

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

In the Matter of)
)
 Assessment and Collection) MD Docket No. 03-83
)
 of Regulatory Fees for)
)
 Fiscal Year 2003)

REPORT AND ORDER

Adopted: July 21, 2003 ; **Released:** July 25, 2003

By the Commission: Commissioners Copps and Adelstein concurring and issuing separate statements.

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I. INTRODUCTION

1. In this *Report and Order* ("R&O"), the Commission concludes a proceeding to collect \$269,000,000 in regulatory fees for Fiscal Year (FY) 2003. These fees are mandated by Congress and are collected to recover the regulatory costs associated with the Commission's enforcement, policy and rulemaking, user information, and international activities.¹

II. DISCUSSION

A. Development of FY 2003 Fees

i. Calculation of Revenue and Fee Requirements

2. Each fiscal year, the Commission proportionally allocates the total amount that must be collected via regulatory fees (Attachment C).² For FY 2003, this allocation was done using FY 2002 revenues as a base. From this base, a revenue amount for each fee category was calculated. Each fee category was then adjusted upward by 23 percent to reflect the increase in regulatory fees from FY 2002 to FY 2003. These FY 2003 amounts were then divided by the number of payment units in each fee category to determine the unit fee.³ In instances of small fees, such as licenses that are renewed over a multiyear term, the resulting unit fee was also divided by the term of the license. These unit fees were then rounded in accordance with 47 U.S.C. §159 (b) (2).

ii. Further Adjustments to Payment Units

3. In calculating the FY 2003 regulatory fees for each service in Attachment D, the Commission adjusted the FY 2002 list of payment units (Attachment B) based upon licensee data bases and industry and trade group projections. Whenever possible, the Commission verified these estimates from multiple sources to ensure accuracy of these estimates.

4. The R&O also adjusts the payment units for FY 2003 by expanding the AM and FM Radio Station Regulatory Fees Grid. Since FY 1998, the Commission has used a grid that divides broadcast station regulatory fees by class of service, population, and type of service (AM/FM).⁴ This grid was originally adopted to provide equity and fairness among radio stations with varying signal strengths and market reach. However, in recent years, modifications to radio stations, a trend toward more

¹ See 47 U.S.C. §159(a).

² The costs assigned to each service category are based upon the regulatory activities (enforcement, policy and rulemaking, user information, and international activities) undertaken by the Commission on behalf of units in each service category. It is important to note that the required increase in regulatory fee payments of approximately 23 percent in FY 2003 is reflected in the revenue that is expected to be collected from each service category. Because this expected revenue is adjusted each year by the number of units in a service category, the actual fee itself is sometimes increased by a number other than 23 percent. For example, in industries where the number of units is declining and the expected revenue is increasing, the impact on the fee increase may be greater.

³ In most instances, the fee amount is a flat fee per licensee or regulatee. However, in some instances the fee amount represents a unit subscriber fee (such as for Cable, Commercial Mobile Radio Service (CMRS) Cellular/Mobile and CMRS Messaging), a per unit fee (such as for International Bearer Circuits), or a fee factor per revenue dollar (Interstate Telecommunications Service Provider fee).

⁴ Assessment and Collection of Regulatory Fees for Fiscal Year 1998, *Report and Order*, 63 FR 35847 (released July 1, 1998), paragraph 37.

powerful stations, and increases in the overall general population have resulted in an ever-increasing number of stations grouped in the one million-plus category of the grid. This trend necessitated the need to review the grid. In its *Fiscal Year 2003 Regulatory Fee Notice of Proposed Rulemaking* ("NPRM"), adopted March 24, 2003, the Commission proposed to revise the grid to include a population category of "greater than three million people" and to change the population threshold amounts to reflect slightly wider population fields.

5. The Commission received no comments concerning this matter. Therefore, beginning in Fiscal Year 2003 we will use the revised grid, as proposed in the *NPRM*, to assess regulatory fees for AM and FM commercial radio stations. The current and revised radio station grids follow:

FY 2002 RADIO STATION REGULATORY FEE GRID (Six by Six)						
Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C1 & C2
<=20,000						
20,001 - 50,000						
50,001 - 125,000						
125,001 - 400,000						
400,001 - 1,000,000						
>1,000,000						

REVISED RADIO STATION REGULATORY FEE GRID (Six by Seven)						
Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C0, C1 & C2
<=25,000						
25,001 - 75,000						
75,001 - 150,000						
150,001 - 500,000						
500,001 - 1,200,000						
1,200,001 - 3,000,000						
> 3,000,000						

iii. Classification of LMDS

6. In our *NPRM*, we sought comment on how to classify Local Multipoint Distribution Service ("LMDS") for regulatory fees purposes, which since FY 2000 has been classified in the fee category of Multipoint Distribution Service ("MDS"). We received several comments from respondents suggesting that the LMDS fee category be reclassified in the microwave category. For example, Blooston, Mordkofsky, Dickens, Duffy & Prendergast ("BMDDP") argue that LMDS and the microwave fee category are regulated similarly, and therefore should be classified together. LMDS is regulated in Part 101 of the Commission's Rules as is the microwave category, whereas MDS is regulated under Part 21. LMDS operates in the 28 GHz and 31 GHz bands and is most similar to the "upper band" of microwave services category. BMDDP argues that both the microwave and LMDS services have similar propagation limitations, and each of these services compete (or could compete) for the same subscriber base within the same geographic market area.⁵

7. In their comments, Bennet & Bennet also argue that LMDS should be classified in the microwave category, noting that the present classification of LMDS with MDS places LMDS at a competitive disadvantage without any rational basis.⁶ Bennet & Bennet argue that by the Commission's own admission in its *Fixed Wireless Report*, it recognizes that the lower (MDS) and upper (LMDS, microwave) band services have significantly different propagation characteristics and generally serve two distinct markets.⁷ As a result, Bennet & Bennet conclude that although LMDS and MDS share some similarities, these two fee categories are regulated under different rules, utilize different network equipment configurations, and serve different markets⁸.

8. The Commission received a reply comment that addressed the distinctions between MDS and LMDS. The Martin Group, on behalf of its Local Multipoint Distribution Service clients, concurs with the arguments raised by respondents Bennet & Bennet, and BMDDP that LMDS should be reclassified in the microwave fee category. The Martin Group also notes that MDS and LMDS are not similar in technologies or usage.⁹ While LMDS and MDS share the same "Multipoint Distribution Service" designation, the technologies involved are radically different – MDS systems, for the most part, use one-way multichannel video systems, while LMDS systems deliver megabytes of data to customers. The Martin Group is not aware of any point-to-point applications of MDS equipment, but point-to-point systems have been successfully deployed using the LMDS spectrum in a manner operationally similar to microwave technology.¹⁰

9. The three commenters on this issue have raised substantive arguments addressing the technological characteristics of MDS, LMDS, and the microwave fee category. Based on these distinctions, the respondents advocate that LMDS be reclassified as a microwave service for regulatory fee purposes. From the comments we have received, we concur that substantive distinctions exist between MDS and LMDS and that they should not be placed in the same fee category. However, we are unpersuaded that LMDS should be moved to the microwave service category. Recent technological and

⁵ Comments of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, pages 1-2.

⁶ Comments of Bennet & Bennet, PLC on behalf of its LMDS clients, page 1.

⁷ *Ibid.*, page 2.

⁸ *Ibid.* pages 2, 4, and 5.

⁹ Comments of Martin Group on behalf of its LMDS clients, page 2.

¹⁰ *Ibid.*, pages 2 and 3.

commercial applications using LMDS service indicate that this service may develop on a separate track from current microwave services. LMDS offers significant potential in offering a broad range of one-way and two-way voice, video, and data service capability, and substantially more capacity than other wireless services. We conclude that the best resolution at this time is to move LMDS administratively into a separate fee category, while maintaining its current fee structure, and initiate a specific proceeding that addresses the policies and fee structure governing LMDS and other wireless services. All other rules and regulations governing LMDS at this time will continue to apply.

10. We note that although we have separated MDS and LMDS into separate fee categories, the regulatory fee amounts for both services this fiscal year will be \$265 per license. This is a reduction of more than 38 percent from last year's fee and is a significantly reduced financial obligation for LMDS licensees.¹¹

iv. Adjustment of Fee Waiver Policies

11. In our NPRM, we addressed the policies applicable to granting fee waivers based on financial hardship.¹² We emphasized that under existing policy, although evidence of bankruptcy or receivership is generally sufficient to establish financial hardship, case-by-case review of fee waiver requests is necessary to determine whether a waiver would be in the public interest, even in bankruptcy cases. We also sought comment on whether we should set a cap on the amount of fees that we will generally waive in circumstances involving bankruptcy and otherwise. We tentatively proposed a cap of either \$500,000 or \$1 million on the amount of fees that would be waived for a single entity and its affiliates.

12. Only one commenter, the Verizon telephone companies (Verizon)¹³, responded to this proposal. Verizon asserts that the Commission should not grant fee waivers based on bankruptcy. According to Verizon, doing so unfairly shifts the cost of the bankrupt's failure to the Commission and to the bankrupt's competitors, who will have to pay higher fees and suffer competitive disadvantage. Verizon maintains that granting waivers to bankrupts may significantly reduce the revenues from fees. In this regard, Verizon estimates that the current upsurge in bankruptcies may affect companies accounting for up to 20 percent of revenues from large telecommunications firms and 30 percent of large interexchange carriers. Moreover, Verizon observes that companies in bankruptcy may nevertheless have sufficient funds to pay regulatory fees and that especially companies undergoing Chapter 11 reorganization should be expected to pay applicable fees on a going-forward basis.¹⁴ In Verizon's view, the bankrupt entity's liability for regulatory fees should be left to bankruptcy law, which will set the priority of the fees relative to other obligations and discount the bankrupt's liability as appropriate.¹⁵ Verizon agrees with our proposal to cap all other fee waivers at \$500,000 to \$1 million.

13. Although we share Verizon's concern over the impact that bankruptcies may have on our ability to collect fees, we find that Verizon's proposals go too far. We continue to believe that in appropriate circumstances the public is served by assisting financially distressed telecommunications companies, especially small entities, by granting them relief or partial relief from Section 8 and Section 9

¹¹ The regulatory fee amount for the MDS/LMDS service category was \$450 per license held in FY 2001, and \$430 per license held in FY 2002.

¹² *Notice of Proposed Rulemaking*, 68 FR 17577 (released April 10, 2003), paragraphs 10-12.

¹³ The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications, Inc.

¹⁴ See 11 U.S.C. §§ 503, 507(a)(1) (allowance of debtor's administrative expenses).

¹⁵ See 11 U.S.C. §§ 507, 726 (regarding priorities).

fees, and thereby assisting them in remaining effective competitors in the telecommunications marketplace. We also believe that bankruptcy generally represents sufficient evidence of financial hardship to warrant granting a waiver. Our concerns in this regard are distinct from those taken into account by a bankruptcy court in setting the respective priorities of various types of obligations and discounting them where appropriate.¹⁶ Bankruptcy law does not limit our ability to forego collecting fees¹⁷ where the public interest warrants, and we therefore act independently of the bankruptcy law to this extent. On the other hand, we continue to believe that very large waivers would excessively impair our ability to comply with our statutory fee collection responsibilities. Even under existing policy, we might decline a request for such a waiver on a case-by-case basis.

14. Additionally, we believe that a cap on waivers would be a useful means of implementing our policy concerns.¹⁸ We adopt a cap of \$500,000 applicable both to bankrupt and other regulates asserting financial hardship, and we will amend the rules accordingly. We believe that granting fee waivers of greater than this amount would tend to have a negative impact on our ability to meet our statutory responsibilities. Fees owed above the cap would be subject to the provisions of the Bankruptcy Act in cases of bankruptcy. In other cases of asserted financial hardship, we may consider waiver, partial waiver, or deferral of fees above the cap on a case-by-case basis. As noted in the *NPRM*, in computing the cap we will aggregate all subsidiaries and other affiliated entities of a particular regulatee. Additionally, in computing the cap we will aggregate the total Section 8 application fees and Section 9 regulatory fees for a given fiscal year, including Section 9 fees due in a fiscal year but paid prior to the due date. The cap will apply to all waiver requests pending as of the effective date of the new rule. Adoption of the fee waiver cap does not limit our ability to grant or deny any current pending waiver requests. We anticipate that we will revisit the amount of the cap in subsequent fee rulemakings as warranted by changing conditions. We may also give further consideration to Verizon's proposals if our further experience suggests that this would be desirable.

v. Procedural Changes and Future Streamlining of the Regulatory Fee Assessment and Collection Process

15. In our *NPRM*, we sought comment on a broad range of options for streamlining and otherwise improving the Commission's fee assessment and collection processes and procedures.¹⁹ While no comments were received with specific regards to future streamlining efforts, the Industrial Telecommunications Association, Inc. ("ITA") objects to the Commission's proposal to discontinue its annual mailing of regulatory fee public notices to licensees. ITA states that small wireless and radio services providers, without adequate notification, may unintentionally miss the deadline for payment of fees.²⁰ In his reply comment, Kenneth J. Brown, a retired broadcast engineer, contends that the annual

¹⁶ Verizon notes that in our *NPRM* we stated with respect to fees in excess of the proposed cap: "By leaving the ultimate disposition of these large fees to bankruptcy law, rather than waiving them, we believe that we would be giving due regard to our congressionally-mandated obligation to collect regulatory fees. Moreover, we believe that we would also be giving due regard to our practice, approved by the courts, of reconciling our regulatory responsibilities with the goals of the Bankruptcy Act." Verizon contends that we should treat all fees from companies in bankruptcy consistent with this approach. We believe, however, that smaller fees warrant a different public interest balancing than larger fees and that we should continue to grant waivers for smaller amounts.

¹⁷ See 11 U.S.C. §§ 501, 502(a), 726 (claims have priority only upon creditor's timely filing of a proof of claim).

¹⁸ The fee waiver cap we adopt is intended to limit the circumstances in which financial hardship will be considered as a basis for granting a fee waiver. It does not affect the procedures for processing waiver requests.

¹⁹ Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Notice of Proposed Rulemaking*, 68 FR 17577 (released April 10, 2003), paragraph 16.

²⁰ Comments of the Industrial Telecommunications Association, Inc., page 4.

(continued....)

mailing of regulatory fee public notices is a waste of federal resources with regard to large radio station group owners.²¹ Mr. Brown asserts that his former employer was able to obtain the public notice and payment information from the Commission's Internet site each year, long before public notice mailings for each of the employer's holdings arrived in the mail.²²

16. In responding to ITA, we first note that the Commission's smallest regulatory fees – generally paid by smaller businesses and entities – are attached to Section 8 application fees and are paid upfront by entities at the time of their initial application or renewal of their multi-year license. Also, because governmental and public safety entities are exempt from regulatory fees, it is not necessary to give notice to these entities. In addition, each year the Regulatory Fee Schedule is established in a *R&O* promulgated by the Commission. This *R&O*, along with our regulatory fee public notices, are published in the *Federal Register* as a means of providing official public notice.²³

17. As in previous years, we will also continue to make our regulatory fee public notices available on the FCC's website (<http://www.fcc.gov/fees>). In our *NPRM*, we proposed no longer to disseminate public notices through surface mail because of the wide availability of the Internet.²⁴ We believe that today use of the Internet among the vast majority of businesses is ubiquitous and even those entities without computers or Internet access on their premises can still obtain the public notices via Internet access at their local public library. The Internet serves as the most convenient source for licensees to obtain regulatory fee information.

18. We also note that our initiative to mail regulatory fee assessment postcards to media services entities is underway, and that if this pilot program is successful we will consider expanding this method to other services.²⁵ We iterate that our broader interest is to move towards disseminating actual regulatory fee bills to entities. To do so, we may consider various methods in the future, including “e-billing” through the Internet.

19. For the reasons stated above, the Commission adopts its proposal no longer to disseminate regulatory fee public notices to the majority of its regulatees. An exception to this policy will be made for Interstate Telecommunication Service Providers (“ITSPs”), as the Commission will continue to generate and mail to them a customized Regulatory Fee Worksheet attached to the general regulatory fee public notice.

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²¹ Reply Comments of Kenneth J. Brown, page 1.

²² Reply Comments of Kenneth J. Brown, page 1.

²³ Moreover, we will continue to mail public notices and other relevant materials free of charge to entities upon request.

²⁴ Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Notice of Proposed Rulemaking*, 68 FR 17577 (released April 10, 2003), paragraph 13.

²⁵ For FY 2003, assessment postcards will be mailed to all media services entities (radio and television station licensees) with the exception of broadcast auxiliary station licensees. Entities receiving assessments will continue to pay their regulatory fees via the Commission's established procedures; i.e., payments must still be accompanied by FCC Form 159 and be submitted via the Commission's traditional methods for collection of regulatory fees each year.

vi. Commercial Mobile Radio Service (CMRS) Messaging

20. Arch Wireless; Allied National Paging Association; American Association of Paging Carriers; Metrocall Holdings, Inc.; and WebLink Wireless I, L.P. ("Joint Commenters"), as joint commenters, urge the Commission to reduce the regulatory fee amount per subscriber, contending that because the messaging industry is not expanding, the Commission is probably expending fewer resources in the messaging industry than in other wireless services.²⁶ Joint Commenters note that the Commission is required to relate its regulatory fee assessments to the cost of regulating each industry segment. American Mobile Telecommunications Association, Inc. ("AMTA" or "Association") also argues that a declining CMRS messaging services base should result in a decrease in the cost of regulation, and adds that spectrum-limited and geographically localized services such as CMRS messaging are very fee sensitive and therefore not able to pass on increases in costs very easily.²⁷ In their reply comments, Blooston, Mordkofsky, Dickens, Duffy & Prendergast ("BMDD&P") concurs that over the past several years, the Commission's level of regulatory and enforcement activity has probably decreased, and as a result, there should be a corresponding decrease in regulatory fees.²⁸ Finally, the Industrial Telecommunications Association, Inc. ("ITA") asks whether small SMR operators are still categorized in the CMRS Messaging Service fee category.²⁹

21. First, we confirm that with respect to SMR operators under the 10 MHz bandwidth, the Commission continues to classify these operators as part of the CMRS Messaging fee category. Turning to the issue pertaining to the CMRS fee, a cogent argument has been presented that there has been a significant decline in CMRS Messaging units -- from 40.8 million in FY 1997 to 19.7 million in FY 2003 -- a decline of 51.7 percent. Commenters have persuasively argued that this decline in subscribership may not be just a temporary phenomenon, but a more long-lasting one, and because the messaging industry is spectrum-limited, geographically localized, and very cost sensitive, it is very difficult for this industry to pass on increases in costs to its subscribers.³⁰ In these unique circumstances, we believe it is appropriate to provide a measure of relief.³¹

22. For the reasons stated above, we will not increase the regulatory fee of CMRS messaging services to \$0.11, but will maintain it at its FY 2002 level of \$.08 per subscriber unit.

vii. Broadcast Television Stations with Single Channel Allotments

23. Sky Television, L.L.C. ("WSKY-TV") urges the Commission to create an additional regulatory fee service category for single-channel National Television System Committee (NTSC) full-service broadcast television stations and to assess a fee for this category that is 50 percent of the fee

²⁶ Comments provided by Arch Wireless; Allied National Paging Association; American Association of Paging Carriers; Metrocall Holdings, Inc.; and WebLink Wireless I, L.P., pages 4-6.

²⁷ Comments by the American Mobile Telecommunications Association, Inc., pages 2 and 5.

²⁸ Comments by Blooston, Mordkofsky, Dickens, Duffy & Prendergast, page 4.

²⁹ Comments by the Industrial Telecommunications Association, Inc., page 4.

³⁰ Comments from American Mobile Telecommunications Association, Inc., pages 2 and 5; comments from Arch Wireless Operating Company, Inc., Allied National Paging Association, American Association of Paging Carriers, Metrocall Holdings, Inc., and Weblink Wireless I, L.P. (collectively known as, "Joint Commenters"), page 6.

³¹ The Commission is completing design work on a new cost accounting system. As part of this process, we are evaluating methodologies for capturing data relevant to the regulatory fee setting process.

assessed against stations that have paired NTSC/DTV allotments. WSKY-TV states that because much of the Commission's current regulatory activities concerning the broadcast industry benefits only television stations with paired NTSC/DTV allotments, the costs of these activities should not be allocated to single-channel NTSC stations.

24. For background, WSKY-TV is a relatively new broadcast station, having been licensed by the Commission on December 26, 2001 to operate on a single NTSC channel. This license condition is congruent with Commission policy in that initial DTV licenses were limited to full service broadcast television station permittees and licensees as of April 3, 1997,³² and that new NTSC permittees are not to be awarded a second channel to convert to DTV, but may convert to DTV on their single 6 MHz channel.³³

25. The Commission's broadcast television regulatory fees are already designed to only capture the costs of analog broadcast activities. Although DTV licensees are subject to Section 8 application fees, the Commission does not yet assess Section 9 regulatory fees to recover the costs of the agency's DTV-related activities. Therefore, there is no need for the Commission to take action on this matter, because the analog-only regulatory fee category that WSKY-TV requests is already in effect.

viii. Amateur Radio Vanity Call Signs

26. Several amateur radio licensees commented concerning the Commission's practice of assessing regulatory fees for amateur vanity call signs. Some commenters assert that no regulatory fees should be assessed for vanity call signs. Other commenters support the payment of a regulatory fee for the administrative costs incurred by the Commission when it initially issues a vanity call sign, but question why a regulatory fee is assessed when renewing the amateur vanity call sign. Of these commenters, some assert that the fee assessed for vanity call signs at the license renewal process should simply be eliminated; others propose that the fee should be eliminated and offset by a higher upfront fee assessed at the time of initial application. Finally, Keven Hemsley states that in instances where the Commission denies an applicant's request for a vanity call sign, the Commission should refund the money automatically rather than requiring the applicant to request a refund.³⁴

27. First, we address the issue of requests for refunds of regulatory fees. Our rules state that the Commission will not process refunds of regulatory fees without a written request from the applicant, permittee, licensee or agent in question.³⁵ We uphold the requirement for a written request for a refund of regulatory fees. The written request serves as documentation when cross-referencing each unique file number that may be entitled to a refund. This documentation is essential for all applications, and particularly so for amateur radio vanity call sign applications, because filing trends indicate that some applicants file several vanity call sign applications per day, for several days on end. When one particular vanity call sign is granted to a filer, all of that filer's other applications are thereby dismissed. Certifying which fees are to be refunded for which dismissed applications would be much more labor intensive without the aid of any refund request documentation from prospective payees – thereby increasing the

³² *Advanced Television Systems and Their Impact Upon Existing Television Broadcast Service, Fifth Report and Order*, 12 FCC Rcd 12809, 12816 (1997).

³³ *Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order*, 13 FCC Rcd 6860, 6865 (1998).

³⁴ Comments of Kevin Hemsley, page 1.

³⁵ See 47 C.F.R. 1.1160(d) Refunds of regulatory fees.

Commission's costs in this service category and leading to higher regulatory fees here, as well. More importantly, the many processors of the myriad applications and filings submitted to the Commission's various Bureaus and Offices are not granted the authority to issue refunds without proper documentation. We cannot relax this filing requirement because maintaining a file of written requests for refunds that are paid to applicants is a sound accounting practice, and is necessary to ensure the integrity of the Commission's financial management and accounting systems.

28. Next, we address comments concerning our general regulatory fee assessment policy with regards to amateur radio vanity call signs. Pursuant to Section 9 of the Telecommunications Act of 1934, as amended, the assessment of regulatory fees is not applicable to amateur radio operator licenses.³⁶ This exemption applies only to the actual license to operate, and does not extend to the vanity call sign component of Amateur Radio Service. Vanity call signs are voluntarily requested by licensees, and an entity that operates under a vanity call sign enjoys a value-added benefit not afforded to all licensees. Therefore, it is reasonable to conclude that those entities holding amateur vanity call signs should be assessed regulatory fees by the Commission to cover its processing and enforcement costs for making the vanity call sign service available.

29. Rather than assess entities a significant up-front vanity call sign fee that lasts the life of the call sign, the Commission chose instead to assess a nominal fee at the time of initial application and a continuance of the nominal fee at subsequent ten-year vanity call sign and license renewals. The Commission believes that this approach allows greater consumer access to vanity call signs. A high one-time-only fee would be cost prohibitive for many entities wishing to obtain a vanity call sign. This approach is also consistent with the fact that the Commission incurs costs in managing each vanity call sign throughout its existence, not merely the first 10 years of its initial license period. This approach also makes the cost of holding any given vanity call sign equitable among all holders throughout the existence of each call sign, providing by example that holding a vanity call sign for 30 years will cost three times the amount to hold such a call sign for 10 years.³⁷

30. For the reasons detailed above, the Commission upholds its fee assessment policy for amateur radio vanity call signs and the payment methodology employed throughout the life-cycle of a vanity call sign authorization.

B. Procedures for Payment of Regulatory Fees

i. De minimis Fee Payment Liability

31. Regulatees whose total regulatory fee liability, including all categories of fees for which payment is due by an entity, amounts to less than \$10 are exempt from payment of regulatory fees in FY 2003.

ii. Standard Fee Calculations and Payment Dates

32. As in prior years, the responsibility for payment of fees by service category is as follows:

- a) Media services – fees must be paid for any license or permit issued on or before October 1, 2002. However, in instances where a license or permit is transferred

³⁶ See 47 U.S.C. § 149(h).

³⁷ Assuming a consistent time-value of money, and barring future Congressionally mandated changes in the amount of regulatory fees to be collected.

or assigned after October 1, 2002, responsibility for payment rests with the holder of the license or permit at the time payment is due.

- b) Wireline (Common Carrier) and Cable Services (fees are not based on a subscriber, unit, or circuit count) - fees must be paid for any authorization issued on or before October 1, 2002. However, where a license or permit is transferred or assigned after October 1, 2002, responsibility for payment rests with the holder of the license or permit at the time payment is due.
- c) Cable Subscriber Services and Commercial Mobile Radio Service (CMRS) cellular, mobile, and messaging services (fees based upon a subscriber, unit or circuit count) - the number of subscribers, units or circuits on December 31, 2002 will be used as the basis from which to calculate the fee payment.³⁸ For facilities-based common carriers with active international bearer circuits, the fee is based on the circuit count as of December 31, 2002. Also, as stated previously, in instances where a license or permit is transferred or assigned after October 1, 2002, responsibility for payment rests with the holder of the license or permit at the time payment is due.

33. The Commission strongly 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. 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.

C. Enforcement

34. 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 also assesses administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the related debt pursuant to the DCIA and §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 underpayments 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. Failure to pay regulatory fees can result in the initiation of a proceeding to revoke any and all authorizations held by the delinquent payer.³⁹

³⁸ 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 2002, rather than on a count as of December 31, 2002.

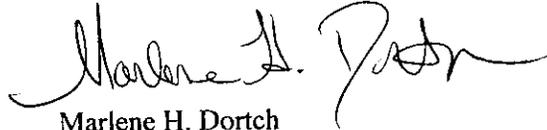
³⁹ See 47 CFR 1.1164.

III. PROCEDURAL MATTERS

35. 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.⁴⁰ It is ordered that the rule changes specified herein be adopted. It is further ordered that the rule changes made herein will become effective September 9, 2003, which is no less than 30 days after publication in the *Federal Register*. A Final Regulatory Flexibility Analysis (FRFA) has been performed and is found in Attachment A, and it is ordered that the Commission's Consumer And Governmental Affairs Bureau, Reference Information Center, send this to the Chief Counsel for Advocacy of the Small Business Administration (SBA). Finally, it is ordered that this proceeding is TERMINATED.

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

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

⁴⁰ See 47 U.S.C. §§ 154(i)-(j), 159, and 303(r).

RULE CHANGES

Part 1 of Title 47 of the Code of Federal Regulations is amended to read as follows:

PART 1 – PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303, 309.

2. Section 1.1117 is revised to add new subparagraph (f) to read as follows:

§ 1.1117 Petitions and applications for review.

* * * *

(f) Petitions for waiver of a fee based on financial hardship will be subject to the provisions of paragraph 1.1166(e) of this subpart.

3. Section 1.1152 is revised to read as follows:

§ 1.1152 Schedule of annual regulatory fees and filing locations for wireless radio services.

Exclusive use services (per license)	Fee Amount ⁴¹	Address
1. Land Mobile (Above 470 MHz and 220 MHz Local, Base Station & SMRS) (47 CFR, Part 90)		
a) New, Renew/Mod (FCC 601 & 159)	\$10.00	FCC P.O. Box 358130 Pittsburgh, PA 15251-5130
b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	\$10.00	FCC P.O. Box 358994 Pittsburgh, PA 15251-5994
c) Renewal Only (FCC 601 & 159)	\$10.00	FCC P.O. Box 358245 Pittsburgh, PA 15251-5245

⁴¹ Note that "small fees" are collected in advance for the entire license term. Therefore, the annual fee amount shown in this table that is a small fee (categories 1 through 5) must be multiplied by the 5- or 10-year license term, as appropriate, to arrive at the total amount of regulatory fees owed. It should be further noted that application fees may also apply as detailed in §1.1102 of this chapter.

d)Renewal Only (Electronic Filing) (FCC 601 & 159)	\$10.00	FCC P.O. Box 358994 Pittsburgh, PA 15251-5994
220 MHz Nationwide a)New, Renew/Mod (FCC 601 & 159)	\$5.00	FCC P.O. Box 358130 Pittsburgh, PA 15251-5130
b)New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	\$5.00	FCC P.O. Box 358994 Pittsburgh, PA 15251-5994
c)Renewal Only (FCC 601 & 159)	\$5.00	FCC P.O. Box 358245 Pittsburgh, PA 15251-5245
d)Renewal Only (Electronic Filing) (FCC 601 & 159)	\$5.00	FCC P.O. Box 358994 Pittsburgh, PA 15251-5994
2. Microwave (47 CFR Pt. 101) (Private) a)New, Renew/Mod (FCC 601 & 159)	\$25.00	FCC P.O. Box 358130 Pittsburgh, PA 15251-5130
b)New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	\$25.00	FCC P.O. Box 358994 Pittsburgh, PA 15251-5994
c)Renewal Only (FCC 601 & 159)	\$25.00	FCC P.O. Box 358245 Pittsburgh, PA 15251-5245
d)Renewal Only (Electronic Filing) (FCC 601 & 159)	\$25.00	FCC P.O. Box 358994 Pittsburgh, PA 15251-5994
3. 218-219 MHz Service a)New, Renew/Mod (FCC 601 & 159)	\$30.00	FCC P.O. Box 358130 Pittsburgh, PA 15251-5130

b)New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	\$30.00	FCC P.O. Box 358994 Pittsburgh, PA 15251-5994
c)Renewal Only (FCC 601 & 159)	\$30.00	FCC P.O. Box 358245 Pittsburgh, PA 15251-5245
d)Renewal Only (Electronic Filing) (FCC 601 & 159)	\$30.00	FCC P.O. Box 358994 Pittsburgh, PA 15251-5994

4. Shared Use Services

Land Mobile (Frequencies Below 470 MHz – except 220 MHz)

a)New, Renew/Mod (FCC 601 & 159)	\$5.00	FCC P.O. Box 358130 Pittsburgh, PA 15251-5130
b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	\$5.00	FCC P.O. Box 358994 Pittsburgh, PA 15251-5994
c)Renewal Only (FCC 601 & 159)	\$5.00	FCC P.O. Box 358245 Pittsburgh, PA 15251-5245
d)Renewal Only (Electronic Filing) (FCC 601 & 159)	\$5.00	FCC P.O. Box 358994 Pittsburgh, PA 15251-5994

General Mobile Radio Service

a)New, Renew/Mod (FCC 605 & 159)	\$5.00	FCC P.O. Box 358130 Pittsburgh, PA 15251-5130
b)New, Renew/Mod (Electronic Filing) (FCC 605 & 159)	\$5.00	FCC P.O. Box 358994 Pittsburgh, PA 15251-5994

c)Renewal Only (FCC 605 & 159)	\$5.00	FCC P.O. Box 358245 Pittsburgh, PA 15251-5245
d)Renewal Only (Electronic Filing) (FCC 605 & 159)	\$5.00	FCC P.O. Box 358994 Pittsburgh, PA 15251-5994
Rural Radio (Part 22) a)New, Additional Facility, Major Renew/Mod (Electronic Filing) (FCC 601 & 159)	\$5.00	FCC P.O. Box 358994 Pittsburgh, PA 15251-5994
b)Renewal, Minor Renew/Mod (Electronic Filing) (FCC 601 & 159)	\$5.00	FCC P.O. Box 358994 Pittsburgh, PA 15251-5994
Marine Coast a)New Renewal/Mod (FCC 601 & 159)	\$10.00	FCC P.O. Box 358130 Pittsburgh, PA 15251-5130
b)Renewal Only (FCC 601 & 159)	\$10.00	FCC P.O. Box 358245 Pittsburgh, PA 15251-5245
c)Renewal Only (Electronic Filing) (FCC 601 & 159)	\$10.00	FCC P.O. Box 358994 Pittsburgh, PA 15251-5994
Aviation Ground a)New, Renewal/Mod (FCC 601 & 159)	\$15.00	FCC P.O. Box 358130 Pittsburgh, PA 15251-5130
b)Renewal Only (FCC 601 & 159)	\$15.00	FCC P.O. Box 358245 Pittsburgh, PA 15251-5245
c)Renewal Only (Electronic Filing) (FCC 601 & 159)	\$15.00	FCC P.O. Box 358994 Pittsburgh, PA 15251-5994

Marine Ship		
a)New, Renewal/Mod (FCC 605 & 159)	\$15.00	FCC P.O. Box 358130 Pittsburgh, PA 15251-5130
b)New, Renewal/Mod (Electronic Filing) (FCC 605 & 159)	\$15.00	FCC P.O. Box 358994 Pittsburgh, PA 15251-5994
c)Renewal Only (FCC 605 & 159)	\$15.00	FCC P.O. Box 358245 Pittsburgh, PA 15251-5245
d)Renewal Only (Electronic Filing) (FCC 605 & 159)	\$15.00	FCC P.O. Box 358994 Pittsburgh, PA 15251-5994
Aviation Aircraft		
a)New, Renew/Mod (FCC 605 & 159)	\$5.00	FCC P.O. Box 358130 Pittsburgh, PA 15251-5130
b)New, Renew/Mod (Electronic Filing) (FCC 605 & 159)	\$5.00	FCC P.O. Box 358994 Pittsburgh, PA 15251-5994
c)Renewal Only (FCC 605 & 159)	\$5.00	FCC P.O. Box 358245 Pittsburgh, PA 15251-5245
d)Renewal Only (Electronic Filing) (FCC 605 & 159)	\$5.00	FCC P.O. Box 358994 Pittsburgh, PA 15251-5994
5. Amateur Vanity Call Signs		
a)Initial or Renew (FCC 605 & 159)	\$1.63	FCC P.O. Box 358130 Pittsburgh, PA 15251-5130
b)Initial or Renew (Electronic Filing) (FCC 605 & 159)	\$1.63	FCC P.O. Box 358994 Pittsburgh, PA 15251-5994

6. CMRS Mobile Services (per unit) (FCC 159)	\$.26 ⁴²	FCC P.O. Box 358835 Pittsburgh, PA 15251-5835
7. CMRS Messaging Services (per unit) (FCC 159)	\$.08 ⁴³	FCC P.O. Box 358835 Pittsburgh, PA 15251-5835
8. Multipoint Distribution (Includes MMDS and MDS)	\$ 265	FCC, Multipoint P.O. Box 358835 Pittsburgh, PA 15251-5835
9. Local Multipoint Distribution Service	\$ 265	FCC, Multipoint P.O. Box 358835 Pittsburgh, PA 15251-5835

4. Section 1.1153 is revised to read as follows:

§ 1.1153 Schedule of annual regulatory fees and filing locations for mass media services.

Radio [AM and FM] (47 CFR, Part 73)	Fee Amount	Address
1. <u>AM Class A</u>		
<=25,000 population	\$600	FCC, Radio
25,001-75,000 population	\$1,200	P.O. Box 358835
75,001-150,000 population	\$1,800	Pittsburgh, PA
150,001-500,000 population	\$2,700	15251-5835
500,001-1,200,000 population	\$3,900	
1,200,001-3,000,000 population	\$6,000	
>3,000,000 population	\$7,200	
2. <u>AM Class B</u>		
<=25,000 population	\$450	
25,001-75,000 population	\$900	
75,001-150,000 population	\$1,125	
150,001-500,000 population	\$1,925	
500,001-1,200,000 population	\$2,925	
1,200,001-3,000,000 population	\$4,500	
>3,000,000 population	\$5,400	

⁴² These are standard fees that are to be paid in accordance with § 1.1157(b) of this chapter.

⁴³ These are standard fees that are to be paid in accordance with § 1.1157(b) of this chapter.

3.	<u>AM Class C</u>	
	<=25,000 population	\$325
	25,001-75,000 population	\$475
	75,001-150,000 population	\$650
	150,001-500,000 population	\$975
	500,001-1,200,000 population	\$1,625
	1,200,001-3,000,000 population	\$2,450
	>3,000,000 population	\$3,100
4.	<u>AM Class D</u>	
	<=25,000 population	\$400
	25,001-75,000 population	\$600
	75,001-150,000 population	\$1,000
	150,001-500,000 population	\$1,200
	500,001-1,200,000 population	\$2,000
	1,200,001-3,000,000 population	\$3,200
	>3,000,000 population	\$4,000
5.	AM Construction Permit	\$455
6.	<u>FM Classes A, B1 and C3</u>	
	<=25,000 population	\$475
	25,001-75,000 population	\$950
	75,001-150,000 population	\$1,300
	150,001-500,000 population	\$2,025
	500,001-1,200,000 population	\$3,200
	1,200,001-3,000,000 population	\$5,225
	>3,000,000 population	\$6,650
7.	<u>FM Classes B, C, C0, C1 and C2</u>	
	<=25,000 population	\$625
	25,001-75,000 population	\$1,100
	75,001-150,000 population	\$2,025
	150,001-500,000 population	\$2,650
	500,001-1,200,000 population	\$3,900
	1,200,001-3,000,000 population	\$6,250
	>3,000,000 population	\$8,125
8.	FM Construction Permits	\$1,850

TV (47 CFR, Part 73)**VHF Commercial**

1.	Markets 1 thru 10	\$57,650	FCC, TV Branch
2.	Markets 11 thru 25	\$43,225	P.O. Box 358835
3.	Markets 26 thru 50	\$30,125	Pittsburgh, PA
4.	Markets 51 thru 100	\$18,075	15251-5835
5.	Remaining Markets	\$ 4,450	
6.	Construction Permits	\$ 4,625	

UHF Commercial

1.	Markets 1 thru 10	\$15,850	FCC,UHFCommercial
2.	Markets 11 thru 25	\$12,875	P.O. Box 358835
3.	Markets 26 thru 50	\$ 8,075	Pittsburgh, PA
4.	Markets 51 thru 100	\$ 4,975	15251-5835
5.	Remaining Markets	\$ 1,425	
6.	Construction Permits	\$ 8,300	

Satellite UHF/VHF Commercial

1.	All Markets	\$1,000	FCC Satellite TV
2.	Construction Permits	\$ 515	P.O. Box 358835
			Pittsburgh, PA
			15251-5835

**Low Power TV, TV/FM
Translator,& TV/FM Booster
(47 CFR Part 74)**

\$ 365	FCC, Low Power
	P.O. Box 358835
	Pittsburgh, PA
	15251-5835

Broadcast Auxiliary

\$ 10	FCC, Auxiliary
	P.O. Box 358835
	Pittsburgh, PA
	15251-5835

5. Section 1.1154 is revised to read as follows:

§ 1.1154 Schedule of annual regulatory charges and filing locations for common carrier services.

Radio Facilities	Fee Amount	Address
1. Microwave (Domestic Public Fixed) (Electronic Filing) (FCC Form 601 & 159)	\$25.00	FCC P.O. Box 358994 Pittsburgh, PA 15251-5994

Carriers

1. Interstate Telephone Service Providers (per interstate and international end-user revenues (see FCC Form 499-A))	\$.00199	FCC, Carriers P.O. Box 358835 Pittsburgh, PA 15251-5835
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6. Section 1.1155 is revised to read as follows:

§ 1.1155 Schedule of regulatory fees and filing locations for cable television services.

	Fee Amount	Address
1. Cable Television Relay Service	\$90	FCC, Cable
2. Cable TV System (per subscriber)	\$.66	P.O. Box 358835 Pittsburgh, PA 15251-5835

7. Section 1.1156 is revised to read as follows:

§ 1.1156 Schedule of regulatory fees and filing locations for international services.

Radio Facilities	Fee Amount	Address
1. International (HF) Broadcast	\$730	FCC, International P.O. Box 358835 Pittsburgh, PA 15251-5835
2. International Public Fixed	\$1,725	FCC, International P.O. Box 358835 Pittsburgh, PA 15251-5835
Space Stations (Geostationary Orbit)	\$115,625	FCC, Space Stations P.O. Box 358835 Pittsburgh, PA 15251-5835
Space Stations (Non-Geostationary Orbit)	\$108,375	FCC, Space Stations P.O. Box 358835 Pittsburgh, PA 15251-5835
Earth Stations Transmit/Receive & Transmit Only (per authorization or registration)	\$210	FCC, Earth Station P.O. Box 358835 Pittsburgh, PA 15251-5835
Carriers International Bearer Circuits (per active 64KB circuit or equivalent)	\$ 2.67	FCC, International P.O. Box 358835 Pittsburgh, PA 15251-5835

8. Section 1.1166 is revised to add new subparagraph (e) to read as follows:

§ 1.1166 Waivers, reductions and deferrals of regulatory fees.

* * * *

(e) Petitions for waiver of a fee based on financial hardship, including bankruptcy, will not be granted, even if otherwise consistent with Commission policy, to the extent that the total regulatory and application fees for which waiver is sought exceeds \$500,000 in any fiscal year, including regulatory fees due in any fiscal year, but paid prior to the due date. In computing this amount, the amounts owed by an entity and its subsidiaries and other affiliated entities will be aggregated. In cases where the claim of financial hardship is not based on bankruptcy, waiver, partial waiver, or deferral of fees above the \$500,000 cap may be considered on a case-by-case basis.

* * * *

ATTACHMENT A

FINAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by the Regulatory Flexibility Act (RFA),⁴⁴ the Commission prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules and incorporated it into the Notice of Proposed Rulemaking, In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2003.⁴⁵ Written public comments were sought on the FY 2003 fees proposal, including comments on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.⁴⁶

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

2. This rulemaking proceeding is initiated to amend the Schedule of Regulatory Fees in the amount of \$269,000,000, the amount that Congress has required the Commission to recover. The Commission seeks to collect the necessary amount through its revised Schedule of Regulatory Fees in the most efficient manner possible and without undue public burden.

II. Summary of Significant Issues Raised by Public Comments in Response to the IRFA:

3. None.

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

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁴⁷ The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁴⁸ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁴⁹ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁵⁰ Nationwide, there are

⁴⁴ 5 U.S.C. 603. The RFA, 5 U.S.C. 601-612 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).

⁴⁵ 68 FR 17577 (April 10, 2003).

⁴⁶ See 5 U.S.C. 604.

⁴⁷ 5 U.S.C. 603(b)(3).

⁴⁸ 5 U.S.C. 601(6).

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

⁵⁰ Small Business Act, 15 U.S.C. 632 (1996).

(continued...)

approximately 22.4 million small organizations.⁵¹ In addition, a small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."⁵² Nationwide, as of 1992, there were approximately 275,801 small organizations.⁵³ The term "small governmental jurisdiction" is defined as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."⁵⁴ As of 1997, there were about 87,453 governmental jurisdictions in the United States.⁵⁵ This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

CABLE SERVICES OR SYSTEMS

5. Cable and Other Program Distribution. The SBA has developed a small business size standard for cable and other program distribution services, which includes all such companies generating \$12.5 million or less in revenue annually.⁵⁶ This category includes, among others, cable operators, direct broadcast satellite ("DBS") services, home satellite dish ("HSD") services, multipoint distribution services ("MDS"), multichannel multipoint distribution service ("MMDS"), Instructional Television Fixed Service ("ITFS"), local multipoint distribution service ("LMDS"), satellite master antenna television ("SMATV") systems, and open video systems ("OVS"). According to the Census Bureau data, there are 1,311 total cable and other pay television service firms that operate throughout the year of which 1,180 have less than \$10 million in revenue.⁵⁷ We address below each service individually to provide a more precise estimate of small entities.

6. Cable Operators. The Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide.⁵⁸ We last estimated that there were 1,439 cable operators that qualified as small cable companies.⁵⁹ Since then, some of those

(...continued from previous page)

⁵¹ See SBA, *Programs and Services*, SBA pamphlet no. CO-0028, at page 40 (July 2002).

⁵² 5 U.S.C. 601(4).

⁵³ U.S. Bureau of the Census, 1992 Economic Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

⁵⁴ 5 U.S.C. 601(5).

⁵⁵ U.S. Census Bureau, *Statistical Abstract of the United States: 2000*, Section 9, pages 299-300, Tables 490 and 492.

⁵⁶ 13 C.F.R. § 121.201, NAICS code 517510 (formerly 513220). This NAICS code applies to all services listed in this paragraph.

⁵⁷ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Subject Series – Establishment and Firm Size, Information Sector 51, Table 4 at 50 (2000). The amount of \$10 million was used to estimate the number of small business firms because the relevant Census categories stopped at \$9,999,999 and began at \$10,000,000. No category for \$12.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

⁵⁸ 47 C.F.R. § 76.901(e). The Commission developed this definition based on its determinations that a small cable system operator is one with annual revenues of \$100 million or less. Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd. 7393 (1995).

⁵⁹ Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

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 that may be affected by our action.

7. The Communications Act, as amended, also contains a size standard for a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% 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."⁶⁰ The Commission has determined that there are 67,500,000 subscribers in the United States. Therefore, an operator serving fewer than 675,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate.⁶¹ Based on available data, we find that the number of cable operators serving 675,000 subscribers or less totals approximately 1,450.⁶² Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

8. **Direct Broadcast Satellite ("DBS") Service.** Because DBS provides subscription services, DBS falls within the SBA-recognized definition of cable and other program distribution services.⁶³ This definition provides that a small entity is one with \$12.5 million or less in annual receipts.⁶⁴ There are four licensees of DBS services under Part 100 of the Commission's Rules. Three of those licensees are currently operational. Two of the licensees that are operational have annual revenues that may be in excess of the threshold for a small business.⁶⁵ The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. DBS service requires a great investment of capital for operation, and we acknowledge, despite the absence of specific data on this point, that there are entrants in this field that may not yet have generated \$12.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

9. **Home Satellite Dish ("HSD") Service.** Because HSD provides subscription services, HSD falls within the SBA-recognized definition of cable and other program distribution services.⁶⁶ This definition provides that a small entity is one with \$12.5 million or less in annual receipts.⁶⁷ The market for HSD service is difficult to quantify.⁶⁸ Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled.⁶⁹ HSD owners can watch unscrambled channels without paying a

⁶⁰ 47 U.S.C. § 543(m)(2).

⁶¹ 47 C.F.R. § 76.1403(b).

⁶² Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

⁶³ 13 C.F.R. § 121.201, NAICS code 517510 (formerly 513220).

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ 13 C.F.R. § 121.201, NAICS code 517510 (formerly 513220).

⁶⁷ *Id.*

⁶⁸ See, however, the census data for Cable and Other Program Distribution, *supra*.

⁶⁹ Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, 12 FCC Rcd 4358, 4385 (1996) ("Third Annual Report").