51229 (Theatrical Producers and Miscellaneous Theatrical Services) (producers of live radio and television programs).

⁷² FCC News Release No. 31327 (January 13, 1993); 1992 Census, Series UC92-S-1, at Appendix A-9.

⁷³ FCC News Release, "Broadcast Station Totals as of September 30, 2001."

⁷⁴ A census to determine the estimated number of Communications establishments is performed every five years, in years ending with a "2" or "7." See 1992 Census, Series UC92-S-1, at III.

stations that produced less than \$10.0 million in revenue was 1,155 establishments.⁷⁵ Only commercial stations are subject to regulatory fees.

25. Additionally, the SBA defines a radio broadcasting station that has \$5 million or less in annual receipts as a small business.⁷⁶ A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.⁷⁷ Included in this industry are commercial, religious, educational, and other radio stations.⁷⁸ Radio broadcasting stations, which primarily are engaged in radio broadcasting and which produce radio program materials, are similarly included.⁷⁹ However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another NAICS number.⁸⁰ The 1992 Census indicates that 96 percent (5,861 of 6,127) of radio station establishments produced less than \$5 million in revenue in 1992.⁸¹ Official Commission records indicate that a total of 11,334 individual radio stations were operating in 1992.⁸² As of September 30, 2001, Commission records indicate that a total of 13,012 radio stations were operating, of which 8,285 were FM stations.⁸³ Only commercial stations are subject to regulatory fees.

26. The rules may affect an estimated total of 1,230 television stations, approximately 1,281 of which are considered small businesses.⁸⁴ The revised rules will also affect an estimated total of 10,819 radio stations, approximately 12,209 of which are small businesses.⁸⁵ These estimates may overstate the

⁷⁵ The amount of \$10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at \$9,999,999 and began at \$10,000,000. No category for \$10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

⁷⁶ 13 CFR 121.201, NAICS codes 513111 and 513112.

⁷⁷ 1992 Census, Series UC92-S-1, at Appendix A-9.

⁷⁸ Id.

⁷⁹ Id.

⁸⁰ Id.

⁸¹ The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.

⁸² FCC News Release, No. 31327 (Jan. 13, 1993).

⁸³ FCC News Release, "Broadcast Station Totals as of September 30, 2001."

⁸⁴ We use an estimated figure of 77 percent (from 1992) of TV stations operating at less than \$10 million and apply it to the 2000 total of 1,663 TV stations to arrive at 1,281 stations categorized as small businesses.

⁸⁵ We use the 96% figure of radio station establishments with less than \$5 million revenue from data presented in the year 2000 estimate (*FCC News Release*, September 30, 2000) and apply it to the 12,717 individual station count to arrive at 12,209 individual stations as small businesses.

number of small entities because the revenue figures on which they are based do not include or aggregate revenues from non-television or non-radio affiliated companies. There are also 2,256 low power television stations (LPTV).⁸⁶ Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA definition.

27. Auxiliary, Special Broadcast and Other Program Distribution Services. This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. The applicable definitions of small entities are those, noted previously, under the SBA rules applicable to radio broadcasting stations and television broadcasting stations.⁸⁷

28. The Commission estimates that there are approximately 3,600 translators and boosters. The Commission does not collect financial information on any broadcast facility, and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most commercial translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (either \$5 million for a radio station or \$10.5 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a "small business concern" because they are not independently owned and operated.⁸⁸

29. Multipoint Distribution Service (MDS). This service has historically provided primarily point-to-multipoint, one-way video services to subscribers, and Local Multipoint Distribution Service (LMDS).⁸⁹ The Commission recently amended its rules to allow MDS licensees to provide a wide range of high-speed, two-way services to a variety of users.⁹⁰ In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues for the three preceding years not in excess of \$40 million.⁹¹ The Commission established this small business definition

⁸⁶ FCC News Release, "Broadcast Station Totals as of September 30, 2001."

⁸⁷ 13 CFR 121.201, NAICS codes 513111 and 513112.

⁸⁸ 15 U.S.C. 632.

⁸⁹ For purposes of this item, MDS includes single channel Multipoint Distribution Service (MDS), Local Multipoint Distribution Service (LMDS), and the Multichannel Multipoint Distribution Service (MMDS). *See* 66 FR 36177.

⁹⁰ *Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions*, 13 FCC Rcd 19112 (1998), *recon.*, 14 FCC Rcd 12764 (1999), *further recon.*, 15 FCC Rcd 14566 (2000).

⁹¹ 47 CFR 21.961 and 1.2110.

in the context of this particular service and with the approval of the SBA.⁹² The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs).⁹³ Of the 67 auction winners, 61 met the definition of a small business. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that are considered small entities.⁹⁴ After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 MDS licensees that are defined as small businesses under either the SBA or the Commission's rules. Some of those 440 small business licensees may be affected by the proposals in this Notice.

WIRELESS AND COMMERCIAL MOBILE SERVICES

30. **Cellular Licensees.** Neither the Commission nor the SBA has developed a definition of small entities specific to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone (wireless) company employing no more than 1,500 persons.⁹⁵ According to the Census Bureau, only twelve radiotelephone (wireless) firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.⁹⁶ Even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. According to the November 2001 *Telecommunications Provider Locator*, 858 wireless telephony providers reported that they were engaged in the provision of either cellular service, Personal Communications Service (PCS) services, and SMR telephony carriers, which are placed together in the data.⁹⁷ We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. We estimate that there are fewer than 858 small wireless service providers that may be affected by the proposed rules, if adopted.

⁹² Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act - Competitive Bidding, 10 FCC Rcd 9589, 9670 (1995), 60 FR 36524 (July 17, 1995).

⁹³ Basic Trading Areas (BTAs) were designed by Rand McNally and are the geographic areas by which MDS was auctioned and authorized. *See id.* At 9608.

⁹⁴ 47 U.S.C. 309(j). (Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. Section 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard for "other telecommunications" (annual receipts of \$11 million or less). *See* 13 CFR 121.201.

⁹⁵ 13 CFR 121.201, NAICS code 513322.

⁹⁶ 1992 Census, Series UC92-S-1, at Table 5, NAICS code 513322.

⁹⁷ Telecommunications Provider Locator, Table 1 (November 2001).

31. **220 MHz Radio Service -- Phase I Licensees.** The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone (wireless) Communications companies. This definition provides that a small entity is a radiotelephone (wireless) company employing no more than 1,500 persons.⁹⁸ According to the Census Bureau, only 12 radiotelephone (wireless) firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.⁹⁹ If this general ratio continues in 2001 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

32. **220 MHz Radio Service -- Phase II Licensees.** The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order*, 62 FR 16004, April 3, 1997, we adopted criteria for defining small and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.¹⁰⁰ We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. A very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed \$3 million for the preceding three years.¹⁰¹ The SBA has approved these definitions.¹⁰² Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.¹⁰³ In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold.¹⁰⁴ Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming

⁹⁸ 13 CFR 121.201, NAICS code 513322.

⁹⁹ U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, NAICS codes 513321, 513322, and 51333.

¹⁰⁰ *220 MHz Third Report and Order*, 12 FCC Rcd 10943, 11068-70, at paragraphs 291- 295 (1997).

¹⁰¹ *220 MHz Third Report and Order*, 12 FCC Rcd at 11068-69, paragraph 291.

¹⁰² See Letter to D. Python, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (January 6, 1998).

¹⁰³ See generally Public Notice, "220 MHz Service Auction Closes," Public Notice, 14 FCC Rcd 605 (1998).

¹⁰⁴ Public Notice, "FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made," Public Notice, 14 FCC Rcd 1085 (1999).

small business status won 158 licenses.¹⁰⁵

33. **700 MHz Guard Band Licenses.** In the *700 MHz Guard Band Order*, we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.¹⁰⁶ We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.¹⁰⁷ Of the 104 licenses auctioned, 96 licenses were sold to 9 bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.¹⁰⁸

34. **Private and Common Carrier Paging.** In the *Paging Third Report and Order*, we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.¹⁰⁹ We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.¹¹⁰ The SBA has approved these definitions.¹¹¹ An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000.¹¹² Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business

¹⁰⁵ "Phase II 220 MHz Service Spectrum Auction Closes", Public Notice, 14 FCC Rcd 11218 (1999).

¹⁰⁶ See Service Rules for the 746-764 MHz Bands, and Revisions to Part 27 of the Commission's Rules, WT Docket No. 99-168, *Second Report and Order*, 65 FR 17599 (April 4, 2000).

¹⁰⁷ See generally Public Notice, "220 MHz Service Auction Closes," Report No. WT 98-36 (Wireless Telecommunications Bureau, October 23, 1998).

¹⁰⁸ "700 MHz Guard Bands Auction Closes," Public Notice, DA 01-478 (rel. February 22, 2001).

¹⁰⁹ *220 MHz Third Report and Order*, 62 FR 16004 (April 3, 1997), at paragraphs 291-295.

¹¹⁰ "700 MHz Guard Band Auction Closes," Public Notice, 15 FCC Rcd 18026 (2000).

¹¹¹ "Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems," Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, at paragraph 98-107 (1999).

¹¹² "Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems," Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, at paragraph 98 (1999).

status won. At present, there are approximately 24,000 Private-Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to the most recent data in the *Telecommunications Provider Locator*, 608 carriers reported that they were engaged in the provision of either paging or “other mobile” services, which are placed together in the data.¹¹³ We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and therefore are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 608 small paging carriers that may be affected by these revised rules. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

35. Broadband Personal Communications Service (PCS). The broadband PCS spectrum is divided into six frequencies designated A through F, and the Commission has held auctions for each block. The Commission defined “small entity” for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.¹¹⁴ For Block F, an additional classification for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.¹¹⁵ These regulations defining “small entity” in the context of broadband PCS auctions have been approved by the SBA.¹¹⁶ No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F.¹¹⁷ On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses; there were 48 small business winning bidders. An additional classification for “very small business” was added for C Block and is defined as “an entity that together with its affiliates and persons or entities that hold interest in such entity and their affiliates, has average annual gross revenues that are not more than forty million dollars for the preceding three years.”¹¹⁸ The SBA approved this definition.¹¹⁹ Based on this information, we

¹¹³ See *Telecommunications Provider Locator* at Table 1 (November 2001).

¹¹⁴ See generally “929 and 931 MHz Paging Auction Closes,” Public Notice, 15 FCC Rcd 4858 (2000).

¹¹⁵ See Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, FCC 96-278, WT Docket No. 96-59 Sections 60 (released June 24, 1996), 61 FR 33859 (July 1, 1996).

¹¹⁶ See, e.g., Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Fifth Report and Order*, 9 FCC Rcd 5532, 5581-84 (1994).

¹¹⁷ FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (released January 14, 1997).

¹¹⁸ See Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, Fourth Report and Order, 13 FCC Rcd 15743 at 15767-68, paragraphs 45-46 (1998).

¹¹⁹ See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division from A. Alvarez, Administrator, SBA (December 2, 1998).

conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, plus the 48 winning bidders in the re-auction, for a total of 231 small entity PCS providers as defined by the SBA and the Commission's auction rules. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as small or very small businesses.

36. Narrowband PCS. To date, two auctions of narrowband PCS licenses have been conducted. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. For purposes of the two auctions that have already been held, small businesses were defined as entities with average gross revenues for the prior three calendar years of \$40 million or less. To ensure meaningful participation of small business entities in the auctions, the Commission adopted a two-tiered definition of small businesses in the *Narrowband PCS Second Report and Order*.¹²⁰ A small business is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A very small business is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million. These definitions have been approved by the SBA.¹²¹ In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future auctions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission's Rules. The Commission assumes, for purposes of this IRFA, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

37. Rural Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.¹²² A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).¹²³ We will use the SBA's definition applicable to radiotelephone (wireless) companies, *i.e.*, an entity employing no more than 1,500 persons.¹²⁴ There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

¹²⁰ In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS, Docket No. ET 92-100, Docket No. PP 93-253, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 65 FR 35875 (June 6, 2000).

¹²¹ See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division from A. Alvarez, Administrator, SBA (December 2, 1998).

¹²² The service is defined in § 22.99 of the Commission's Rules, 47 CFR 22.99.

¹²³ BETRS is defined in §§ 22.757 and 22.759 of the Commission's Rules, 47 CFR 22.757 and 22.759.

¹²⁴ 13 CFR 121.201, NAICS codes 513321, 513322, and 51333.

38. **Air-Ground Radiotelephone Service.** The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service.¹²⁵ We will use the SBA's definition applicable to radiotelephone (wireless) companies, *i.e.*, an entity employing no more than 1,500 persons.¹²⁶ There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

39. **Specialized Mobile Radio (SMR).** Pursuant to 47 CFR 90.814(b)(1), the Commission has defined "small business" for purposes of auctioning 900 MHz SMR licenses, 800 MHz SMR licenses for the upper 200 channels, and 800 MHz SMR licenses for the lower 230 channels on the 800 MHz band, as a firm that has had average annual gross revenues of \$15 million or less in the three preceding calendar years.¹²⁷ The SBA has approved this small business size standard for the 800 MHz and 900 MHz auctions.¹²⁸ Sixty winning bidders for geographic area licenses in the 900 MHz SMR band qualified as small business under the \$15 million size standard. The auction of the 525 800 MHz SMR geographic area licenses for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997.¹²⁹ Ten winning bidders for geographic area licenses for the upper 200 channels in the 800 MHz SMR band qualified as small businesses under the \$15 million size standard.¹³⁰ An auction of 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000 and was completed on September 1, 2000. Of the 1,050 licenses offered in that auction, 1,030 licenses were sold. Eleven winning bidders for licenses for the General Category channels in the 800 MHz SMR band qualified as small business under the \$15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold. Of the 22 winning bidders, 19 claimed small business status. Thus, 40 winning bidders for geographic licenses in the 800 MHz SMR band qualified as small businesses. In addition, there are numerous incumbent site-by-site SMR licenses on the 800 and 900 MHz band.

40. These revised fees in the Report and Order apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no

¹²⁵ The service is defined in § 22.99 of the Commission's Rules, 47 CFR 22.99.

¹²⁶ 13 CFR 121.201, NAICS codes 513321, 513322, and 51333.

¹²⁷ 47 CFR 90.814(b)(1).

¹²⁸ See Letter to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (August 10, 1999).

¹²⁹ See Letter to Daniel B. Python, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (October 27, 1997).

¹³⁰ *Id.*

more than \$15 million. One firm has over \$15 million in revenues. We assume, for purposes of this FRFA, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA.

41. **Private Land Mobile Radio (PLMR).** PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. The Commission has not developed a definition of small entity specifically applicable to PLMR licensees due to the vast array of PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area.

42. The Commission is unable at this time to estimate the number of small businesses which could be impacted by the rules. The Commission's 1994 Annual Report on PLMRs¹³¹ indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the revised rules in this context could potentially impact every small business in the United States.

43. **Amateur Radio Service.** We estimate that 8,000 applicants will apply for vanity call signs in FY 2001. These licensees are presumed to be individuals, and therefore not small entities. All other amateur licensees are exempt from payment of regulatory fees.

44. **Aviation and Marine Radio Service.** Small businesses in the aviation and marine radio services use a marine very high frequency (VHF) radio, any type of emergency position indicating radio beacon (EPIRB) and/or radar, a VHF aircraft radio, and/or any type of emergency locator transmitter (ELT). The Commission has not developed a definition of small entities specifically applicable to these small businesses. The applicable definition of small entity is the definition under the SBA rules for radiotelephone (wireless) communications.¹³²

45. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations and conclusions in this IRFA, we estimate that there may be at least 712,000 potential licensees which are individuals or are small entities, as that term is defined by the SBA. We estimate that only 16,800 will be subject to FY 2001 regulatory fees.

46. **Fixed Microwave Services.** Microwave services include common carrier,¹³³ private-operational

¹³¹ Federal Communications Commission, 60th Annual Report, Fiscal Year 1994, at paragraph 116.

¹³² 13 CFR 121.201, NAICS codes 513321, 513322, and 51333.

¹³³ 47 CFR 101 et seq. (formerly, part 21 of the Commission's Rules).

fixed,¹³⁴ and broadcast auxiliary radio services.¹³⁵ At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, we will use the SBA's definition applicable to radiotelephone (wireless) companies -- *i.e.*, an entity with no more than 1,500 persons.¹³⁶ We estimate that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone (wireless) companies.

47. Public Safety Radio Services. Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.¹³⁷ There are a total of approximately 127,540 licensees within these services. Governmental entities¹³⁸ as well as private businesses comprise the licensees for these services. As indicated *supra* in paragraph four of this IRFA, all governmental entities with populations of less than 50,000 fall within the definition of a small entity.¹³⁹ All licensees in this category are exempt from the payment of regulatory fees.

48. Personal Radio Services. Personal radio services provide short-range, low power radio for personal

¹³⁴ Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. See 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

¹³⁵ Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's Rules. See 47 CFR 74 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

¹³⁶ 13 CFR 121.201, NAICS codes 513321, 513322, 51333.

¹³⁷ With the exception of the special emergency service, these services are governed by Subpart B of part 90 of the Commission's Rules, 47 CFR 90.15 through 90.27. The police service includes 26,608 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes 22,677 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of 40,512 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are 7,325 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The 9,480 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The 1,460 licensees in the Emergency Medical Radio Service (EMRS) use the 39 channels allocated to this service for emergency medical service communications related to the delivery of emergency medical treatment. 47 CFR 90.15 through 90.27. The 19,478 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 CFR 90.33 through 90.55.

¹³⁸ 47 CFR 1.1162.

¹³⁹ 5 U.S.C. 601(5).

communications, radio signaling, and business communications not provided for in other services. The services include the citizen's band (CB) radio service, general mobile radio service (GMRS), radio control radio service, and family radio service (FRS).¹⁴⁰ Since the CB, GMRS, and FRS licensees are individuals, no small business definition applies for these services. We are unable at this time to estimate the number of other licensees that would qualify as small under the SBA's definition; however, only GMRS licensees are subject to regulatory fees.

49. **Offshore Radiotelephone Service.** This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal areas of states bordering the Gulf of Mexico.¹⁴¹ There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's definition for radiotelephone (wireless) communications.

50. **Wireless Communications Services.** This service can be used for fixed, mobile, radiolocation and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these definitions.¹⁴² The FCC auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees affected includes these eight entities.

51. **39 GHz Service.** The Commission defined "small entity" for 39 GHz licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.¹⁴³ An additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.¹⁴⁴ These regulations defining "small entity" in the context of 39 GHz auctions have been approved by the SBA. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses.

¹⁴⁰ Licensees in the Citizens Band (CB) Radio Service, General Mobile Radio Service (GMRS), Radio Control (R/C) Radio Service and Family Radio Service (FRS) are governed by Subpart D, Subpart A, Subpart C, and Subpart B, respectively, of part 95 of the Commission's Rules. 47 CFR 95.401 through 95.428; 95.1 through 95.181; 95.201 through 95.225; 47 CFR 95.191 through 95.194.

¹⁴¹ This service is governed by subpart I of part 22 of the Commission's Rules. See 47 CFR 22.1001 through 22.1037.

¹⁴² See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division from A. Alvarez, Administrator, SBA (December 2, 1998).

¹⁴³ See In the Matter of Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Band, *Report and Order*, 12 FCC Rcd 18600 (1997).

¹⁴⁴ *Id.*

52. **Local Multipoint Distribution Service.** The auction of the 1,030 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission defined “small entity” for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.¹⁴⁵ An additional classification for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.¹⁴⁶ These regulations defining “small entity” in the context of LMDS auctions have been approved by the SBA.¹⁴⁷ There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 small business winning bidders. Based on this information, we conclude that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission’s auction rules.

53. **218-219 MHz Service.** The first auction of 218-219 MHz spectrum resulted in 170 entities winning licenses for 595 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, we defined a small business as an entity that, together with its affiliates, has no more than a \$6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than \$2 million in annual profits each year for the previous two years.¹⁴⁸ In the *218-219 MHz Report and Order and Memorandum Opinion and Order*, we defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed \$15 million for the preceding three years.¹⁴⁹ A very small business is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed \$3 million for the preceding three years.¹⁵⁰ We cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218-219 MHz spectrum. Given the success of small businesses in the previous auction, and

¹⁴⁵ See Local Multipoint Distribution Service, *Second Report and Order*, 62 FR 23148, April 29, 1997.

¹⁴⁶ *Id.*

¹⁴⁷ See Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (January 6, 1998).

¹⁴⁸ Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP WT Docket No. 93-253, *Fourth Report and Order*, 59 FR 24947 (May 13, 1994).

¹⁴⁹ In the Matter of Amendment of Part 95 of the Commission’s Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, WT Docket No. 98-169, *Report and Order and Memorandum Opinion and Order*, 64 FR 59656 (November 3, 1999).

¹⁵⁰ Amendment of Part 95 of the Commission’s Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, *Report and Order and Memorandum Opinion and Order*, 64 FR 59656 (1999).

the above discussion regarding the prevalence of small businesses in the subscription television services and message communications industries, we assume for purposes of this IRFA that in future auctions, all of the licenses may be awarded to small businesses if these proposed rules were adopted.

III. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements:

54. With certain exceptions, the Commission's Schedule of Regulatory Fees applies to all Commission licensees and regulatees. Most licensees will be required to count the number of licenses or call signs authorized, complete and submit an FCC Form 159 ("FCC Remittance Advice"), and pay a regulatory fee based on the number of licenses or call signs.¹⁵¹ Interstate telephone service providers must compute their annual regulatory fee based on their interstate and international end-user revenue using information they already supply to the Commission in compliance with the Form 499-A, Telecommunications Reporting Worksheet, and they must complete and submit the FCC Form 159. Compliance with the fee schedule will require some licensees to tabulate the number of units (e.g., cellular telephones, pagers, cable TV subscribers) they have in service, and complete and submit an FCC Form 159. Licensees ordinarily will keep a list of the number of units they have in service as part of their normal business practices. No additional outside professional skills are required to complete the FCC Form 159, and it can be completed by the employees responsible for an entity's business records.

55. Each licensee must submit the FCC Form 159 to the Commission's lockbox bank after computing the number of units subject to the fee. Licensees may also file electronically to minimize the burden of submitting multiple copies of the FCC Form 159. Applicants who pay small fees in advance and provide fee information as part of their application must use FCC Form 159.

56. Licensees and regulatees are advised that failure to submit the required regulatory fee in a timely manner will subject the licensee or regulatee to a late payment penalty of 25 percent in addition to the required fee.¹⁵² If payment is not received, new or pending applications may be dismissed, and existing authorizations may be subject to rescission.¹⁵³ Further, in accordance with the Debt Collection

¹⁵¹ The following categories are exempt from the Commission's Schedule of Regulatory Fees: Amateur radio licensees (except applicants for vanity call signs) and operators in other non-licensed services (e.g., Personal Radio, part 15, ship and aircraft). Governments and non-profit (exempt under section 501(c) of the Internal Revenue Code) entities are exempt from payment of regulatory fees and need not submit payment. Non-commercial educational broadcast licensees are exempt from regulatory fees as are licensees of auxiliary broadcast services such as low power auxiliary stations, television auxiliary service stations, remote pickup stations and aural broadcast auxiliary stations where such licenses are used in conjunction with commonly owned non-commercial educational stations. Emergency Alert System licenses for auxiliary service facilities are also exempt as are instructional television fixed service licensees. Regulatory fees are automatically waived for the licensee of any translator station that: (1) is not licensed to, in whole or in part, and does not have common ownership with, the licensee of a commercial broadcast station; (2) does not derive income from advertising; and (3) is dependent on subscriptions or contributions from members of the community served for support. Receive only earth station permittees are exempt from payment of regulatory fees. A regulatee will be relieved of its fee payment requirement if its total fee due, including all categories of fees for which payment is due by the entity, amounts to less than \$10.

¹⁵² 47 CFR 1.1164.

¹⁵³ 47 CFR 1.1164(c).