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Before the
Federal Communications Commission
Washington, D.C. 20554

FEB 16 2005

In the matter of)
)
Assessment and Collection of Regulatory Fees for)
Fiscal Year 2005)
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MD Docket No. 05-59

NOTICE OF PROPOSED RULEMAKING

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By the Commission:

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I. INTRODUCTION

1. In this *Notice of Proposed Rulemaking* ("NPRM"), we propose to collect \$280,098,000 in regulatory fees for Fiscal Year (FY) 2005. 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

¹ 47 U.S.C. § 159(a).

II. DISCUSSION

A. Development of FY2005 Fees

1. 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 2005, this allocation was done using FY 2004 revenues as a base. From this base, a revenue amount for each fee category was calculated. Each fee category was then adjusted upward by 2.6 percent to reflect the increase in regulatory fees from FY 2004 to FY 2005. These FY 2005 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).

2. Additional Adjustments to Payment Units

3. In calculating the FY 2005 regulatory fees proposed in Attachment D, we further adjusted the FY2004 list of payment units (Attachment B) based upon licensee databases and industry and trade group projections. Whenever possible, we verified these estimates from multiple sources to ensure the accuracy of these estimates. In some instances, Commission licensee databases were used, while in other instances, actual prior year payment records and/or industry and trade association projections were used in determining the payment unit counts.⁴ Where appropriate, we adjusted and/or rounded our final estimates to take into consideration variables that may impact the number of payment units, such as waivers and/or exemptions that may be filed in FY 2005, and fluctuations in the number of licensees or station operators due to economic, technical or other reasons. Therefore, when we note that our estimated FY 2005 payment units are based on FY 2004 actual payment units, we may have rounded the number for FY 2005 or adjusted it slightly to account for these variables.

4. Additional factors are considered in determining regulatory fees for AM and FM radio stations. These factors are facility attributes and the population served by the radio station. The calculation of the population served is determined by coupling current U.S. Census Bureau data with technical and

² It is important to note that the required increase in regulatory fee payments of approximately 2.6 percent in FY2005 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 estimated payment units in a service category, the actual fee itself is sometimes increased by a number other than 2.6 percent. For example, in industries where the number of units is declining and the expected revenue is increasing, the impact of 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). The payment unit is the measure upon which the fee is based, such as a licensee, regulatee, subscriber fee, etc.

⁴ The databases we consulted include, but are not limited to, the Commission's Universal Licensing System (ULS), International Bureau Filing System (IBFS), and Consolidated Database System (CDBS). We also consulted industry sources including but not limited to *Television & Cable Factbook* by Warren Publishing, Inc. and the *Broadcasting and Cable Yearbook* by Reed Elsevier, Inc., as well as reports generated within the Commission such as the Wireline Competition Bureau's *Trends in Telephone Service* and the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast and Annual CMRS Competition Report*. For additional information on source material, see Attachment B.

engineering data, as detailed in Attachment E. Consequently, the population served, as well as the class and type of service (AM or FM), determines the regulatory fee amount to be paid.

B. Commercial Mobile Radio Service (CMRS) Messaging Service

5. In our *FY 2003 Report & Order*, we noted that in recent years there has been a significant decline in the number of CMRS Messaging units—from 40.8 million in FY 1997 to 19.7 million in FY 2003—a decline of 51.7 percent.⁵ This trend is continuing. For example, in the FY 2004 regulatory fee cycle, the number of CMRS Messaging units for which regulatory fees were paid declined to 13.5 million. This is consistent with our *Ninth Annual CMRS Competition Report*, which estimates the number of paging-only subscribers at the end of 2003 to be 11.2 million units.⁶ We also note that in recent years there have been no significant changes in the level of regulatory oversight for this fee category. For these reasons, we propose to continue our policy of maintaining the CMRS Messaging subscriber regulatory fee at the rate calculated in FY 2003 and FY 2004 to avoid further contributing to the financial hardships associated with a declining subscriber base.

C. Local Multipoint Distribution Service (LMDS)

6. In the *FY 2004 NPRM*,⁷ we again sought comment on the appropriate fee classification for LMDS.⁸ Commenters urged the Commission to classify LMDS as a microwave service, arguing that LMDS is operationally, functionally, and legally similar to 24 and 39 GHz services in the microwave fee category. We rejected this argument because LMDS licenses are, as a factual matter, quite different than other Part 101 fixed microwave services in the upper frequency bands (above 15 GHz). While these three services are licensed on a geographic basis allowing licensees to place multiple stations within the authorized service areas, most microwave stations are currently licensed on a site-by-site basis thereby requiring, depending on the frequency band, multiple individual licenses to serve a particular geographic area or multiple points therein.⁹ Even when the fees for LMDS licensees are compared with the fees for licensees in the 24 and 39 GHz bands, we did not find current fee assessments to impose a disproportionate burden on LMDS licensees.

7. However, we did identify an anomaly in FY 2004 between LMDS Block A and LMDS Block B licenses. Block A licenses are authorized for 1150 MHz of spectrum, more than seven times the amount of spectrum authorized for Block B licenses (150 MHz). Currently, LMDS regulatory fees are assessed on

⁵ See Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Report and Order*, 18 FCC Rcd 15985, 15992, at ¶ 21 (2003) (*FY 2003 Report and Order*).

⁶ Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, *Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, *Ninth Report*, FCC 04-216, rel. Sept. 28, 2004, at ¶ 177 (*Ninth Annual CMRS Competition Report*).

⁷ See Assessment and Collection of Regulatory Fees for Fiscal Year 2004, *Notice of Proposed Rulemaking*, 19 FCC Rcd 5795, 5797-8, at ¶ 5 (2004) (*FY 2004 NPRM*).

⁸ In the *FY 2003 NPRM*, we sought comment on the appropriate fee classification of the Local Multipoint Distribution Service (LMDS). Some commenters urged that LMDS be classified in the microwave fee category. We declined to do so because technological developments and emerging commercial applications suggested that usage of LMDS could evolve differently than services in the microwave fee category. We recognized, however, that “substantive distinctions did exist between MDS and LMDS, and that they should not be placed in the same fee category.” Therefore, we created a separate LMDS fee category and stated that we would “initiate a specific proceeding that addresses the policies and fee structure governing LMDS and other wireless services.” See *FY 2003 Report and Order*, 18 FCC Rcd 15985, 15988-9, at ¶¶ 6-10 (2003).

⁹ *Id.*

a per-license basis. Using the authorized bandwidth for each license as the basis for comparison, we noted that the LMDS fee for Block A licenses in FY2004 was significantly lower on a per megahertz basis than the fee for Block B licenses. For example, on a per MHz basis, Block B licenses, which are authorized for 150 MHz in the 31,000-31,075/31,225-31,300 MHz bands, paid \$1.80 per MHz in FY2004, whereas Block A licenses authorized for 1150 MHz of spectrum paid \$0.24 per MHz. Because this anomaly appears to create a disproportionate fee obligation on LMDS Block B licenses, on our own motion we propose in FY 2005 to exercise our authority pursuant to section 9(b)(3) and amend the fee schedule to assess LMDS regulatory fees on a per megahertz basis. This proposed action would thereby place fee assessments on Block A and Block B licenses more in line with the benefits received under the respective licenses in terms of their authorized bandwidth, which varies substantially, as noted above.

8. Following auctions 17 and 23, half of all of the licenses were Block A licenses and half were Block B licenses. Since then, some of the original licenses have been divided among other licensees pursuant to the Commission's license disaggregation and partitioning policies and procedures and others have been surrendered back to the FCC. Based on the FY 2005 revenue amount to be collected from the LMDS fee category (\$94,050),¹⁰ the per megahertz per unit fee is \$0.44, which is based on a total authorized bandwidth of 1,300 MHz and estimated units of 165 Block A units and 165 Block B units.¹¹ This methodology of calculating LMDS regulatory fees incorporates the differences in bandwidth use between Block A and Block B licenses, as well as differences in the number of units between Block A and Block B licenses. Using the per MHz per unit fee of \$0.44, the regulatory fee for LMDS Block A licenses is calculated to be \$505 per license, and the regulatory fee for LMDS Block B licenses is calculated to be \$65 per license.¹²

9. We seek comment on our proposal to use the above methodology for calculating regulatory fees for LMDS. We are aware of the dramatic one-year increase in regulatory fees that would result for Block A licensees if we were to adopt the above per-MHz methodology. Therefore, so as to minimize the impact of the fee increase, we seek comment on whether we should graduate the increase in increments over a brief period of years.

10. Additionally, we seek general comment on applying the per-MHz methodology to LMDS Block A and Block B licenses that have been partitioned and disaggregated. We also seek comment on whether to continue to use a fee calculation process that does not distinguish between LMDS Block A and LMDS Block B licenses. A fee calculation process that does not distinguish between Block A and Block B licenses would result in a regulatory fee of \$285 per LMDS license.¹³ Finally, we seek comment on other proposals to address the assessment of regulatory fees for LMDS.

¹⁰ See Attachment C.

¹¹ The per megahertz per unit fee is calculated as follows:

$$\begin{aligned}
 &165 \text{ Block A units times } 1,150 \text{ MHz used} = 189,750 \text{ (total MHz used by Block A licensees)} \\
 &165 \text{ Block B units times } 150 \text{ MHz used} = \underline{24,750} \text{ (total MHz used by Block B licensees)} \\
 &\text{Total} = 214,500 \text{ (total MHz used by Block A \& B licensees)} \\
 &\text{Per MHz Per Unit Fee} = \$94,050 \text{ divided by } 214,500 = \$0.44
 \end{aligned}$$

¹² LMDS Block A Licenses: \$0.44 per MHz per unit times 1,150 MHz bandwidth = \$506, rounded to \$505.

LMDS Block B Licenses: \$0.44 per MHz per unit times 150 MHz bandwidth = \$66, rounded to \$65.

¹³ A regulatory fee that does not distinguish between Block A and Block B LMDS licenses is calculated as follows: \$94,050 (total expected FY 2005 revenue) divided by 330 (estimated units) = \$285 per license.

D. International Bearer Circuits

11. The Commission currently assesses regulatory fees on international carriers based on the number of active international bearer circuits the carrier had the previous year.¹⁴ In response to our *FY 2004 NPRM*, several commenters requested that the Commission change the regulatory fee regime for international carriers.¹⁵ In the *FY 2004 Report and Order* we found that we needed a more complete record on these issues and stated that we would seek comment on them in our 2005 regulatory fees proceeding.

12. In this proceeding we seek comment on possible changes to the regulatory fees assessed on international carriers. Specifically we seek comment on possible bases, other than active circuits, for assessing regulatory fees on international carriers.¹⁶

13. Several carriers raised concerns with the use of international bearer circuits as the basis for assessing regulatory fees in the 2004 regulatory fee proceeding. They argued that basing fees on the number of active circuits an international carrier has favors older, lower-capacity systems to the detriment of newer, higher-capacity systems. Specifically the commenters argued that 1) the Commission's present methodology does not take into account the reduced regulation of non-common carrier (also known as "private") submarine cable operators, and 2) imposing fees based on a company's "lit and sold" (also known as "active") bearer circuit capacity is at odds with how non-common carrier submarine cable operators actually sell capacity, thereby requiring operators to spend time determining if regulatory fees are applicable based on the Commission's definition of "active."

14. Tyco proposed the following changes be made to the regulatory regime: (1) separate the non-common carrier submarine cable operator subcategory from the existing international bearer circuit fee category by creating a new non-common carrier submarine cable operator category; (2) allocate the current revenue requirement for the bearer circuit fee category between two new fee categories based on the regulatory burden of each new category; and (3) adopt a flat, per-cable-landing-license fee for non-common carrier submarine cable operators. Several commenters supported Tyco's position. Several commenters also noted that satellite operators provide international bearer circuits on a non-common carrier basis, and that circuit fees should include both non-common carriers as well as private submarine cable providers.

15. The Commission concluded in the *FY 2004 Report and Order* that these arguments warranted further consideration, and that a fee system based on cable landing licenses and international section 214 authorizations, rather than international bearer circuits, would be administratively simpler for both the

¹⁴ Regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers for active international bearer circuits in any transmission facility for the provision of service to an end user or resale carrier, and also including active circuits to themselves or their affiliates. In addition, non-common carrier satellite operators must pay a fee for each circuit sold or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. Non-common carrier submarine cable operators are also to pay fees for any and all international bearer circuits sold on an indefeasible right of use (IRU) basis or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. *See Assessment and Collection of Regulatory Fees for Fiscal Year 2001*, MD Docket No. 01-76, Report and Order, 16 FCC Rcd 13525, 13593 (2001); *Regulatory Fees Fact Sheet: What You Owe – International and Satellite Services Licensees for FY 2004* at 3 (rel. July 2004) (the fact sheet is available on the FCC web-site at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-249904A4.pdf).

¹⁵ *See Assessment and Collection of Regulatory Fees for Fiscal Year 2004, Report and Order*, 19 FCC Rcd 11662, 11671-72, at ¶¶ 26-30 (2004) (*FY 2004 Report and Order*).

¹⁶ Because of the complexity of this issue, we will review the comments and reply comments, but we will not implement any action in FY 2005.

Commission and carriers.¹⁷ The Commission also noted that a fee system based on licenses/authorizations could provide an incentive for carriers to initiate new services and to use new facilities more efficiently.¹⁸

16. The assessment of regulatory fees on international carriers based on active international circuits is set out in the fee schedule in section 9 of the Communications Act.¹⁹ The statute provides the Commission with the authority to amend the fee schedule. 47 U.S.C. § 159(b)(3). Section 9(b)(3) requires the Commission to amend the schedule if the Commission determines that amendment is necessary to comply with the general fee authority set forth in section 9(b)(1)(A) of the Communications Act. Section 9(b)(3) also grants the Commission authority to “add, delete, or reclassify service in the Schedule to reflect additions, deletions, or changes in the nature of its services as a consequence of Commission rulemaking proceedings or changes in the law.”²⁰ We seek comment on whether a change to the computation of fees for the international bearer circuit category or a reclassification of the category is warranted in light of the Commission’s authority to amend the fee schedule.²¹ If a reclassification of the category is proposed, commenters should specifically address the Commission rulemakings or changes in law that justify the reclassification.

17. Commenters should address possible alternative methods of assessing regulatory fees on international carriers, for example whether regulatory fees should be assessed based on the holding of an international section 214 authorization or a cable landing license. As noted above, Tyco proposed to separate the non-common carrier submarine cable operator subcategory from the existing international bearer circuit fee category, thereby creating a new non-common carrier submarine cable operator category. We seek comment on the Tyco proposal. Commenters should address how to allocate the current international bearer circuit revenue requirement between non-common carrier submarine cable operators and the remaining circuit fee category.

E. Multichannel Video Distribution and Data Service (MVDDS)

18. In 2002 the Commission established the Multichannel Video Distribution and Data Service (MVDDS) in the 12.2-12.7 GHz band (12 GHz band),²² totaling 500 megahertz of contiguous spectrum that is licensed by 214 service areas (“MVDs”). MVDDS spectrum is used to facilitate the delivery of new video and broadband communications services, such as local television programming and high-speed

¹⁷ *FY 2004 Report and Order* at ¶ 29.

¹⁸ *Id.*

¹⁹ 47 U.S.C. § 159(g).

²⁰ 47 U.S.C. § 159(b)(3).

²¹ On December 15, 2004, counsel for Tyco Telecommunications (US) Inc. submitted a letter addressing the Commission’s legal authority to amend the schedule of regulatory fees pursuant to section 9(b)(3), 47 U.S.C. § 159(b)(3). Letter from Kent D. Bressie, Harris, Wiltshire & Grannis, to David Krech, FCC, dated December 15, 2004. A copy of the letter has been placed in the record for this proceeding. We seek comment on the analysis presented in the letter.

²² Amendment of Parts 2 and 25 of the Commission’s Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commission’s Rules to Authorize Subsidiary Terrestrial Use of the 12.2-12.7 GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. to Provide a Fixed Service in the 12.2-12.7 GHz Band, ET Docket No. 98-206, *Memorandum Opinion and Order and Second Report and Order*, 17 FCC Rcd 9614, 9680 (2002) (*MVDDS Second R&O*).

Internet access.²³ The technical rules reflect a carefully crafted balance in which the Commission affords protection to the Direct Broadcast Satellite (DBS) service and the non-geostationary satellite orbit (NGSO) fixed-satellite service (FSS) while allowing the entrance of MVDDS.²⁴

19. The Commission established MVDDS because it had concluded that a fourth provider in the MVPD marketplace would generate significant public interest benefits, such as lower prices, improved service quality, increased innovation, and increased service to unserved or underserved rural areas.²⁵ However, the Commission found that “open eligibility for in-region cable operators [would] pose a significant likelihood of substantial competitive harm” because “cable operators have a strong incentive to prevent entry by new MVPD providers.”²⁶ Therefore, cable operators and entities holding attributable interests in cable operators must divest these interests within ninety days of being granted an MVDDS license whose geographic service area significantly overlaps the cable operator’s service area.²⁷

20. On January 27, 2004, the Commission completed the auction of the 214 MVDDS licenses (“Auction No. 53”), raising (in net bids) a total of \$118,721,835. In this auction, ten winning bidders won a total of 192 MVDDS licenses, which the Commission issued later in 2004.²⁸ MVDDS licenses are issued for a ten-year term beginning on the date the initial authorization is granted.²⁹ Licensees must provide “substantial service” within five years of the grant, which must be documented at license renewal time.³⁰ As of the third quarter 2004, MVDDS equipment was still under development. Because MVDDS spectrum can be used to provide non-video, *i.e.*, broadband data services,³¹ the Commission concluded that MVDDS

²³ MVDDS licensees may use the 12.2–12.7 GHz band for any digital fixed non-broadcast service (broadcast services are intended for reception of the general public and not on a subscribership basis) including one-way direct-to-home/office wireless service. See 47 C.F.R. § 101.1407 (Permissible operations for MVDDS).

²⁴ See generally subpart P of 47 C.F.R. Part 101.

²⁵ *MVDDS Second Rcd*, 17 FCC Rcd at 9680.

²⁶ *Id.*

²⁷ 47 C.F.R. § 101.1412(a). “Cable operator” means a company that is franchised to provide cable service, as defined in 47 C.F.R. § 76.1000(e), in all or part of the MVDDS license area, *id.* § 101.1412(b). “Significant overlap” occurs when a cable operator’s subscribers in the MVDDS license area make up 35 percent or more of the households in that MVDDS license area which subscribe to one or more Multichannel Video Program Distributors (MVPDs), as defined in 47 C.F.R. § 76.1000(e). See 47 C.F.R. §§ 101.1412(c) and (e). The winning bidder for the MVDDS license of the New York service area (MVD001), *inter alia*, requested and received a 270-day extension of the 90-day divestiture deadline, see 47 C.F.R. § 101.1412(g)(4), of the Commission’s MVDDS/cable cross-ownership rule. See DTV Norwich, LLC, Application for Multichannel Video Distribution and Data Service License, MVD001-New York, Request for Waiver of Section 101.1412(g)(4) of the Commission’s Rules, *Order*, File No. 0001618606-MVD001, DA 04-3044 (rel. Sept. 23, 2004) (*DTV Norwich Waiver Order*).

²⁸ See Wireless Telecommunications Bureau Grants Multichannel Video Distribution and Data Service Licenses, *Public Notice*, DA 04-2331 (rel. July 27, 2004) (granting 154 licenses); Wireless Telecommunications Bureau Grants Multichannel Video Distribution and Data Service Licenses to South.Com LLC, DA 04-2547, *Public Notice*, (rel. Aug. 18, 2004) (granting 37 licenses); and *DTV Norwich Waiver Order* (granting license for MVD001). All of the grants are subject to conditions.

²⁹ 47 C.F.R. § 101.1413(a).

³⁰ 47 C.F.R. § 101.1413(b) and (c).

³¹ MVDDS licensees may use this spectrum for any digital fixed non-broadcast service (broadcast services are intended for reception of the general public and not on a subscribership basis) including one-way direct-to-home/office wireless service. Licensees are permitted to provide one-way video programming and data services on a non-common carrier and/or on a common carrier basis. Mobile and aeronautical services are not authorized. Two-way services may be provided by using other spectrum or media for the return or upstream path. See 47 C.F.R. § 101.1407.

does not fall within the Cable Television and DBS Subscribers regulatory fee category, which raises the question of whether MVDDS should be established as a new regulatory fee category.

21. Since MVDDS equipment is still under development, we propose to not establish regulatory fees for MVDDS as a new regulatory fee category in FY 2005. We seek comment on this proposal. In the alternative, if the Commission were to establish regulatory fees for MVDDS in FY 2005, we seek comment on equitable ways to assess fees for MVDDS based on the nature of this service, such as whether the fee should be flat or be set on a per-MHz basis. We also seek comment on whether the Commission should collect the fee on an annual basis, or whether we should collect it in advance to cover the term of the license fee when the application for license is filed.

F. Broadband Radio Service (BRS) / Educational Broadband Service (EBS), (formerly MDS/MMDS and ITFS)

22. On June 10, 2004, we adopted a *Report & Order and Further Notice of Proposed Rulemaking (R&O and FNPRM)*, and also referred to as the BRS/EBS proceeding³² that takes important steps to transform our rules and policies governing the licensing of the Instructional Television Fixed Service (ITFS), the Multipoint Distribution Service (MDS), and the Multichannel Multipoint Distribution Service (MMDS) in the 2500-2690 MHz band.³³ The actions taken in this proceeding initiated a fundamental restructuring of the band that will provide both existing ITFS and MDS licensees and potential new entrants with greatly enhanced flexibility in order to encourage the highest and best use of spectrum domestically and internationally, and the growth and rapid deployment of innovative and efficient communications technologies and services.³⁴ The *R&O* renamed the MDS service as the "Broadband Radio Service" (BRS). This new designation connotes a more accurate description of the services we anticipate will develop in the band. The *R&O* also renamed the ITFS service as the "Educational Broadband Service" (EBS), which more accurately describes the kinds of the services that we anticipate will develop in the band.³⁵ The *R&O*, among other things, implemented geographic area licensing for all licensees in the band, which gives licensees increased flexibility while greatly reducing administrative burdens on both licensees and the Commission. We note that geographic area licensing will reduce the total number of BRS licenses because, in most cases, separate licenses will no longer be necessary for each transmitter a licensee places in service.

23. In the *FNPRM*, we sought comment on issues relating to regulatory fees.³⁶ We note that, other than renaming our MDS/MMDS regulatory fee category to BRS and adjusting its estimated number of payment units, any other changes to the regulatory fee rules we adopt in the BRS/EBS proceeding will not be adopted in time to take effect in FY 2005. If new regulatory fee rules are adopted in the BRS/EBS proceeding, the Commission will make appropriate adjustments in the appropriate regulatory fee cycle, which will presumably be the cycle for FY 2006 or beyond.

³² See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands et al, *Report & Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 14165 (2004) (*R&O and FNPRM*).

³³ The terms MDS and MMDS are often used interchangeably. The Commission coined the term "MDS" at a time when it was making only two channels available for the service, at 2150-2162 MHz. The Commission began using the term "MMDS" when formulating rules making additional channels for the service available in the 2500-2690 MHz band. In discussing this *Report & Order and Further Notice of Proposed Rulemaking*, we will use the term "MDS" to signify both services.

³⁴ Federal Communications Commission, Strategic Plan FY 2003-FY 2008 at 5 (2002) (*Strategic Plan*).

³⁵ Federal Communications Commission, Strategic Plan FY 2003-FY 2008 at 5 (2002) (*Strategic Plan*).

³⁶ See *R&O and FNPRM*, 19 FCC Rcd at 14293-97 ¶¶ 351-359.

G. Regulatory Fees for AM and FM Construction Permits

24. At the inception of our regulatory fee program in FY 1994, the regulatory fee amount for construction permits was set at an amount that, when compared to licensed stations, was commensurate to the limited nature of station operations under the terms of a construction permit. Each year since FY 1994, the unit fee for AM, FM, and full-service VHF and UHF television construction permits was calculated by determining the proportion of the amount to be collected by each respective fee category, divided by the number of estimated units, as illustrated in Attachment C. However, since the inception of the program in FY 1994, the amount of fees that we have been directed to collect each year has steadily increased, while the number of estimated payment units for these construction permits has steadily decreased. This combination of increasing expected revenue and decreasing payment units for these construction permits has resulted in a regulatory unit fee that is higher than that of some licensed stations.

25. To rectify this situation, we propose beginning in FY 2005 to set the AM, FM, VHF, and UHF construction permit fee to be no higher than the regulatory fee associated with the lowest licensed station for that fee category. Because there are unit and revenue variables in assessing the per-unit regulatory fee, thereby causing the fee to change each fiscal year, it may be necessary to make revenue adjustments each fiscal year to keep the per unit regulatory fee for construction permits at the level of the lowest licensed fee for AM, FM, VHF, and UHF stations. We seek comment on whether construction permit fees should be held at the level of the lowest licensed fee for their respective fee categories (e.g. AM, FM, VHF, and UHF stations), and whether any adjustments that have to be made to hold the construction permit fee at the level of the lowest respective licensed fee should be spread across only a narrow group of fee categories, such as AM, FM, VHF, and UHF stations, or across all fee categories.

H. Clarification of Policies and Procedures

1. Ad Hoc Issues Concerning Our Regulatory Fee Exemption Policies

26. Pursuant to 47 CFR 1.1162, the Commission does not establish regulatory fees for applicants, permittees and licensees who qualify as government entities or non-profit entities. Despite the language of 47 CFR 1.1162, we still encounter frequent uncertainty and comments from parties with respect to our fee exemption policies. Therefore, we believe it would be helpful for us to provide clarification of these policies.³⁷

27. Determination of Fee Code for a Facility: The fee code is determined by the operational status of the facility as of October 1 of each year. This involves factors such as whether the facility is in construction permit status or licensed status and a variety of other factors. Every facility has a fee code. There is no prorating of regulatory fees. For example, if a facility is in construction permit status as of the close of business October 1, but a license is granted on or after October 2, that facility is considered to be in construction permit status for the entire year. Other facility changes during the course of the year, such as technical changes, are treated in the same manner.

28. Establishment of Exempt Status: State, local, and federal government agencies and IRS-certified not-for-profit entities are generally exempt from payment of regulatory fees. The Commission requires that each exempt entity have on file a valid IRS Determination Letter or certification from a

³⁷ In the ensuing discussion, "facility" includes "station" and "licensee" includes "permittee." "October 1" means the close of business on October 1, the first day of the government fiscal year. "Fee Due Date" means the close of business on the day determined to be the final date by which regulatory fees must be paid. The Fee Due Date usually occurs in August or September. An "Exempt Entity" is a legal entity that is relieved of the burden of paying annual regulatory fees.

government authority documenting its exempt status. In instances where there is a question regarding the exempt status of an entity, the FCC may request, at any time, for the entity to submit an IRS Determination Letter or certification from a government authority that documents its exempt status.

29. Subsidiaries of Exempt Entities: The licensee of a facility may be distinct from the ultimate owner. Exempt entities may hold one or more licenses for media facilities directly and/or through subsidiaries. Facilities licensed directly to an exempt entity and its exempt subsidiaries are excused from the regulatory fee obligation. However, licensees that are for-profit subsidiaries of exempt entities are subject to regulatory fees regardless of the exempt status of the ultimate owner.

Examples:

A University owns a commercial facility whose profits are used to support the University and/or its programs. If the facility is licensed to the University directly, or to an exempt subsidiary of the University, it is exempt from regulatory fees. If, however, the license is held by a for-profit subsidiary, regulatory fees are owed, even though the University is an exempt entity.

A state pension fund is the majority owner of a for-profit commercial broadcasting firm. The facilities licensed to the for-profit broadcasting firm would be subject to regulatory fees, even though it is owned by an exempt agency.

30. Responsible Party, and the Effects of Transfers of Control: The entity holding the license for a facility as of the Fee Due Date is responsible for the regulatory fee for that facility. Eligibility for a regulatory fee exemption is determined by the status of the licensee as of the Fee Due Date, regardless of the status of any previous licensee(s).

2. Regulatory Fee Obligations for Digital Broadcasters

31. Our current schedule of regulatory fees does not include service categories for digital broadcasters. Licensees in the broadcast industry pay regulatory fees based on their analog facilities. For licensees that broadcast in both the analog and digital formats, the only regulatory fee obligation at present is for their analog facility. Moreover, a licensee that has fully transitioned to digital broadcasting and has surrendered its analog spectrum would have no regulatory fee obligation.

32. At this time, we regard it as premature to establish regulatory fee obligations for digital broadcasters. However, recognizing the Commission's initiatives to transition analog broadcasters to digital spectrum, we wish to begin to address these issues from a regulatory fee perspective, so that both the Commission and licensees can prepare for fee policy changes that may need to occur.

33. Therefore we seek comment on whether and when we should establish regulatory fee service categories for digital broadcasters. In particular, we seek comment on ways that we could most efficiently and seamlessly adjust our schedule of regulatory fees to account for the collection of fee revenue from digital broadcasters without harming early transitioners to digital spectrum or late transitioners from analog spectrum.

3. Regulatory Fee Obligations for AM Expanded Band Broadcasters

34. AM Expanded Band Radio Station: We are aware of uncertainty among licensees as to whether or not regulatory fees are owed for AM Expanded Band radio stations. The concept of the AM Expanded Band has its basis in the Commission's rules regarding experimental stations.³⁸ The AM

³⁸ Definitions regarding AM Expanded Band stations are listed in many places in the Commission rules, including 47 CFR section 73.14, 73.21, 73.30, and 73.37.

Expanded Band was created to reduce interference in the upper standard band portion of the AM spectrum band by allowing stations to voluntarily move their broadcasts from the standard band to a point above 1605 kHz.³⁹

35. Uncertainty about the fee status of AM Expanded Band stations may exist because AM Expanded Band radio service is not among our categories for general exemptions from regulatory fees, as defined in 47 CFR 1.1162. While not fitting a general exemption, we clarify here that, at this time, licensees of AM Expanded Band radio stations—stations authorized for broadcast in the 1605-1705 kHz range—are not required to pay regulatory fees for such stations. Licensees that operate a standard band AM station (540-1600 kHz) that is linked to an AM Expanded Band station are subject to regulatory fees for their standard band station only.

36. We also note that our decision not to require regulatory fee payments for AM Expanded Band stations is not synonymous with giving AM Expanded Band radio service a general exemption from regulatory fees. Because the movement to the expanded band is voluntary and helps to reduce interference in the standard bandwidth, we wish to continue our policy of not subjecting this relatively small group of stations to regulatory fees. However, at some future point when the migration of standard band broadcasters to the Expanded Band has advanced, we will consider establishing regulatory fee requirements for AM Expanded Band stations.

4. Effective Date of Payment of Multi-Year Wireless Fees

37. The first eleven fee categories in our Attachment D, Schedule of Regulatory Fees, constitute a general fee category known as multi-year wireless fees. Regulatory fees for this category are generally paid in advance, and for the amount of the entire 5-year or 10-year term of the license. Because payment of these regulatory fees is linked to the date of license renewal (or at the time of a new application), these fees can be paid at any time during the fiscal year. As a result, there has been some confusion as to the regulatory fee rate that should apply at the time of license renewal. Current fiscal year regulatory fees generally become effective 30 or 60 days after publication of the fees Report & Order in the Federal Register, or in some instances, 90 days after delivery of the Report & Order to Congress. Because current fiscal year regulatory fees have an effective date, only licensees (including new licensees) whose license renewal dates fall on or after this effective date pay regulatory fees at the new rate. Licensees whose license renewal dates fall before the current year effective date pay regulatory fees at the prior year rate, which, in other words, is the rate currently in effect before the new rate becomes effective.

I. Proposals for Notification, Assessment and Collection of Regulatory Fees

38. Each year, we generate public notices and fact sheets that notify regulatees of the fee payment due date and provide additional information regarding regulatory fee payment procedures. In prior years, we disseminated these notices and fact sheets to regulatees through surface mail. We discontinued this practice two years ago, informing regulatees that with the widespread use of the Internet, sending public notices by surface mail was not an efficient use of our time and resources. We stated that we can better serve the public by providing these general notices on our website, while exploring ways to disseminate specific regulatory fee bills or assessments through surface mail.

39. Accordingly, in FY 2005 we will provide our public notices, fact sheets and all other relevant materials on our website at <http://www.fcc.gov/fees/regfees.html>, just as we have done for the past several years. As a general practice, we will not send such information through surface mail. However, in the

³⁹ See 47 CFR sections 73.14, 73.21, 73.30, and 73.37 of the Commission's rules for information regarding AM Expanded Band stations.

event that regulatees do not have access to the Internet, we will mail public notices and other relevant materials upon request. Regulatees and the general public may request such information by contacting the FCC CORES HelpDesk at (877) 480-3201, Option 4.

40. Although last year we did not send public notices and fact sheets to regulatees en masse, we did send specific regulatory fee assessments or bills by surface mail to a select group of fee categories. Here, we believe that it is important to clarify the distinction between an assessment and a bill. An assessment is a proposed statement of the amount of regulatory fees owed by an entity to the Commission (or proposed subscriber count to be ascribed for purposes of setting the entity's regulatory fee) but it is not entered into the Commission's accounts receivable system as a current debt. A bill is distinct from an assessment in that it is automatically entered into our financial records as a debt owed to the Commission. Bills reflect the amount owed and have a due date of the last day of the fee payment window. Consequently, if a bill is not paid by the due date, it becomes delinquent and is subject to our debt collection procedures.⁴⁰

41. We are pursuing our billing initiatives as part of our effort to modernize our financial practices. Eventually, we intend to expand our billing initiatives to include all regulatory fee service categories. For now, based on the results of our assessment and billing initiatives from last year, and the resources currently available to us, we propose to proceed with our various FY 2005 initiatives as follows.

1. Interstate Telecommunications Service Providers (ITSPs)

42. In FY 2001, we began sending pre-completed FCC Form 159-W assessments to carriers in an effort to assist them in paying the Interstate Telecommunications Service Provider (ITSP) regulatory fee.⁴¹ The fee amount on FCC Form 159-W was calculated from the FCC Form 499-A report, which carriers are required to submit by April 1st of each year. Throughout FY 2002 and FY 2003, we refined the FCC Form 159-W to simplify the regulatory fee payment process.⁴² In FY 2004, we generated and mailed the same pre-completed FCC Form 159-W's to carriers under the same dissemination procedures, but we informed them that we will be treating the amount due on Form 159-W as a bill, rather than as an assessment. Other than the manner in which Form 159-W payments were entered into our financial system, carriers experienced no procedural changes regarding the use of the FCC Form 159-W when submitting payment of their FY 2004 ITSP regulatory fees.

43. For FY 2005, we propose to continue our Form 159-W billing initiative for ITSPs. We seek comment on this proposal and on ways that we could improve our billing initiative for ITSPs.

2. Satellite Space Station Licensees

44. Last year, for the first time, we mailed regulatory fee bills through surface mail to all licensees in our two satellite space station service categories. Specifically, geostationary orbit space station ("GSO") licensees received bills requesting regulatory fee payment for satellites that (1) were licensed by the Commission and operational on or before October 1, 2003; and (2) were not co-located with and technically identical to another operational satellite on October 1, 2003 (i.e., were not functioning as a spare satellite). Non-geostationary orbit space station ("NGSO") licensees received bills requesting

⁴⁰ See 47 CFR sections 1.1161(c), 1.1164(f)(5), and 1.1910.

⁴¹ See *FY 2001 Report and Order*, 16 FCC Rcd 13590 (2001) at ¶ 67. See also FCC Public Notice – Common Carrier Regulatory Fees (August 3, 2001) at 4.

⁴² Beginning in FY2002, Form 159-W included a payment section at the bottom of the form that allowed carriers the opportunity to send in Form 159-W in lieu of completing Form 159 Remittance Advice Form.

regulatory fee payment for systems that were licensed by the Commission and operational on or before October 1, 2003.

45. For FY 2005, we propose to continue our billing initiative for our two satellite space station categories: GSOs and NGSOs.

46. Finally, we emphasize that the bills that we propose to generate for our GSO and NGSO licensees will be only for the satellite or system aspects of their respective operations. GSO and NGSO licensees typically have regulatory fee obligations in other service categories (such as earth stations, broadcast facilities, etc.), and we expect satellite operators to meet their full fee payment obligations for their entire portfolio of FCC licenses. We seek comment on our proposal to generate regulatory fee bills for our two satellite space station service categories.

3. Media Services Licensees

47. In FY 2003 and FY 2004, we mailed fee assessment postcards to media services entities on a per-facility basis. The postcards served to notify licensees of the date when fee payments are due, the assessed fee amount for the facility, as well as other data attributes that we used in determining the fee amount.⁴³ We propose to continue our assessment initiative for media services licensees this year in a similar fashion.

48. As was the case last year, we propose to mail a single round of postcards to licensees and their other known points of contact listed in CDBS (Consolidated Database System) and in CORES (Commission Registration System), the Commission's two official databases for media services. By doing so, licensees and their other points of contact will all be furnished with the same information for each facility in question so that they can designate among themselves the payer of this year's fee. Mailing postcards to all interested parties at different addresses on file for each facility also encourages all parties to visit our Commission-authorized web site to update or correct information regarding the station, or to certify their fee-exempt status, if appropriate. The web site will be available again on-line throughout this summer.⁴⁴ In addition to using the postcards to direct parties to our authorized web site for updates and corrections, the postcards will also direct licensees to the telephone number of our FCC CORES Help Desk at (877) 480-3201, Option 4, where licensees can call to obtain clarification on procedures. We seek comment on our proposal to generate fee assessment postcards for media services entities.

49. Under our proposal, media services licensees would still be required to submit a completed Form 159 with their fee payments, despite having received an assessment postcard. We cannot guarantee that your regulatory fees will be posted accurately against your account if a Form 159 is not returned with your fee payment. We emphasize that the assessment postcards that we propose to mail to media services licensees are not to be used as a substitute to completing Form 159. Rather, we hope licensees will use the postcards as a tool to help them complete their Form 159.

50. We also emphasize that the most important data element that media services licensees need to include on their Form 159 is their station's facility ID. The facility ID is a unique identifier that never changes over the course of a station's existence. Despite the fact that we prominently display a station's facility ID on the station's assessment postcard, and Form 159 filing instructions call for each station's

⁴³ Fee assessments were issued for AM and FM Radio Stations, AM and FM Construction Permits, FM Translators/Boosters, VHF and UHF Television Stations, VHF and UHF Television Construction Permits, Satellite Television Stations, Low Power Television (LPTV) Stations, and LPTV Translators/Boosters. Fee assessments were not issued for broadcast auxiliary stations, nor will they be issued for them in FY 2005.

⁴⁴ The Commission-authorized web site is <http://www.fccfees.com>.

facility ID and call sign to be provided, we typically receive many incomplete Form 159s that do not provide the facility ID of the station whose fee is being paid.

4. Commercial Mobile Radio Service (CMRS) Cellular and Mobile Services

51. In our *FY2004 NPRM*, we proposed to mail assessments to Commercial Mobile Radio Services (CMRS) cellular and mobile service providers using information from the Numbering Resource Utilization Forecast (NRUF) form.⁴⁵ We proposed that subscriber data from the NRUF form and the Local Number Portability (LNP) database be used to compute and assess a regulatory fee obligation. Upon the suggestion of some of our commenters to our *NPRM*, we decided to provide entities who filed an NRUF form an opportunity to revise their subscriber counts before making a regulatory fee payment.⁴⁶ We propose to continue our procedure of giving entities an opportunity to revise their subscriber counts again this year by sending two rounds of assessment letters, an initial assessment and a final assessment letter. If this exercise again proves to be successful, we will be sending these letters next year as "bills", which will have Debt Collection Improvement Act (DCIA) implications if the assessment fee based on these subscriber counts is not paid by the due date of next year's regulatory fees.

52. As in FY 2004, we again propose to send an assessment letter that is based on NRUF data⁴⁷ that includes a list of the carrier's Operating Company Numbers (OCNs) upon which the assessment is based. The letters will not include assigned number counts by OCNs, but rather an aggregate of assigned numbers for each carrier. If the number of subscribers on the initial assessment letter differs from the subscriber count they provided on the NRUF form, CMRS cellular and mobile service providers can amend their initial assessment letter to correctly identify their subscriber count as of December 31, 2004. Assessment letters that are amended should indicate the specific reason for the change, such as the purchase or the sale of a subsidiary, the date of the transaction, and any other information that will help to justify a reason for the change. If we receive no response to our initial assessment letter, we will assume that the initial assessment is correct and will expect the fee payment to be based on the number of subscribers listed on the initial assessment. We will review all responses and determine whether a change in the number of subscribers is warranted. As in previous years, operators will certify their subscriber counts in Block 30 of the FCC Form 159 Remittance Advice when making their regulatory fee payments.

53. Although two assessment letters will be mailed to carriers that have filed an NRUF form, it is conceivable that some carriers will not be sent any letters of assessment because they did not file the NRUF form. For these carriers, we again propose to use the methodology⁴⁸ that is currently in place for CMRS Wireless services. They should use their subscriber count as of December 31, 2004 and submit payment accordingly on FCC Form 159. However, whether a carrier receives a letter of assessment or computes the subscriber count itself, the Commission reserves the right, under the Communications Act, to audit the number of subscribers upon which regulatory fees are paid. In the event that the Commission determines that the number of subscribers is inaccurate or that an insufficient reason is given for making a correction on the initial assessment letter, we again propose that we reserve the right to assess the carrier for the difference between what was paid and what should have been paid.

⁴⁵ See Assessment and Collection of Regulatory Fees for Fiscal Year 2004, *Notice of Proposed Rulemaking*, 19 FCC Rcd 5795, 5801, at ¶ 20 (2004) (*FY 2004 NPRM*).

⁴⁶ See *FY 2004 Report and Order*, 19 FCC Rcd 11662, 11676-11677, at ¶¶ 48-49 (2004).

⁴⁷ Our proposal to continue to use NRUF data is subject to action taken in response to a Petition for Reconsideration of the FY 2004 fee Order filed by Cingular Wireless LLC filed on August 6, 2004.

⁴⁸ Federal Communications Commission, Regulatory Fees Fact Sheet, "What You Owe - Commercial Wireless Services, July 2004, page 1.

54. After having the benefit of using NRUF data last year, we will clarify some of the issues raised last year. First, we propose to derive the subscriber count from NRUF data based on “assigned” number counts that have been adjusted for porting to net Type 0 ports (“in” and “out”), which should reflect a more accurate subscriber count. Second, as a result of number pooling, many wireless carriers receive their new numbers as thousand-number blocks and that, within each block, up to 100 numbers can be retained by the donating carrier. Because retained numbers are reported on the NRUF form as “assigned” to the holder of the thousand block, a concern was raised last year that this anomaly would result in a lower count for the donating carrier and a higher count for the recipient carrier. Although we are unable to correct this anomaly at this time, we believe our proposal to give carriers an opportunity to revise their subscriber count should alleviate any potential harm resulting from this phenomenon. And finally, because we are requiring carriers to confirm their subscriber counts on an aggregate basis, a carrier should be able to identify its subscriber count accurately as of December 31, 2004, regardless of whether the carrier uses data in the NRUF report, a Securities and Exchange (SEC) filing, the 477 report, or some other certified financial statement. Because we have found subscriber counts reported by carriers on the NRUF form to be very accurate, we propose to continue to use the NRUF report⁴⁹ as the basis for our CMRS cellular/mobile provider assessments.

5. Cable Television Subscribers

55. Last year, we generated regulatory fee assessment letters for that segment of the cable television industry that was listed in selected publicly available data sources. The data sources that we selected for reference were the *Broadcasting and Cable Yearbook 2003-2004* (“*Yearbook*”)⁵⁰ and industry statistics published by the National Cable and Telecommunications Association (“NCTA”).⁵¹ We also permitted cable operators for the first time, regardless of whether or not they were listed in the selected data sources, to make regulatory fee payments based on their companies’ aggregate subscriber counts, rather than requiring them to sub-report subscriber counts on a per community unit identifier (“CUID”) basis.

56. We generated assessment letters for each of the cable operators listed in the *Yearbook*, as well as the 25 largest multiple-system operators (“MSOs”), as listed on NCTA’s web page. The cable operators that received assessment letters were given the opportunity to respond to the Commission to rectify their subscriber counts before making their fee payments. The remainder of the cable television industry did not receive assessment letters. Regardless of whether or not a company was listed in the *Yearbook* or on NCTA’s web page, all cable operators were instructed to base their fee obligations on their basic subscriber counts as of December 31, 2003, with the understanding that we would corroborate the counts with other publicly available data sources.

57. This year, we propose to conduct a similar assessment initiative, but with different procedures. Specifically, we will generate fee assessment letters for the cable operators who are on file as having paid regulatory fees last year for their basic cable subscribers. Under our proposal, our letter to each operator would announce the due date for payment of FY 2005 regulatory fees; reflect the subscriber count for which the operator paid FY 2004 regulatory fees; and, request that the operator access a Commission-authorized web site to provide its aggregate count of basic cable subscribers as of December 31, 2004—the

⁴⁹ Our proposal to continue to use NRUF data is subject to action taken in response to a Petition for Reconsideration of the FY 2004 fee Order filed by Cingular Wireless LLC filed on August 6, 2004.

⁵⁰ *Broadcasting and Cable Yearbook 2003-2004*, by Reed Elsevier, Inc., Newton, MA, 2003. Subscriber counts reported in Section C, “Multiple System Operators, Independent Owners and Cable Systems,” page C-3.

⁵¹ NCTA maintains an updated list of the 25 largest multiple-system operators at its web site located at <http://www.ncta.com>.

date that the Commission requires operators to use as the basis for determining their regulatory fee obligations for basic cable subscribers. If the number of subscribers as of December 31, 2004 differs from the amount paid for last year, operators would be required to provide a brief explanation for the differing subscriber counts and indicate when the difference occurred. Cable operators who do not have access to the Internet would be able to contact the FCC CORES Help Desk at (877) 480-3201, Option 4, to provide their subscriber count as of December 31, 2004. We seek comment on our proposed assessment initiative.

58. Some cable operators may not have made regulatory fee payments last year. For example, a new company may have become operational after the first day of the fiscal year and therefore they did not have a regulatory fee obligation in FY 2004; or an existing company did not make a payment because it filed a petition for waiver of regulatory fees for FY 2004 based on financial hardship. Regardless of the circumstance, we emphasize that not receiving a regulatory fee assessment letter in FY 2005 would not excuse an operator from the obligation to pay FY 2005 regulatory fees. We expect payment from all non-exempt cable operators, not just those that made FY2004 payments and/or received assessment letters for FY2005 fees.

59. Actual payment procedures for cable operators would be the same as they were in previous years. Operators would continue to complete the FCC Form 159 Remittance Advice when making their payment, and would continue to certify their December 31, 2004 subscriber count in Block 30 of the Form 159.

60. Finally, we seek comment on a proposal to require the cable industry to annually report their basic subscriber counts to the Commission prior to paying regulatory fees for the fiscal year in question. For example, by June 1st of a given fiscal year, we would require that operators report the number of subscribers on December 31st of the preceding year. The Commission would then use the subscriber counts received on June 1st to audit regulatory fee payments that are collected later in the fiscal year.

61. Currently, subscriber counts are self-reported and certified by cable operators when they make their regulatory fee payments to the Commission at the end of each fiscal year. Self-reporting and certifying subscriber counts does not furnish us with data that we can use to audit regulatory fee payments. Therefore, we believe that a cable industry reporting requirement specific to regulatory fees may be necessary and we are therefore seeking comment on the proposal. We do not intend to implement any such reporting requirement for the collection of FY 2005 regulatory fees.

J. Future Streamlining of the Regulatory Fee Assessment and Collection Process

62. We continue to welcome comments on a broad range of options concerning our commitment to reviewing, streamlining and modernizing our statutorily required fee-assessment and collection procedures. Our areas of particular interest included: (1) the process for notifying licensees about changes in the annual regulatory fee schedule and how it can be improved; (2) the most effective way to disseminate regulatory fee assessments and bills, i.e. through surface mail, email, or some other mechanism; (3) the fee payment process, including how the agency's electronic payment system can be improved; and (4) the timing of fee payments, including whether we should alter the existing fee payment "window" in any way.

III. PROCEDURAL MATTERS

A. Payment of Regulatory Fees

1. De Minimis Fee Payment Liability

63. As in the past, regulatees whose total FY 2005 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 payment of

FY 2005 regulatory fees.

2. Standard Fee Calculations and Payment Dates

64. Licensees are reminded that, under our current rules, the responsibility for payment of fees by service category is as follows:

- a) Media Services: The responsibility for the payment of regulatory fees rests with the holder of the permit or license as of October 1, 2004. However, in instances where a license or permit is transferred or assigned after October 1, 2004, responsibility for payment rests with the holder of the license or permit at the time payment is due.
- b) Wireline (Common Carrier) Services: Fees must be paid for any authorization issued on or before October 1, 2004. However, where a license or permit is transferred or assigned after October 1, 2004, responsibility for payment rests with the holder of the license or permit at the time payment is due.
- c) Wireless Services: Commercial Mobile Radio Service (CMRS) cellular, mobile, and messaging services (fees based upon a subscriber, unit or circuit count): Fees must be paid for any authorization issued on or before October 1, 2004. The number of subscribers, units or circuits on December 31, 2004 will be used as the basis from which to calculate the fee payment. For small multi-year wireless services, the regulatory fee will be due at the time of authorization or renewal of the license, which is generally for a period of five or ten-years and paid throughout the year.
- d) Multichannel Video Programming Distributor Services (basic cable television subscribers and CARS licenses): The number of subscribers on December 31, 2004 will be used as the basis from which to calculate the fee payment.⁵² For CARS licensees, fees must be paid for any authorization issued on or before October 1, 2004. The responsibility for the payment of regulatory fees for CARS licenses rests with the holder of the permit or license on October 1, 2004. However, in instances where a CARS license or permit is transferred or assigned after October 1, 2004, responsibility for payment rests with the holder of the license or permit at the time payment is due.
- e) International Services: For earth stations and geostationary orbit space stations, payment is calculated on a per operational station basis. For non-geostationary orbit satellite systems, payment is calculated on a per operational system basis. The responsibility for the payment of regulatory fees rests with the holder of the permit or license on October 1, 2004. However, in instances where a license or permit is transferred or assigned after October 1, 2004, responsibility for payment

⁵² Cable television system operators should compute their basic 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. Operators may base their count on "a typical day in the last full week" of December 2004, rather than on a count as of December 31, 2004.

rests with the holder of the license or permit at the time payment is due. For international bearer circuits, payment is calculated on a per active circuit basis as of December 31, 2004.

65. The Commission strongly recommends that entities submitting more than twenty-five (25) Form 159-C's use the electronic Fee Filer program when sending 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.

B. Enforcement

66. As a reminder to all licensees, section 159(c) of the Communications Act requires us to impose an additional charge as a penalty for late payment of any regulatory fee. As in years past, 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. REGULATORY FEE PAYMENT MUST BE RECEIVED AND STAMPED AT THE LOCKBOX BANK BY THE LAST DAY OF THE REGULATORY FEE FILING WINDOW, AND NOT MERELY POSTMARKED BY THE LAST DAY OF THE WINDOW. 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"). We also assess 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.

67. Furthermore, we recently amended our regulatory fee rules effective November 1, 2004, to provide that we will withhold action on any applications or other requests for benefits filed by anyone who is delinquent in any non-tax debts owed to the Commission (including regulatory fees) and will ultimately dismiss those applications or other requests if payment of the delinquent debt or other satisfactory arrangement for payment is not made. See 47 CFR §§ 1.1161(c), 1.1164(f)(5), and 1.1910. Failure to pay regulatory fees can also result in the initiation of a proceeding to revoke any and all authorizations held by the delinquent payer.

C. Comment Period and Procedures

68. Pursuant to 47 CFR §§1.415, 1.419, interested parties may file comments on or before March 8, 2005, and reply comments on or before March 18, 2005. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.⁵³

69. Comments filed through the ECFS are 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. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must submit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an

⁵³ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998), available at <<http://www.fcc.gov/Bureaus/OGC/Orders/1998/fcc98056.pdf>>.

electronic comment by Internet e-mail. 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.

70. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be hand delivered or by messenger delivery, sent by commercial overnight courier, or mailed by first-class mail through the U.S. Postal Service (please note that the Commission continues to experience delays in receiving U.S. Postal Service mail). The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington D.C. 20002. The filing hours at this location are 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 Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

71. Parties who choose to file by paper must also submit their comments on diskette. Two copies of the diskettes must be submitted. One copy is to be sent to Qualex International, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554. The other copy is to be sent to Office of Managing Director, Federal Communications Commission, 445 12th Street, S.W., 1-C848, Washington, D.C. 20554. These submissions must be in a Microsoft Windows™ -compatible format on a 3.5" floppy diskette. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number MD Docket No. 04-73), 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 "Copy - Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file.

72. 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.gulfoss2.fcc.gov/prod/ecfs/comsrch_v2.cgi. Those seeking materials in alternative formats (computer diskette, large print, audio recording, and Braille) should contact Brian Millin at (202) 418-7426 voice, (202) 418-7365 TTY, or bmillin@fcc.gov.

D. Ex Parte Rules

73. 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.⁵⁴

E. Paperwork Reduction Act Analysis

74. This document contains proposed modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due 60 days after date of publication of this document in the Federal

⁵⁴ 47 C.F.R. §§ 1.1203 and 1.1206(b).

Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

F. Initial Regulatory Flexibility Analysis

75. As required by the Regulatory Flexibility Act,⁵⁵ we have 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.

G. Authority and Further Information

76. Authority for this proceeding is contained in §§ 4(i) and (j), 8, 9, and 303(r) of the Communications Act of 1934, as amended. It is ordered that this NPRM is adopted.⁵⁶ 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.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

⁵⁵ See 5 U.S.C. § 603.

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

ATTACHMENT A

INITIAL REGULATORY FLEXIBILITY ANALYSIS

77. As required by the Regulatory Flexibility Act (RFA),⁵⁷ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules in the present Notice of Proposed Rulemaking, In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2004. 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 provided in paragraph 75. The Commission will send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.⁵⁸ In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.⁵⁹

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

78. This rulemaking proceeding is initiated to obtain comments concerning the Commission's proposed amendment of its Schedule of Regulatory Fees in the amount of \$280,098,000, the amount that Congress has required the Commission to recover. The Commission seeks to collect the necessary amount through its proposed Schedule of Regulatory Fees in the most efficient manner possible and without undue public burden.

II. Legal Basis:

79. This action, including publication of proposed rules, is authorized under sections (4)(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended.⁶⁰

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

80. 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 and policies, if adopted.⁶¹ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁶² In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁶³ A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3)

⁵⁷ 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).

⁵⁸ 5 U.S.C. 603(a).

⁵⁹ Id.

⁶⁰ 47 U.S.C. 154(i) and (j), 159, and 303(r).

⁶¹ 5 U.S.C. § 603(b)(3).

⁶² 5 U.S.C. § 601(6).

⁶³ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), 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."

satisfies any additional criteria established by the SBA.⁶⁴

81. **Small Businesses.** Nationwide, there are a total of 22.4 million small businesses, according to SBA data.⁶⁵

82. **Small Organizations.** Nationwide, there are approximately 1.6 million small organizations.⁶⁶

83. **Small Governmental Jurisdictions.** 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."⁶⁷ As of 1997, there were approximately 87,453 governmental jurisdictions in the United States.⁶⁸ 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.

84. We have included small incumbent local exchange carriers 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."⁶⁹ The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope.⁷⁰ We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

85. **Incumbent Local Exchange Carriers (LECs).** Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁷¹ According to Commission data,⁷² 1,337 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,337 carriers, an estimated 1,032 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our proposed action.

86. **Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), "Shared-Tenant Service Providers," and "Other Local Service Providers."** Neither the Commission

⁶⁴ 15 U.S.C. § 632.

⁶⁵ See SBA, Programs and Services, SBA Pamphlet No. CO-0028, at page 40 (July 2002).

⁶⁶ Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

⁶⁷ 5 U.S.C. § 601(5).

⁶⁸ U.S. Census Bureau, *Statistical Abstract of the United States: 2000*, Section 9, pages 299-300, Tables 490 and 492.

⁶⁹ 15 U.S.C. § 632.

⁷⁰ 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. See 13 C.F.R. § 121.102(b).

⁷¹ 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517110 (changed from 513310 in October 2002).

⁷² FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.3, Page 5-5 (Aug. 2003) (hereinafter "Trends in Telephone Service"). This source uses data that are current as of December 31, 2001.

nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁷³ According to Commission data,⁷⁴ 609 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 609 carriers, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees. In addition, 16 carriers have reported that they are "Shared-Tenant Service Providers," and all 16 are estimated to have 1,500 or fewer employees. In addition, 35 carriers have reported that they are "Other Local Service Providers." Of the 35, an estimated 34 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities that may be affected by our proposed action.

87. Local Resellers. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁷⁵ According to Commission data,⁷⁶ 133 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 127 have 1,500 or fewer employees and six have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by our proposed action.

88. Toll Resellers. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁷⁷ According to Commission data,⁷⁸ 625 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 590 have 1,500 or fewer employees and 35 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our proposed action.

89. Payphone Service Providers (PSPs). Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁷⁹ According to Commission data,⁸⁰ 761 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 757 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our proposed action.

90. Interexchange Carriers (IXCs). Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁸¹ According to Commission data,⁸² 261 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 223 have

⁷³ 13 C.F.R. § 121.201, NAICS code 517110 (changed from 513310 in October 2002).

⁷⁴ "Trends in Telephone Service" at Table 5.3.

⁷⁵ 13 CFR § 121.201, NAICS code 517310 (changed from 513330 in October 2002).

⁷⁶ "Trends in Telephone Service" at Table 5.3.

⁷⁷ 13 CFR § 121.201, NAICS code 517310 (changed to 513330 in October 2002).

⁷⁸ "Trends in Telephone Service" at Table 5.3.

⁷⁹ 3 CFR § 121.201, NAICS code 517110 (changed from 513310 in October 2002).

⁸⁰ "Trends in Telephone Service" at Table 5.3.

⁸¹ 13 C.F.R. § 121.201, NAICS code 517110 (changed from 513310 in October 2002).

⁸² "Trends in Telephone Service" at Table 5.3.

1,500 or fewer employees and 38 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our proposed action.

91. Operator Service Providers (OSPs). Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁸³ According to Commission data,⁸⁴ 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 22 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed action.

92. Prepaid Calling Card Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁸⁵ According to Commission data,⁸⁶ 37 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated 36 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by our proposed action.

93. 800 and 800-Like Service Subscribers.⁸⁷ Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service ("toll free") subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁸⁸ The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, and 877 numbers in use.⁸⁹ According to our data, at the end of January, 1999, the number of 800 numbers assigned was 7,692,955; the number of 888 numbers assigned was 7,706,393; and the number of 877 numbers assigned was 1,946,538. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,692,955 or fewer small entity 800 subscribers; 7,706,393 or fewer small entity 888 subscribers; and 1,946,538 or fewer small entity 877 subscribers.

94. International Service Providers. The Commission has not developed a small business size standard specifically for providers of international service. The appropriate size standards under SBA rules are for the two broad categories of Satellite Telecommunications and Other Telecommunications. Under both categories, such a business is small if it has \$12.5 million or less in average annual receipts.⁹⁰ For the first category of Satellite Telecommunications, Census Bureau data for 1997 show that there were a total of 324 firms that operated for the entire year.⁹¹ Of this total, 273 firms had annual receipts of under \$10

⁸³ 13 C.F.R. § 121.201, NAICS code 517110 (changed from 513310 in October 2002).

⁸⁴ "Trends in Telephone Service" at Table 5.3.

⁸⁵ 13 C.F.R. § 121.201, NAICS code 517310 (changed from 513330 in October 2002).

⁸⁶ "Trends in Telephone Service" at Table 5.3.

⁸⁷ We include all toll-free number subscribers in this category, including those for 888 numbers.

⁸⁸ 13 C.F.R. § 121.201, NAICS code 517310 (changed from 513330 in October 2002).

⁸⁹ FCC, Common Carrier Bureau, Industry Analysis Division, Study on Telephone Trends, Tables 21.2, 21.3, and 21.4 (Feb. 19, 1999).

⁹⁰ 13 CFR. § 121.201, NAICS codes 517410 and 517910 (changed from 513340 and 513390 in October 2002).

⁹¹ U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 513340 (issued October 2000).