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

In the Matter of	)	
	)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2005	)	MD Docket No. 05-59
	)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2004	)	MD Docket No. 04-73
	)	
	)	
	)	

REPORT AND ORDER
AND
ORDER ON RECONSIDERATION

Adopted: July 1, 2005 **Released: July 7, 2005**

By the Commission: Commissioner Copps concurring and issuing a statement; Commissioner Adelstein approving in part, concurring in part, and issuing a statement.

TABLE OF CONTENTS

Heading Paragraph #

I. INTRODUCTION 1

II. DISCUSSION 2

A. Development of FY 2005 Fees 2
1. Calculation of Revenue and Fee Requirements 2
2. Additional Adjustments to Payment Units 3
3. Commercial Mobile Radio Service (CMRS) Messaging Service 5
4. Local Multipoint Distribution Service (LMDS) 6
5. International Bearer Circuits 8
6. Regulatory Fees for Direct Broadcast Service (DBS) Providers and Cable Television Operators 10
7. Multichannel Video Distribution and Data Service (MVDDS) 12
8. Broadband Radio Service (BRS) / Educational Broadband Service (EBS), (formerly MDS/MMDS and ITFS) 13
9. Regulatory Fees for AM and FM Construction Permits 14

10. Clarification of Policies and Procedures 16
a. Ad Hoc Issues Concerning Our Regulatory Fee Exemption Policies 16
b. Regulatory Fee Obligations for Digital Broadcasters 23
c. Regulatory Fee Obligations for AM Expanded Band Broadcasters 24
d. Effective Date of Payment of Multi-Year Wireless Fees 26
11. Notification, Assessment and Collection of Regulatory Fees 27
a. Interstate Telecommunications Service Providers (ITSPs) 29
b. Satellite Space Station Licensees 31
c. Media Services Licensees 34
d. Cable Television Subscribers 36

B. FY 2005 Fee Determination and FY 2004 Reconsideration 38
12. Commercial Mobile Radio Service (CMRS) Providers 38

III. PROCEDURAL MATTERS 45

A. Payment of Regulatory Fees 45
1. De Minimis Fee Payment Liability 45
2. Standard Fee Calculations and Payment Dates for Annual Regulatory Fees 46
3. Limitations on Credit Card Transactions 48

B. Enforcement 49

C. Congressional Review Act Analysis 51

IV. ORDERING CLAUSES 52

ATTACHMENTS
Attachment A Final Regulatory Flexibility Analysis
Attachment B Sources of Payment Unit Estimates for FY2005
Attachment C Calculation of Revenue Requirements and Pro-Rata Fees
Attachment D FY 2005 Schedule of Regulatory Fees
Attachment E Factors, Measurements, and Calculations that Determine Station Contours and Population Coverages
Attachment F List of Commenters
Attachment G FY 2004 Schedule of Regulatory Fees
Attachment H Rule Changes

I. INTRODUCTION

1. In this *Order*, we conclude a proceeding 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] We also deny the petition for reconsideration filed by Cingular Wireless LLC of the Commission's *FY 2004 Report and Order*.[2]

[1] 47 U.S.C. § 159(a).

[2] Assessment and Collection of Regulatory Fees for Fiscal Year 2004, *Report and Order*, 19 FCC Rcd 11,662 (2004) (*FY 2004 Report and Order*); *see infra paras. 38-41.*

II. DISCUSSION

A. Development of FY 2005 Fees

1. Calculation of Revenue and Fee Requirements

2. As explained below, we adjust our section 9 regulatory fees to reflect the requirement to collect $280,098,000 in regulatory fees during FY 2005. As described in the *FY 2005 NPRM*,[3] this adjusted amount is $7,140,000, or approximately 2.6 percent greater than the $272,958,000 we were required to collect during the previous fiscal year. Each fiscal year, the Commission proportionally allocates the total amount that must be collected via regulatory fees. The results of this calculation are contained in Attachment C.[4] 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.[5] In instances of small fees, such as licenses that are renewed for a multiyear term, the resulting unit fee was also divided by the term of the license. These unit fees were then rounded to the nearest $5 or $25 in accordance with 47 U.S.C. §159(b)(2).

2. Additional Adjustments to Payment Units

3. In calculating the FY 2005 regulatory fees in Attachment D, we further adjusted the FY 2004 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.[6] 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

[3] *See* Assessment and Collection of Regulatory Fees for Fiscal Year 2005, *Notice of Proposed Rulemaking*, 70 FR at 9575, 9576, ¶ 5 (2005) *(FY 2005 NPRM)*.

[4] It is important to note that the required increase in regulatory fee payments of approximately 2.6 percent in FY 2005 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.

[5] 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, etc.

[6] 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.

variables.

4. We consider additional factors to determine regulatory fees for AM and FM radio stations. These factors are facility attributes (class of service and type (AM or FM) of service), as well as the population served by the radio station. Calculating the population served for each radio station is determined by coupling current U.S. Census Bureau data with technical and engineering data, as detailed in Attachment E. Consequently, the class and type of service, as well as the population served, determine the regulatory fee amount to be paid.

3. Commercial Mobile Radio Service (CMRS) Messaging Service

5. In the *FY 2005 NPRM*, the Commission proposed to continue its policy of maintaining the CMRS Messaging Service 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.[7] We received no comments or reply comments on this matter. Consequently, we will maintain the CMRS Messaging Service regulatory fee at $0.08 per subscriber.

4. Local Multipoint Distribution Service (LMDS)

6. In the FY 2004 proceeding, the Commission identified a difference in treatment between LMDS Block A and Block B licensees for the purposes of assessing section 9 regulatory fees. This difference resulted in a disproportionately higher fee obligation on LMDS Block B licenses when compared on a per-megahertz (MHz) basis.[8] As a result, in the *FY 2005 NPRM*, we proposed to amend the fee schedule and assess LMDS regulatory fees on a flat MHz basis.[9] We received two comments on this proposal. These commenters oppose the proposal to collect LMDS regulatory fees on a per-MHz basis, arguing that that the Commission cannot use a per-MHz regulatory fee for LMDS without using the same fee methodology for the 24 GHz and 39 GHz services.[10] We decline to adopt a per-MHz fee methodology for LMDS at this time, and we will therefore retain our existing methodology for assessing LMDS fees for FY 2005.[11]

7. The commenters also argued that LMDS should be reclassified for fee assessment purposes as a microwave service.[12] The Commission determined in its FY 2003 fee proceeding that LMDS was developing on a separate track from microwave services and that it should be moved into a separate fee

[7] *See FY 2005 NPRM*, 70 FR at 9576, ¶ 5.

[8] *FY 2004 Report and Order*, 19 FCC Rcd 11,662, 11,669, ¶ 16. Block A licenses are authorized for 1150 MHz of spectrum, while Block B licenses are authorized for 150 MHz of spectrum. Using the authorized bandwidth for each license as the basis for comparison, the Commission noted that the regulatory fee for Block B licenses in FY 2004 was significantly higher on a per-MHz basis than the fee for Block A licenses. On a per-MHz basis, Block B licensees, which are authorized for 150 MHz in the 31,000-31,075/31,225-31,300 MHz bands, paid regulatory fees equivalent to $1.80 per MHz ($270 divided by 150 MHz) in FY 2004, while Block A licensees, which are authorized for 1150 MHz of spectrum, paid the equivalent $0.24 per MHz ($270 divided by 1150 MHz).

[9] *FY 2005 NPRM*, 70 FR at 9577, ¶ 7. The Commission proposed to set a per-MHz per unit fee of $0.44 for LMDS licensees, and then multiply the unit fee by the amount of bandwidth authorized for Block A and Block B licenses. As proposed, in FY 2005 the regulatory fee amount for Block A licensees would have been $0.44 multiplied times 1150 MHz = $506, rounded to $505; while the amount for Block B licensees would have been $0.44 multiplied times 150 MHz = $66, rounded to $65.

[10] Comments of XO Communications (XO), at 2-7; Comments of the Law Firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast (BMDDP), at 2-4.

[11] However, we may revisit the per-MHz and other fee methodologies in the future.

[12] *XO Comments at 2-5; BMDDP Comments at 4-5.*

category.[13] The Commission subsequently rejected arguments to place LMDS in the microwave fee category in the *FY 2004 Report and Order*.[14] XO and BMDDP have presented no new evidence or arguments that would cause us to reconsider that decision. We find no compelling reason to reclassify LMDS as a microwave service, which would reduce the LMDS annual fee by more than 80 percent, and thereby impose a disproportionate financial burden on fee payers in other service categories. We therefore will maintain the existing regulatory fee classification for LMDS for FY 2005.

5. International Bearer Circuits

8. We decline to change or modify the methodology for assessing regulatory fees for international carriers at this time. In the *FY 2005 NPRM*, we sought comment on possible changes to the regulatory fees assessed on international carriers.[15] Only three parties filed comments and/or reply comments on this matter.[16] The Commission currently assesses regulatory fees on international carriers based on the number of active international bearer circuits the carrier had the previous year. [17]

9. We are not persuaded by these commenters that a significant change to our section 9 regulatory fee assessment methodology for international bearer circuits is warranted at this time, or that the benefits of changing our assessment methodology outweigh the costs of modifying our systems and processes at this time. We decline to adopt the Tyco proposal to create a new, separate fee category for non-common carrier cable landing licensees at this time.[18] As a practical matter, we note that we have at present no acceptable methodology for allocating fee requirement between categories of payers. [19] Even if we had an acceptable methodology, we would not be able to undertake the required analysis in time for FY 2005 fee payments and still comply with the section 9(b)(3) notification requirement. Moreover, because creating a new section 9 regulatory fee category would impact other international carriers, we would want to address the issue of regulatory fee payments by international carriers as a whole and not make discrete changes for one

[13] Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Report and Order*, 18 FCC Rcd 15,985, 15,989, at ¶ 9 (2003) (*FY 2003 Report and Order*).

[14] *FY 2004 Report and Order*, 19 FCC Rcd at 11,669, ¶ 16.

[15] *FY 2005 NPRM*, 70 FR at 9577, 9578, ¶¶ 11-17.

[16] Tyco filed comments and reply comments, SIA filed comments and Level 3 filed reply comments that addressed the international bearer circuit issue. The parties generally argued that the current methodology for assessing regulatory fees on the number of active circuits favors older, lower capacity systems, and a fee system based on cable landing licenses and international section 214 authorizations would be administratively simpler and provide an incentive for carriers to initiate new services.

[17] Regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers that have active international bearer circuits in any transmission facility for the provision of service to an end user or resale carrier, which includes active circuits to themselves or to 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).

[18] Tyco Comments at 7-8. We may revisit this determination in the regulatory fee proceeding for FY 2006.

[19] Tyco proposes that the Commission use either employee or employee-hour equivalents to establish the regulatory fee requirements for non-common carrier cable landing licensees. Tyco Comments at 23-25.

category of payers at this time. In addition, we conclude that Tyco's main concern is addressed by modifying the section 9 regulatory fee for international bearer circuits rather than creating an entirely new category of section 9 regulatory fees. To that end, we note that these fees have declined substantially, due to increased capacity in the active circuit market: The FY 2005 section 9 fee assessment of $1.37 per 64 kbps circuit is just over half the $2.52 per 64 kbps circuit fee adopted for FY 2004, and is 32% below the $2.01 per 64 kbps circuit proposed in the *FY 2005 NPRM*. For these reasons, we find that it would not be appropriate to change the fee assessment for international carriers for FY 2005. We note that in the *FY 2005 NPRM*, we stated that we would not implement any changes to the bearer circuit fee assessment methodology for this FY 2005 collection cycle.[20]

6. Regulatory Fees for Direct Broadcast Service (DBS) Providers and Cable Television Operators

10. We decline to modify the FY 2005 regulatory fee assessment methodology for DBS providers in response to the comments of the National Cable and Telecommunications Association (NCTA) and American Cable Association (ACA). NCTA argues that cable operators pay a disproportionately larger amount of the Commission's regulatory fees as compared to DBS providers, despite the fact that they are similarly situated competitors.[21] NCTA proposes that the Commission adopt the same per-subscriber assessment for DBS operators that applies to cable television operators. DirecTV, Inc. and Echostar Satellite L.L.C. (DirecTV & Echostar), in joint reply comments, argue that the cable operators have failed to make the required showing to satisfy the legal standard in section 9 of the Act for changes to the Commission's regulatory fee structure.[22] DirecTV and Echostar further argue that the costs to the Commission of regulating cable exceed those associated with DBS.[23]

11. We agree that the cable commenters have not made a compelling argument, consistent with the standard set forth in section 9(b)(3) for "permitted amendments", to justify a change to the section 9 regulatory fees for DBS operators. Moreover, the Commission has not provided notice for a change to the fee methodology for DBS operators. However, the Commission may seek further information on this issue during FY 2006 in order to fully explore whether there is a legal basis for such a change and to analyze the impact of any change in the methodology used to assess fees both for DBS providers and cable television operators. Therefore, for FY 2005, we will continue to use our current methodology for assessing regulatory fees for cable television operators and DBS operators.

7. Multichannel Video Distribution and Data Service (MVDDS)

12. We decline to establish a MVDDS regulatory fee category at this time. In our *FY 2005 NPRM*, we proposed that, since MVDDS licenses were first awarded in 2004 and equipment is still under development, we would not establish MVDDS as a new regulatory fee category in FY 2005.[24] We received no comments or reply comments on this matter. We therefore adopt our proposal and will not establish a MVDDS regulatory fee category for FY 2005.

[20] FY 2005 NPRM, 70 FR at 9578, ¶ 16.

[21] Comments of NCTA at 4-8. *See also* ACA Comments at 2-3 (arguing that the difference in regulatory fee treatment increases the burden on cable operators in small markets).

[22] Reply Comments of DirectTV and Echostar at 3.

[23] *Id.* at 5.

[24] *FY 2005 NPRM*, 70 FR at 9579, ¶ 21.

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

13. We note that the BRS/EBS proceeding is currently pending.[25] As we stated in the *FY 2005 NPRM*, we are exploring regulatory fee assessment issues for BRS/EBS in that proceeding.[26] To the extent we adopt any changes to our regulatory fee rules in that proceeding, such changes will not be effective in time for the FY 2005 regulatory fee assessments. We expect to make any appropriate adjustments in the FY 2006 regulatory fee cycle or later.

9. Regulatory Fees for AM and FM Construction Permits

14. 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. However, since 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.

15. To rectify this situation, we proposed 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, noting that because there are unit and revenue variables in assessing the per-unit regulatory fee, 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 did not receive any comments or reply comments on this matter. Therefore, beginning in FY 2005, we will hold fee amounts for construction permits in each respective fee category (e.g., AM, FM, VHF and UHF stations) to levels no higher than the lowest fee amounts for licensed facilities in each respective fee category, and if necessary, will make adjustments across only a narrow group of media fee categories, such as AM, FM, VHF and UHF stations, to keep the level of the lowest respective licensed fee.

10. Clarification of Policies and Procedures

a. Ad Hoc Issues Concerning Our Regulatory Fee Exemption Policies

16. 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 frequently encounter uncertainty and comments from parties with respect to our fee exemption policies. In our *FY 2005 NPRM*, we proposed certain clarifications to our exemption policies.[27] We received no comments or reply comments regarding our fee exemption policies. Therefore, we will be incorporating these clarifications into the text of the regulatory fee public notices that are generated each year prior to the collection of regulatory fees.

17. Terminology: In the ensuing discussion, "facility" includes "station" and "licensee" includes

[25] 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, 14293-97 (2004) *(R&O and FNPRM)*.

[26] FY 2005 NPRM, 70 FR at 9579, ¶¶ 22-23.

[27] *FY 2005 NPRM*, 70 FR at 9579, 9580, ¶¶ 26-30.

"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.

18. 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 a Construction Permit (CP) or Licensed status and a variety of other factors. Every facility has a fee code.

19. Facility Changes During the Year: 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.

20. 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 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.

21. 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.

22. 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).

b. Regulatory Fee Obligations for Digital Broadcasters

23. In our *FY 2005 NPRM*, we noted that our current schedule of regulatory fees does not include service categories for digital broadcasters.[28] 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 the present time is for their analog facility. Moreover, a licensee that has fully transitioned to

[28] *Id.* at 9580, ¶ 31.

digital broadcasting and has surrendered its analog spectrum would have no regulatory fee obligation under the current fee regime. We sought comment on whether to establish a regulatory fee category for digital broadcasters, but received no comments or reply comments on this matter.[29] At this time, we will maintain the regulatory fee obligation that applies only for the analog facility.

c. Regulatory Fee Obligations for AM Expanded Band Broadcasters

24. We do not require AM Expanded Band radio stations to pay section 9 regulatory fees for their expanded band AM station at this time. In the *FY 2005 NPRM*, we proposed to clarify this point and to explain that 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.[30] We recognized uncertainty about the regulatory fee status in the industry that resulted from the fact that AM Expanded Band radio service is not among the Commission's categories of general exemptions from regulatory fees specified in the Commission's rules.[31] We received no comments or reply comments on this matter.

25. We will continue to refrain from requiring AM Expanded Band radio stations to pay section 9 regulatory fees for their stations. However, we note that our decision not to require section 9 regulatory fee payments for AM Expanded Band stations is not a permanent exemption from regulatory fees for AM Expanded Band Radio Service. Because the movement to the expanded band is voluntary and helps to reduce interference in the standard bandwidth, we will 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 may consider establishing section 9 regulatory fee requirements for AM Expanded Band stations.

d. *Effective Date of Payment of Multi-Year Wireless Fees*

26. 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 regulatory fees are paid at the time 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 *Order* in the Federal Register, or in some instances, 90 days after delivery of the *Order* to Congress. Current procedures regarding the renewal of multi-year wireless fees stipulate that licensees may submit their fee payments no more than 90 calendar days prior to the expiration of their licenses. The regulatory fee rate that applies at the time of renewal (or at the time of an application for a new license) depends on the date that payment is physically received within the 90 day period, and how this date relates to the "effective date" of the current fiscal year regulatory fees. Generally, the "effective date" of the current fiscal year regulatory fees is published in our fee public notices soon after the *Order* is released. If the renewal payment (or application of a new license) is physically received before the "effective date," the prior fiscal year regulatory fee rate applies. If the renewal payment (or application of a new license) is physically received on or after the "effective date", the current fiscal year regulatory fee rate applies.

[29] *Id.*, ¶ 33.

[30] *Id.*, ¶ 34-36.

[31] 47 CFR § 1.1162

11. Notification, Assessment and Collection of Regulatory Fees

27. 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. Accordingly, in FY 2005, as in prior years, we will make available to all regulatees these public notices, fact sheets and other relevant fee payment information on our website at http://www.fcc.gov/fees/regfees.html. In the 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.

28. In addition to making the above information available on-line for all of our regulatees, we proposed in our *FY 2005 NPRM* to send specific regulatory fee assessments or bills by surface mail to regulatees in a select group of fee categories.[32] We are pursuing our billing initiatives as part of our effort to modernize our financial practices. Eventually, we may 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 will proceed with our various FY 2005 initiatives as described below.

a. Interstate Telecommunications Service Providers (ITSPs)

29. 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.[33] 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.[34] 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. In our *FY 2005 NPRM*, we sought comment on this billing initiative and on ways to improve it.

30. We received no comments or reply comments on our ITSP billing initiative for FY 2005. We will continue our ITSP, Form 159-W, billing initiative in FY 2005.

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[32] *FY 2005 NPRM*, 70 FR at 9575, ¶¶ 38-61. We 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). An assessment is not entered into the Commission's accounts receivable system as a current debt. A "bill" 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. *See also* 47 CFR §§ 1.1161(c), 1.1164(f)(5), 1.1910.

[33] *See* Assessment and Collection of Regulatory Fees for Fiscal Year 2001, *Report and Order*, 16 FCC Rcd 13525, at 13590, ¶ 67 (2001) (*FY 2001 Report and Order*). *See also* FCC Public Notice – Common Carrier Regulatory Fees (August 3, 2001) at 4.

[34] Beginning in FY 2002, the Form 159-W included a payment section that allowed carriers the opportunity to send in Form 159-W in lieu of completing Form 159 Remittance Advice Form.

b. *Satellite Space Station Licensees*

31. In FY 2004, 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 for their operational satellites;[35] and non-geostationary orbit space station ("NGSO") licensees received bills for their systems.[36] In our *FY 2005 NPRM*, we proposed to continue our billing initiative for our GSO and NGSO satellite space station categories. We sought comment on this proposal and received comments from the Satellite Industry Association ("SIA").

32. SIA states that its members experienced a wide range of problems with our billing system in FY 2004. For example, in some cases licensees did not receive a pre-printed bill for all of their space stations.[37] Several satellite operators report that they received bills that substantially undercounted the number of space stations for which they owed fees. However, the bills that were issued in FY 2004 lacked call sign information, making it impossible for most operators to determine which satellites were missing from their bills. SIA offered suggestions for improving the process.[38]

33. We have modified our Fee Filer online payment system so that it will address most of SIA's suggested corrective measures.[39] We will address SIA's other suggestions by generating and mailing the bills at the earliest allowable date after this *FY 2005 Order* becomes effective. We will also ensure that we will have knowledgeable staff available to assist licensees with their billing questions and to resolve any bill disputes.

c. Media Services Licensees

34. In our *FY 2005 NPRM*, we proposed that we would continue to generate regulatory fee assessment postcards for media services following the same procedures we used in FY 2004. We noted that we mail the postcards on a per-facility basis and that they serve to provide parties with the fee payment due date and the assessed fee amount for the facility (as well as the data attributes that were used to determine the amount).[40] We received no comments or reply comments on our proposal. We will continue our assessment

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[35] "Satellites" are in operation on the first day of the fiscal year and not co-located with and technically identical to another operational satellite (i.e., not functioning as a spare satellite) on the first day of the fiscal year.

[36] "Systems" are licensed by the Commission and operational on the first day of the fiscal year.

[37] SIA Comments at 11.

[38] *Id.* Specifically, SIA suggests: 1) licensees should be issued a single bill that lists all the space stations for which the Commission believes the licensee owes fees; 2) call signs should be included on bills so that licensees can verify the accuracy of the billing information; 3) procedures should be in place to permit a bill to be modified or supplemented if it is incorrect; 4) bills should be mailed well in advance of the payment deadline so that licensees have a reasonable period to review the bill, seek additional information, if needed, and correct any errors prior to the payment due date; and 5) the Commission staff members who are knowledgeable about satellite licensing should be available to assist licensees by answering questions and resolving problems.

[39] Although the process of mailing one bill per space station will continue unchanged, Fee Filer will automatically find and consolidate all regulatory fees which have been billed, based upon FCC Registration Number (FRN) and password entered. Information that describes each individual fee will include FRN, call sign, and the fee amount. This information will be subject to review by the Fee Filer user, who can then make modifications, deletions or additions online. After the user confirms the details of each fee, he/she may print a one-page Remittance Voucher which is to accompany the payment. The one-page Remittance Voucher will reflect the total payment and the detail applicable to that summary payment.

[40] 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

initiative for media services entities as we originally proposed. Specifically, we will mail a single round of postcards to licensees and their other known points of contact in our Consolidated Database System (CDBS) and Commission Registration System (CORES) – our two official databases for media services. By doing so, licensees and their points of contact will all be furnished with the same fee information for the facility in question. The postcards will direct parties to a Commission-authorized web site to update or correct fee information regarding the facility, or to certify their fee-exempt status if need be.[41] The postcards will also provide the telephone number of our FCC CORES Help Desk at (877) 480-3201, Option 4, in the event that parties need additional assistance.

35. We emphasize that parties must still submit a completed Form 159 with their fee payment, despite having received an assessment postcard. The postcards are not to be used as a substitute for completing a Form 159. We cannot guarantee that a party's regulatory fees will be posted accurately against its account if a completed Form 159 is not returned with the fee payment. We also emphasize that the facility ID is the most important data element that parties need to include on their completed Form 159. The facility ID is a unique identifier that never changes over the course of a facility's existence (unlike its call sign). We prominently display each facility's facility ID on its assessment postcard, and our Form 159 filing instructions require that each facility's facility ID (and call sign) needs to be provided. However, each year we typically receive many incomplete Form 159s that do not provide the facility ID of the facility whose fee is being paid.

d. Cable Television Subscribers

36. We adopt our proposal to generate fee assessment letters for cable operators who are on file as having paid FY 2004 regulatory fees for their basic cable subscribers.[42] We received no comments or reply comments on this issue. Under our proposal, our assessment 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 date that cable operators are 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 number paid for FY 2004, 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. Payment procedures for FY 2005 regulatory fees are the same as they were in previous years. For example, cable operators are to complete the FCC Form 159 Remittance Advice when making their payment, and are to certify their December 31, 2004 subscriber count in Block 30 of the Form 159.

37. We also sought comment on a proposal to require the cable television operators to annually report their basic subscriber counts to the Commission prior to paying regulatory fees for the fiscal year in question.[43] The Commission proposed to use the reported subscriber counts to audit regulatory fee payments that are collected later in the fiscal year. NCTA was the only commenter on this proposal. NCTA agreed that a June 1st reporting requirement could be met with accurate subscriber information from the previous year

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.

[41] The Commission-authorized web site will be available on-line throughout this summer. The site's web address is http://www.fccfees.com.

[42] *FY 2005 NPRM*, 70 FR at 9583, ¶ 57.

[43] *Id.*, ¶¶ 60-61.

and would not be unduly burdensome for operators to file.[44] We do not adopt a subscriber reporting requirement at this time. We will continue to assess our need for information to manage the regulatory fee assessment program and may revisit this issue in the future.

B. FY 2005 Fee Determination and FY 2004 Reconsideration

12. Commercial Mobile Radio Service (CMRS) Providers

38. In this section, we address the arguments presented by Cingular and CTIA in their comments to the *FY 2005 NPRM*. In addition, we address Cingular's petition for reconsideration of the Commission's *FY 2004 Report and Order* and the comments filed in response to Cingular's petition.[45]

39. Prior to FY 2004, the Commission relied on Cellular, PCS, and SMR providers to compute and submit the regulatory fee applicable to them based on the number of their subscribers. Beginning in fiscal year 2004, the Commission decided to take an alternative approach and adopted a system of mailing assessments to Cellular, PCS, and SMR providers based on subscriber data contained in their Numbering Resource Utilization Forecast (NRUF) reports.[46] NRUF data is collected by the North American Numbering Plan Administrator (NANPA) to monitor the utilization of telephone numbers by carriers. For purposes of assessing regulatory fees, the Commission uses the count of "assigned" telephone numbers (TN's)[47] stated by carriers in their NRUF reports (adjusted for porting).[48] For carriers not required to file NRUF reports, the self-computation method still applies.[49]

40. We disagree with the arguments of Cingular, CTIA, and others that the NRUF data are not sufficiently accurate for the purpose of assessing regulatory fees for the three classes of Commercial Mobile Radio Service (CMRS) providers — the Cellular Radiotelephone Service, the Personal Communications Service (PCS), and the Specialized Mobile Radio (SMR) Service. Evidence of the accuracy and reliability of the NRUF data can be found in the fact that while the initial FY 2004 assessment letters calculated regulatory fees based on approximately 162.36 million numbers, the reconciliation process, based on provider responses, revised the regulatory fee assessment by only 1.4 percent (to 160.02 million numbers). Further evidence of the reliability of the NRUF data is that in FY 2004, we issued 127 initial assessment letters to CMRS providers. Only 3.2 percent of the respondents had adjustments of greater than 5,000 subscribers but less than 20,000; and only 5.5 percent had adjustments of greater than 20,000 subscribers. This experience indicates that NRUF data is sufficiently reliable and accurate for the purposes of assessing section 9 regulatory fees. We therefore reject Cingular's request to reconsider the use of NRUF data in calculating FY 2004 fees for

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[44] NCTA Comments at 2.

[45] See Cingular Wireless LLC Petition for Reconsideration, MD Docket No. 04-73, filed Aug. 6, 2004 (*Cingular Petition*). We received comments in support of the *Cingular Petition* from CTIA – The Wireless Association™ (CTIA) and joint comments from seven wireless carriers (American Cellular Corporation, AT&T Wireless Services, Inc., Dobson Cellular Systems, Inc., Nextel Communications, Inc., Sprint Corporation, T-Mobile USA, Inc., and Western Wireless Corporation) (Wireless Carriers). We also received reply comments in support of the petition from the Rural Telecommunications Group, Inc. (RTG).

[46] *FY 2004 Report and Order*, 19 FCC Rcd at 11,675-76 ¶ 45.

[47] "Assigned" numbers are "numbers working in the Public Switched Telephone Network under an agreement such as a contract or tariff at the request of specific end users or customers for their use, or numbers not yet working but having a customer service order pending." Instructions for Utilization and Forecast Forms, FCC Form 502 (Jun. 2003).

[48] The porting information is developed from the telephone number porting database managed by the Local Number Portability Administrator, NeuStar, Inc.

[49] *FY 2004 Report and Order*, 19 FCC Rcd at 11,677 ¶ 49.

these three classes of CMRS carriers. We will also continue to rely on the NRUF data for the *FY 2005* regulatory fee assessments for these carriers.

41. Further, we find no basis for the assertion in Cingular's petition that a lack of clarity in the NRUF definition of "intermediate" TN's (number made available for use by another telecommunications carrier or non-carrier entity) unduly complicates the correction process and makes the NRUF data unreliable.[50] The Commission's fee assessment is based only on the number of "assigned" TN's stated in the NRUF report. Thus, to the extent that a carrier categorizes TN's as "intermediate," it has no need to make a correction.

42. These facts suggest that using NRUF data has not led to inaccurate or unfair assessments for CMRS providers. They also demonstrate that the Commission has a method to address and correct for potential anomalies that the NRUF data may implicate. We therefore disagree with Cingular and others that using NRUF data, combined with the reconciliation process, may result in overpayment of regulatory fees.[51] In fact, using NRUF data, which is subject to verification, will likely produce more accurate assessments than the self-assessment method the Commission previously used. Our experience in FY 2004 indicates that – far from being overly burdensome – this process offers CMRS providers an opportunity to correct potential errors in their data for section 9 regulatory fee assessment purposes.[52]

43. We also reject the arguments of Cingular and others that the two-step process that we established in the *FY 2004 Report and Order* — sending an initial assessment letter, which a CMRS provider may correct, followed by a final assessment letter — is unduly burdensome.[53] Cingular maintains that the correction process contemplates a burdensome number-by-number reconciliation of the NRUF data and a carrier's actual subscriber count. We clarify that carriers are not required to perform number-by-number reconciliations when making corrections. Carriers may make corrections on an aggregate basis. We will review the letters, and decide whether to accept the revised totals. Based upon this feedback, we will send out a second assessment letter that will coincide with the payment period of regulatory fees. This second assessment letter with aggregate totals will constitute the basis upon which FY 2005 regulatory fees will be paid. If we receive no response to our initial assessment letter within 21 days, we will assume that no corrections are required and the final assessment letter, which is mailed approximately 30 days after the initial letter, will base the fee payment due on the number of subscribers listed on the initial assessment. In response to Cingular's questions as to whether the Commission intends to allow carriers to correct so-called "contaminated numbers" (numbers used by a thousands-block carrier before donating the remainder of the block to the pool),[54] we clarify that carriers are permitted to address "contaminated numbers." Paragraph 46 of the *FY 2004 Report and Order* specifically links the correction process with the problem of "contaminated numbers." To the extent that paragraph 46 of the *FY 2004 Report and Order* does not unequivocally provide that carriers may correct the initial assessment letter to account for "contaminated numbers," we hereby clarify that they may do so.

44. We will continue to use the two-step process for assessing section 9 regulatory fees on CMRS providers as proposed in the *FY 2005 NPRM*.[55] Specifically, we will continue to mail an initial regulatory fee

[50] *Cingular Petition* at 4-5.

[51] *Cingular Petition* at 3, 5-6.

[52] *Cingular Petition* at 5-6. See also CTIA Comments at 3.

[53] *Cingular Petition* at 5-6.

[54] *Cingular Petition* at 3.

[55] *See FY 2005 NPRM*, 70 FR at 9579, ¶ 51-52.

assessment to CMRS providers based on information they submit on their NRUF forms. The initial assessment letter will include a list of the carriers' Operating Company Numbers (OCNs), and an aggregate total of assigned numbers (adjusted for porting) upon which the assessment is based.[56] If the number of subscribers on the initial assessment letter differs from the data included on their NRUF forms, CMRS providers may amend their initial assessment letter to identify their subscriber count as of December 31, 2004.

III. PROCEDURAL MATTERS

A. Payment of Regulatory Fees

1. De Minimis Fee Payment Liability

45. As in the past, regulatees whose total FY 2005 regulatory fee liability, including all categories of fees for which payment is due, amounts to less than $10 will be exempted from payment of FY 2005 regulatory fees.

2. Standard Fee Calculations and Payment Dates for Annual Regulatory Fees

46. The responsibility for payment of annual regulatory fees by service category is as follows:[57]

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.

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.[58] For CARS

[56] Additionally, paragraph 48 of the *FY 2004 Report and Order* indicates that "[i]f some subscribers are no longer customers, but have been assigned to another company, please indicate the company which has acquired these subscribers." Cingular suggests that it is unnecessary to report numbers because the Commission already takes ported numbers into account using the LNP database. *Cingular Petition* at 3. We agree with Cingular that it is generally unnecessary to correct ported numbers.

[57] Note that regulatees in the service categories that are shaded in grey in Attachment D do not pay annual regulatory fees. We collect regulatory fees from these entities in advance to cover the term of license. Fee payments from these entities are submitted along with their initial authorization or renewal application when that application is filed.

[58] 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 customers. Note: Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households.

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 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.

47. We strongly recommend that entities who will be submitting more than twenty-five (25) Form 159-C's use the electronic Fee Filer program when sending their regulatory fee payment. We will, for the convenience of payers, accept fee payments made in advance of the normal formal window for the payment of regulatory fees.

3. Limitations on Credit Card Transactions

48. The U.S. Treasury has advised the Commission that it may begin rejecting Credit Card transactions greater than $99,999.99 from a single credit card in a single day. The U.S. Treasury has published Bulletin No. 2005-03 in which Federal Agencies are directed to limit credit card collections per these rules. The Commission will institute policies to conform to the U.S. Treasury policy. Entities needing to remit amounts of $100,000.00 or greater should use check, ACH or Fed Wire payment methods. Additional information can be found at http://www.fcc.gov/fees.

B. Enforcement

49. 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 payment 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

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.

date, the 25 percent late charge penalty will be assessed on the portion that is submitted after the filing window.

50. Furthermore, we 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. Congressional Review Act Analysis

51. The Commission will send a copy of this *Order in MD Docket No. 05-59 and Order on Reconsideration in MD Docket No. 04-73* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

IV. ORDERING CLAUSES

52. Accordingly, IT IS ORDERED pursuant to sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 159, and 303(r) that the FY 2005 section 9 regulatory fee assessment requirements ARE ADOPTED as specified herein.

53. IT IS FURTHER ORDERED, pursuant to sections 4(i) and (j), 9, 303(r), and 405 of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 154(j), 159, 303(r), and 405, 47 U.S.C. § 405 and 47 C.F.R. § 1.106 that the Petition for Reconsideration, filed August 6, 2004, by Cingular Wireless LLC IS DENIED.

54. IT IS FURTHER ORDERED that Part 1 of the Commission's Rules ARE AMENDED as set forth in Attachment G, and the these Rules shall become effective 30 days after publication in the Federal Register.

55. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Order in MD Docket No. 05-59 and Order on Reconsideration in MD Docket No. 04-73*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

56. IT IS FURTHER ORDERED that this proceeding is TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

Marlene H. Dortch
Secretary

ATTACHMENT A

FINAL REGULATORY FLEXIBILITY ANALYSIS

57. As required by the Regulatory Flexibility Act (RFA),[59] the Commission prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules in its Notice of Proposed Rulemaking, In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2005. Written public comments were sought on the FY 2005 fees proposal, including comments on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[60]

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

58. This rulemaking proceeding is initiated to amend the 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 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:

59. None.

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

60. 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) satisfies any additional criteria established by the SBA.[64]

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

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[59] 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).

[60] 5 U.S.C. § 604

[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."

[64] 15 U.S.C. § 632.

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

62. **Small Organizations**. Nationwide, there are approximately 1.6 million small organizations.[66]

63. **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.

64. 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.

65. ***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 these rules.

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

[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 CFR § 121.102(b).
[71] 13 CFR § 121.201, North American Industry Classification System (NAICS) code 517110 (changed from 13310 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.
[73] 13 CFR § 121.201, NAICS code 517110 (changed from 513310 in October 2002).
[74] "Trends in Telephone Service" at Table 5.3.

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 these rules.

67. **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 these rules.

68. **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 these rules.

69. **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 these rules.

70. **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 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 these rules.

71. **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

[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 CFR § 121.201, NAICS code 517110 (changed from 513310 in October 2002).
[82] "Trends in Telephone Service" at Table 5.3.
[83] 13 CFR § 121.201, NAICS code 517110 (changed from 513310 in October 2002).
[84] "Trends in Telephone Service" at Table 5.3.

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 these rules.

72. **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 these rules.

73. **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.

74. **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 million, and an additional 24 firms had receipts of $10 million to $24,999,999. Thus, the majority of Satellite Telecommunications firms can be considered small.

75. The second category – Other Telecommunications – includes "establishments primarily engaged in … providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems."[92] According to Census Bureau data for 1997, there were 439

[85] 13 CFR § 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 CFR § 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).
[92] Office of Management and Budget, North American Industry Classification System, page 513 (1997) (NAICS code 513390, changed to 517910 in October 2002).

firms in this category that operated for the entire year.[93] Of this total, 424 firms had annual receipts of $5 million to $9,999,999 and an additional six firms had annual receipts of $10 million to $24,999,990. Thus, under this second size standard, the majority of firms can be considered small.

76. **Wireless Service Providers.** The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of "Paging"[94] and "Cellular and Other Wireless Telecommunications."[95] Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year.[96] Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more.[97] Thus, under this category and associated small business size standard, the great majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year.[98] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[99] Thus, under this second category and size standard, the great majority of firms can, again, be considered small.

77. **Internet Service Providers.** The SBA has developed a small business size standard for Internet Service Providers. This category comprises establishments "primarily engaged in providing direct access through telecommunications networks to computer-held information compiled or published by others."[100] Under the SBA size standard, such a business is small if it has average annual receipts of $21 million or less.[101] According to Census Bureau data for 1997, there were 2,751 firms in this category that operated for the entire year.[102] Of these, 2,659 firms had annual receipts of under $10 million, and an additional 67 firms had receipts of between $10 million and $24,999,999.[103] Thus, under this size standard,

[93] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 513390 (issued October 2000).

[94] 13 CFR § 121.201, NAICS code 513321 (changed to 517211 in October 2002).

[95] 13 CFR § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[96] U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000).

[97] U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1000 employees or more."

[98] U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000).

[99] U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1000 employees or more."

[100] Office of Management and Budget, North American Industry Classification System, page 515 (1997). NAICS code 514191, "On-Line Information Services" (changed to current name and to code 518111 in October 2002).

[101] 13 CFR § 121.201, NAICS code 518111.

[102] U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 4, Receipts Size of Firms Subject to Federal Income Tax: 1997, NAICS code 514191 (issued October 2000).

[103] U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 4, Receipts Size of Firms Subject to Federal Income Tax: 1997, NAICS code 514191 (issued October 2000).

the great majority of firms can be considered small entities.

78. **Cellular Licensees**. The SBA has developed a small business size standard for wireless firms within the broad economic census category "Cellular and Other Wireless Telecommunications."[104] Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category Cellular and Other Wireless Telecommunications firms, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year.[105] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[106] Thus, under this category and size standard, the great majority of firms can be considered small. According to the most recent Trends in Telephone Service data, 719 carriers reported that they were engaged in the provision of cellular service, personal communications service, or specialized mobile radio telephony services, which are placed together in the data.[107] We have estimated that 294 of these are small, under the SBA small business size standard.[108]

79. **Common Carrier Paging**. The SBA has developed a small business size standard for wireless firms within the broad economic census categories of "Cellular and Other Wireless Telecommunications."[109] Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year.[110] Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more.[111] Thus, under this category and associated small business size standard, the great majority of firms can be considered small.

80. In the Paging Second Report and Order, the Commission adopted a size standard for "small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[112] A small business is an entity that, together with its affiliates and controlling

[104] 13 CFR § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[105] U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000).

[106] U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1000 employees or more."

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

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

[109] 13 CFR § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[110] U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000).

[111] U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1000 employees or more."

[112] Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, Second Report and Order, 12 FCC Rcd 2732, 2811-2812, paras. 178-181 (Paging Second Report and Order); *see also* Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 10030, 10085-10088, paras. 98-107 (1999).

principals, has average gross revenues not exceeding $15 million for the preceding three years.[113] The SBA has approved this definition.[114] An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold.[115] Fifty-seven companies claiming small business status won 440 licenses.[116] An auction of MEA and Economic Area (EA) licenses commenced on October 30, 2001, and closed on December 5, 2001. Of the 15,514 licenses auctioned, 5,323 were sold.[117] One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs commenced on May 13, 2003, and closed on May 28, 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.[118] Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent Trends in Telephone Service, 608 private and common carriers reported that they were engaged in the provision of either paging or "other mobile" services.[119] Of these, we estimate that 589 are small, under the SBA-approved small business size standard.[120] We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

81. **Wireless Communications Services**. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years.[121] The SBA has approved these definitions.[122] The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity. An auction for one license in the 1670-1674 MHz band commenced on April 30, 2003 and closed the same day. One license was awarded. The winning bidder was not a small entity.

82. **Wireless Telephony**. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The SBA has developed a small business size standard for "Cellular and Other Wireless Telecommunications" services.[123] Under the SBA small business

[113] Paging Second Report and Order, 12 FCC Rcd at 2811, para. 179.

[114] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

[115] *See* "929 and 931 MHz Paging Auction Closes," Public Notice, 15 FCC Rcd 4858 (WTB 2000).

[116] *See* "929 and 931 MHz Paging Auction Closes," Public Notice, 15 FCC Rcd 4858 (WTB 2000).

[117] *See* "Lower and Upper Paging Band Auction Closes," Public Notice, 16 FCC Rcd 21821 (WTB 2002).

[118] *See* "Lower and Upper Paging Bands Auction Closes," Public Notice, 18 FCC Rcd 11154 (WTB 2003).

[119] *See* Trends in Telephone Service, Industry Analysis Division, Wireline Competition Bureau, Table 5.3 (Number of Telecommunications Service Providers that are Small Businesses) (May 2002).

[120] 13 CFR § 121.201, NAICS code 517211.

[121] Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS), Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

[122] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

[123] 13 CFR § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

size standard, a business is small if it has 1,500 or fewer employees.[124] According to the most recent Trends in Telephone Service data, 719 carriers reported that they were engaged in wireless telephony.[125] We have estimated that 294 of these are small under the SBA small business size standard.

83. **Broadband Personal Communications Service.** The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[126] For Block F, an additional small business size standard for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[127] These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.[128] No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 "small" and "very small" business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.[129] On March 23, 1999, the Commission reauctioned 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.[130]

84. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses.[131] Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

85. **Narrowband Personal Communications Services.** The Commission held an auction for Narrowband PCS licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second auction commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, "small businesses" were entities with average gross revenues for the prior three calendar years of $40 million or less.[132] Through these auctions, the Commission awarded a total of 41 licenses, 11 of which

[124] 13 CFR § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

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

[126] *See* Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, 11 FCC Rcd 7824, 7850-7852, paras. 57-60 (1996); *see also* 47 CFR § 24.720(b).

[127] *See* Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, 11 FCC Rcd 7824, 7852, para. 60.

[128] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

[129] FCC News, "Broadband PCS, D, E and F Block Auction Closes," No. 71744 (released January 14, 1997).

[130] *See* "C, D, E, and F Block Broadband PCS Auction Closes," *Public Notice*, 14 FCC Rcd 6688 (WTB 1999).

[131] *See* "C and F Block Broadband PCS Auction Closes; Winning Bidders Announced," *Public Notice*, 16 FCC Rcd 2339 (2001).

[132] Implementation of Section 309(j) of the Communications Act – Competitive Bidding Narrowband PCS, *Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 10 FCC Rcd 175, 196, para. 46 (1994).