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Assessment and Collection of Regulatory Fees for ) MD Docket No. 06-68  
Fiscal Year 2006 )  
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NOTICE OF PROPOSED RULEMAKING

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By the Commission:

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## I. INTRODUCTION

1. In this *Notice of Proposed Rulemaking (Notice)*, we propose to collect \$288,771,000 in regulatory fees for Fiscal Year (FY) 2006, pursuant to section 9 of the Communications Act of 1934, as amended (the Act). 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.<sup>1</sup>

## II. DISCUSSION

2. In this *Notice*, we seek comment on the development of FY 2006 regulatory fees collected pursuant to section 9 of the Act. For FY 2006, we tentatively propose to retain the established method, policies, and priorities. In addition to the assessment methodology, the Commission typically seeks comment on various administrative and operational issues affecting the collection of regulatory fees. For the FY 2006 regulatory fee cycle, we propose to retain the same administrative measures used for notification and assessment of regulatory fees in previous years, such as generating pre-completed regulatory fee assessment forms for certain regulatees. Consistent with past practice, we invite comments and suggestions on ways to improve the Commission's administrative processes for notifying entities of their regulatory fee obligations and collecting their payments.

3. The Commission is obligated to collect \$288,771,000 in regulatory fees during FY 2006 to fund the Commission's operations. Consistent with our established practice, we plan to collect these regulatory fees in the August-September 2006 time frame in order to collect the required amount by the end of the fiscal year. In addition to the \$288,771,000 amount above, pursuant to section 3013 of the Deficit Reduction Act (Public Law 109-171), the Commission is required to assess and collect an additional \$10,000,000 in fiscal year 2006 as offsetting receipts.<sup>2</sup> We seek comment on how the Commission should

<sup>1</sup> 47 U.S.C. § 159(a).

<sup>2</sup> Section 3013 of Public Law 109-171 reads as follows, "In addition to any fees assessed under the Communications Act of 1934 (47 U.S.C. 151 et seq.), the Federal Communications Commission shall assess extraordinary fees for

(continued...)

implement this provision. Specifically, we seek comment on whether the Commission should assess the additional \$10,000,000 on application fees, on regulatory fees, or from some other form of assessment.

**A. FY 2006 Regulatory Fee Assessment Methodology**

**1. Development of FY 2006 Regulatory Fees**

**a. Calculation of Revenue and Fee Requirements**

4. We propose to use, for the purpose of our FY 2006 regulatory fee assessment, the same section 9 regulatory fee assessment methodology adopted for FY 2005. Each fiscal year, the Commission proportionally allocates the total amount that must be collected via section 9 regulatory fees. The results of our proposed FY 2006 regulatory fee assessment methodology (including a comparison to the prior year's results) are contained in Appendix C. For FY 2006, we propose to use the receipts collected through the FY 2005 regulatory fees as a base for calculating the amount the Commission must collect in FY 2006. To collect the \$288,771,000 million required by law, we propose to adjust the FY 2005 amount upward by 3.1 percent.<sup>3</sup> Consistent with past practice, we propose to divide the FY 2006 amount by the number of payment units in each fee category to determine the unit fee.<sup>4</sup> As in prior years, for cases involving small fees (e.g., licenses that are renewed over a multiyear term), we propose to divide the resulting unit fee by the term of the license. We propose to round these unit fees consistent with the requirements of section 9(b)(2).

**b. Additional Adjustments to Payment Units**

5. In calculating the FY 2006 regulatory fees proposed in Attachment D, we further adjusted the FY 2005 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.<sup>5</sup> 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 state that our estimated FY 2006 payment units

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licenses in the aggregate amount of \$10,000,000, which shall be deposited in the Treasury during fiscal year 2006 as offsetting receipts."

<sup>3</sup> Note that the required increase in regulatory fee payments of approximately 3.1 percent in FY 2006 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 3.1 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.

<sup>4</sup> In many instances, the regulatory fee amount is a flat fee per licensee or regulatee. However, in some instances the fee amount represents a unit subscriber fee (such as for Cable, Commercial Mobile Radio Service (CMRS) Cellular/Mobile and CMRS Messaging), a per unit fee (such as for International Bearer Circuits), or a fee factor per revenue dollar (Interstate Telecommunications Service Provider fee). The payment unit is the measure upon which the fee is based, such as a licensee, regulatee, subscriber fee, etc.

<sup>5</sup> 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.

are based on FY 2005 actual payment units, the number may have been rounded or adjusted slightly to account for these variables.

6. Additional factors are considered in determining regulatory fees for AM and FM radio stations. These factors are facility attributes and the population served by the radio station. The calculation of the population served is determined by coupling current U.S. Census Bureau data with technical and engineering data, as detailed in Attachment E. Consequently, the population served, as well as the class and type of service (AM or FM), determines the regulatory fee amount to be paid.<sup>6</sup>

## 2. Commercial Mobile Radio Service (CMRS) Messaging Service

7. Since FY 2003, the Commission has maintained the CMRS Messaging regulatory fee at the rate that was established in FY 2002 (*i.e.*, \$0.08 per subscriber). We have maintained, rather than increased, this rate to account for the messaging industry's declining subscriber base.<sup>7</sup> We note that between FY 1997 and FY 2005, for example, the CMRS Messaging subscriber base declined 75.3 percent from 40.8 million to 10.1 million, respectively.<sup>8</sup> We seek comment on whether we should continue the same approach for regulatory fees applicable to the messaging industry. Specifically, should we maintain the industry's regulatory fee at \$0.08 per subscriber in FY 2006?

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

8. We seek comment on the appropriate regulatory fee structure for both cable operators and DBS providers. Since the inception of the Commission regulatory fee program, we have assessed section 9 regulatory fees on cable operators using a per-subscriber approach, which is consistent with the statute. By contrast, section 9 regulatory fee assessments for DBS providers are based on a per-license approach. In the FY 2005 regulatory fee proceeding, the cable industry generally argued that the Commission should modify the regulatory fee assessment for DBS providers to a per-subscriber approach.<sup>9</sup> In the FY 2005 proceeding, we concluded that no changes were warranted at that time and therefore retained the regulatory fee assessment methodology used for DBS providers since FY 1995. We seek comment on whether we should retain the existing regulatory fee assessment methodology for cable operators and DBS providers for the purposes of our FY 2006 regulatory fee assessment. Commenters proposing a fee change should identify the Commission rulemaking proceeding(s) or change(s) in law that they believe warrant a modification of our fee assessment methodology for DBS operators. To the extent parties argue the regulatory fee assessment process should be changed, they should identify the legal basis that would justify a change and explain how the benefits of the proposed change outweigh the costs of the established assessment methodology.

## 4. Broadband Radio Service (BRS)/Educational Broadband Service (EBS)

9. We are exploring regulatory fee issues for BRS/EBS in a separately pending BRS/EBS

<sup>6</sup> In addition, beginning in FY 2005, we established a procedure by which we set regulatory fees for AM and FM radio and VHF and UHF television Construction Permits each year at an amount no higher than the lowest regulatory fee in that respective service category. For example, the regulatory fee for a Construction Permit for an AM radio station will never be more than the regulatory fee for an AM Class C radio station serving a population of less than 25,000.

<sup>7</sup> See, e.g., Assessment and Collection of Regulatory Fees for Fiscal Year 2003; *Report and Order*, 18 FCC Rcd 15985, 15992 ¶ 21 (2003).

<sup>8</sup> The 40.8 million number represents a unit estimate from the FY 1997 regulatory fee order, and the 10.1 million figure represents the number of paid units as of fiscal year end 2005.

<sup>9</sup> Assessment and Collection of Regulatory Fees for Fiscal Year 2005, *Report and Order and Order on Reconsideration*, 20 FCC Rcd 12259, 12264 ¶ 10 (2005) (*FY 2005 R&O and Order on Recon*).

proceeding.<sup>10</sup> To the extent that any changes to our regulatory fee rules are adopted in this separate BRS/EBS proceeding, we propose not to implement such regulatory fee changes in the FY 2006 schedule of section 9 Regulatory Fees.

## **B. Administrative and Operational Issues**

10. We invite comment on the administrative and operational processes used to collect the annual section 9 regulatory fees. Although these issues do not affect the amount of regulatory fees parties are obligated to submit, the administrative and operational issues affect the process of submitting payment. We generally invite comment on ways to improve these processes.

### **1. Mandatory Use of Fee Filer**

11. We continue to encourage regulatees to use the Commission's online electronic Fee Filer application. Since this application was introduced in 2000, entities who will be submitting more than twenty-five (25) Form 159-Cs have been strongly encouraged to use Fee Filer when sending their regulatory fee payment. We seek comment on the impact to the public if the Commission was to institute the mandatory use of Fee Filer for large-volume section 9 regulatory fee payers. Mandatory use of Fee Filer by large-volume payers could ease both the Commission's administrative burden and those of high-volume payers, as well. We seek comment on whether any such mandatory usage requirement should be based on a pre-determined dollar amount, or on the number of transactions necessary to make payment. If mandatory usage were to be based on a dollar amount, what amount should be pre-determined? If based on the number of transactions conducted by a single entity, at what threshold should mandatory usage be established? Commenters should be aware that, for FY 2006, the Commission seeks solely to establish a record on this topic. In the event that, after receiving comments, the Commission deems this proposal to be an improvement, the use of Fee Filer would only become mandatory in FY 2007 or later.

### **2. Proposals for Notification and Collection of Regulatory Fees**

12. In this section, we seek comment on the administrative processes that the Commission uses to notify regulatees and collect regulatory fees. 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. Consistent with our established practice, we propose to provide public notices, fact sheets and all other relevant material on our website at <http://www.fcc.gov/fees/regfees.html> for the FY 2006 regulatory fee cycle. As a general practice, we will not send such material via surface mail. However, in the event that regulatees do not have access to the Internet, we will mail public notices and other relevant material upon request. Regulatees and the general public may request such information by contacting the FCC Financial Operations HelpDesk at (877) 480-3201, Option 4.

13. Although we will not send public notices and fact sheets to regulatees en masse, we will send specific regulatory fee bills or assessments via surface mail or e-mail to the select fee categories discussed below.<sup>11</sup> We are pursuing our billing initiatives as part of our effort to modernize our financial practices. These initiatives also serve the purpose of providing licensees with notification of upcoming

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<sup>10</sup> 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, ¶¶ 351-359 (2004) (R&O and FNPRM).

<sup>11</sup> An assessment is a proposed statement of the amount of regulatory fees owed by an entity to the Commission (or proposed subscriber count to be ascribed for purposes of setting the entity's regulatory fee) but it is not entered into the Commission's accounts receivable system as a current debt. By contrast, a bill is automatically recognized as a debt owed to the Commission. Bills reflect the amount owed and have a Fee Due Date of the last day of the regulatory fee payment window. Consequently, if a bill is not paid by the Fee Due Date, it becomes delinquent and is subject to our debt collection procedures. See also 47 C.F.R. §§ 1.1161(c), 1.1164(f)(5), and 1.1910.

regulatory fees. Eventually, we intend to expand our billing initiatives to include all regulatory fee service categories.

**a. Interstate Telecommunications Service Providers (ITSPs) -- Billed**

14. 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. 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 1<sup>st</sup> of each year. Throughout FY 2002 and FY 2003, we refined the FCC Form 159-W to simplify the regulatory fee payment process.<sup>12</sup> Beginning in FY 2004, the pre-completed FCC Form 159-W was sent to carriers as a bill, rather than as an assessment of amount due. 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 ITSP regulatory fees. For FY 2006, we propose to continue our Form 159-W billing initiative for ITSPs. We seek comment on this proposal and on ways that we could improve our billing initiative for ITSPs.

**b. Satellite Space Station Licensees -- Billed**

15. Beginning in FY 2004, we mailed regulatory fee bills via surface mail to licensees in our two satellite space station service categories. Specifically, geostationary orbit space station (GSO) licensees receive bills requesting regulatory fee payment for satellites that (1) were licensed by the Commission and operational on or before October 1 of the respective fiscal year; and (2) were not co-located with and technically identical to another operational satellite on that date (*i.e.*, were not functioning as a spare satellite). Non-geostationary orbit space station (NGSO) licensees received bills requesting regulatory fee payment for systems that were licensed by the Commission and operational on or before October 1 of the respective fiscal year.

16. For FY 2006, we propose to continue our billing initiative for our GSO and NGSO satellite space station categories. We emphasize that the bills that we propose to generate for our GSO and NGSO licensees will only be for the satellite or system aspects of their respective operations. GSO and NGSO licensees typically have regulatory fee obligations in other service categories (such as earth stations, broadcast facilities, etc.), and we expect satellite operators to meet their full fee payment obligations for their entire portfolio of FCC licenses. We seek comment on our proposal to generate regulatory fee bills for our two satellite space station service categories.

**c. Additional Service Categories for Billing or Assessing**

17. We are currently exploring the feasibility of expanding our section 9 regulatory fee billing or assessing initiatives to three additional service categories in FY 2006. The service categories are Earth Stations, Cable Television Relay Service Stations (CARS) and the Local Multipoint Distribution Service (LMDS). We believe that billing or assessing can be accomplished for these categories because they are comprised of relatively few payment units (in comparison to many other categories in our Schedule of Regulatory Fees), and because the Commission maintains licensing databases for each of the three categories. Depending on progress made throughout this year, we may be in a position to generate bills or assessments for Earth Station, CARS and LMDS licensees in FY 2006. Any assessment initiative may occur solely online, whereby licensees would be instructed to visit a Commission-authorized web site to view their regulatory fee obligations. Licensees would then be able to update or correct any information concerning their license, or to certify their fee-exempt status, if appropriate. The web site would be available to licensees throughout this summer. We seek comment on our intent to expand our billing/assessment initiatives to these service categories.

<sup>12</sup> Beginning in FY 2002, Form 159-W included a payment section at the bottom of the form that allowed carriers the opportunity to send in Form 159-W in lieu of completing Form 159 Remittance Advice Form.

**d. Media Services Licensees -- Assessed**

18. Beginning in FY 2003, we sent fee assessment postcards via surface mail to media services entities on a per-facility basis. The postcards notified licensees of the date when fee payments were due; provided the assessed fee amount for the facility, as well as other data attributes that we used to determine the fee amount; and, beginning in FY 2004, provided licensees with a telephone number to call (Financial Operations Help Desk) in the event that they needed customer assistance. We propose to continue our assessment initiative for media services licensees this year in a similar fashion.<sup>13</sup>

19. Consistent with procedures used last year, we propose to mail a single round of postcards to licensees and their other known points of contact listed in CDBS (Consolidated Database System) and in CORES (Commission Registration System), the Commission's two official databases for media services. By doing so, licensees and their other points of contact will all be furnished with the same information for each facility in question so that they can designate among themselves the payer of this year's fee. Mailing postcards to all interested parties at different addresses on file for each facility also encourages all parties to visit a Commission-authorized web site to update or correct any information concerning the facility, or to certify their fee-exempt status, if appropriate. The web site will be available to licensees throughout this summer.<sup>14</sup> We seek comment on our proposal to generate fee assessment postcards for media services entities.

20. In the past, some media services licensees have mistakenly mailed their postcards back to the Commission stapled to payment checks. We emphasize that under our proposal, licensees must still submit a completed FCC Form 159 Remittance Advice with their fee payments, despite having received an assessment postcard. The postcards may not be used as a substitute for a completed Form 159. We cannot guarantee that a licensee's regulatory fee payment will be posted accurately against the licensee's account if the licensee does not submit a completed Form 159 along with its fee payment.

21. We also emphasize that the most important data element that media services licensees need to include on their Form 159 is their facility ID number. The facility ID number is a unique identifier that remains constant over the course of a facility's existence. Despite the fact that we prominently display a facility ID number on the facility's postcard, and our Form 159 filing instructions require payers to provide their facility ID number (and associated call sign) for the facility in question, we continue to receive many incomplete Form 159s that do not provide the facility ID number for the facility for which the fee is being paid.

**e. Commercial Mobile Radio Service (CMRS) Cellular and Mobile Services -- Assessed**

22. As in FY 2005,<sup>15</sup> we propose to send an assessment letter to Commercial Mobile Radio Service (CMRS) providers using data that is based on the Numbering Resource Utilization Forecast (NRUF) form, which includes a list of the carrier's Operating Company Numbers (OCNs) upon which the assessment is based. Consistent with existing practice, the letters will not include OCNs with their respective assigned number counts, but rather, an aggregate total of assigned numbers for each carrier. We also propose to continue our procedure of giving entities an opportunity to amend their subscriber counts by sending two rounds of assessment letters -- an initial assessment and a final assessment letter.

<sup>13</sup> Fee assessments are proposed to be issued for AM and FM Radio Stations, AM and FM Construction Permits, FM Translators/Boosters, VHF and UHF Television Stations, VHF and UHF Television Construction Permits, Satellite Television Stations, Low Power Television (LPTV) Stations and LPTV Translators/Boosters, to the extent that applicants, permittees and licensees of such facilities do not qualify as government entities or non-profit entities. Fee assessments have not been issued for broadcast auxiliary stations in prior years, nor will they be issued in FY 2006.

<sup>14</sup> The Commission-authorized web site for media services licensees is <http://www.fccfees.com>.

<sup>15</sup> See FY 2005 R&O and Order on Recon., 20 FCC Rcd 12259, 12264 ¶¶ 38-44.

23. If the number of subscribers on the initial assessment letter differs from the subscriber count the service provider provided on its NRUF form, the carrier can correct its subscriber count by returning the assessment letter or by contacting (a telephone number will be provided) the Commission and stating a reason for the change, such as the purchase or the sale of a subsidiary, including the date of the transaction, and any other information that will help to justify a reason for the change.

24. If we receive no response to our initial assessment letter, we will assume that the initial assessment is correct and will expect the fee payment to be based on the number of subscribers listed on the initial assessment. We will review all responses to initial assessment letters and determine whether a change in the number of subscribers is warranted. We will then generate a final assessment letter that informs carriers as to whether or not we accept the changed number of subscribers.

25. As in previous years, operators will certify their subscriber counts in Block 30 of the FCC Form 159 Remittance Advice when making their regulatory fee payments. As an additional enhancement this year to this assessment process, we propose to include porting information (e.g., information on the number of "ports in" and "ports out") in our assessment letters so that licensees can account for any differences between the data submitted in their NRUF report and the Commission's assessment count.

26. Although an initial and a final assessment letter will be mailed to carriers that have filed an NRUF form, it is conceivable that some carriers will not be sent any letters of assessment because they did not file the NRUF form. We propose that these carriers compute their fee payment using the standard methodology<sup>16</sup> that is currently in place for CMRS Wireless services (e.g., compute their subscriber counts as of December 31, 2005), and submit their payment accordingly on FCC Form 159. However, regardless of whether a carrier receives an assessment letter or computes the subscriber count itself, the Commission reserves the right, under the Communications Act, to audit the number of subscribers for which regulatory fees are paid. In the event that the Commission determines that the number of subscribers is inaccurate or that an insufficient reason is given for making a correction on the initial assessment letter, we note that the Commission reserves the right to assess the carrier for the difference between what was paid and what should have been paid.

27. In summary, we propose to (1) derive the subscriber count from NRUF data based on "assigned" number counts that have been adjusted for porting to net Type 0 ports ("in" and "out"), which should reflect a more accurate subscriber count; (2) provide carriers with the opportunity to revise their subscriber count in an initial assessment letter; and (3) require carriers to confirm their subscriber counts on an aggregate basis using data in the NRUF report.

#### **f. Cable Television Subscribers – Assessed**

28. We propose to conduct a regulatory fee assessment initiative for the cable television industry consistent with the process the Commission used in FY 2005. Specifically, we propose to generate fee assessment letters for the cable operators who are on file as having paid regulatory fees the previous fiscal year for their basic cable subscribers. Also, as an additional means of notifying cable television regulatees of their section 9 regulatory fee payment obligations for FY 2006, we propose to send an e-mail reminder to all of the operators' e-mail addresses that are populated in the Media Bureau's Cable Operations and Licensing System (COALS). We seek comment on our proposed assessment initiative and on our intention to use company e-mail addresses in COALS.

29. Our assessment letter to each operator will (1) announce the due date for payment of regulatory fees; (2) reflect the subscriber count for which the operator paid regulatory fees in FY 2005 – and thus certified as having served as of December 31, 2004; and (3) request that the operator access a

<sup>16</sup> Federal Communications Commission, *Regulatory Fees Fact Sheet: What You Owe - Commercial Wireless Services for FY 2005* at 1 (rel. July 2005).

Commission-authorized web site to provide its aggregate subscriber count as of December 31, 2005. If the number of subscribers as of December 31, 2005 differs from that as reported for last year, operators will 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 will be able to contact the FCC Financial Operations Help Desk to provide their subscriber count as of December 31, 2005. We seek comment on this proposed assessment initiative.

30. Some cable operators may not have made regulatory fee payments in FY 2005 and, as a result, will not receive an assessment letter for FY 2006 regulatory fees. For example, a new company may have become operational after the first day of the fiscal year and therefore did not have a regulatory fee obligation in FY 2005; or an existing company did not make a payment because it filed a petition for waiver of regulatory fees for FY 2005 based on financial hardship. Regardless of the circumstance, we emphasize that not receiving a regulatory fee assessment letter in FY 2006 does not excuse an operator from its obligation to pay FY 2006 regulatory fees. All non-exempt cable operators, not only those that made payments in FY 2005 and/or receive assessment letters for FY 2006 fees, are required to make payments.

31. We also propose to retain the payment procedures for cable television operators that we have had in place for the past two fiscal years. That is, we will continue to permit cable television operators to base their payment on their company's aggregate subscriber count as of December 31, 2005, rather than requiring them to sub-report subscriber counts on a per community unit identifier ("CUID") basis on the FCC Form 159 Remittance Advice. After providing their company's aggregate subscriber count in Block 25A of the FCC Form 159, operators will still be required to certify the accuracy of the subscriber count in Block 30.

32. Finally, regarding the cable television industry's annual payment obligation for section 9 regulatory fees, we seek comment on ways in which we could reduce the gap between the number of estimated payment units that we establish for each fiscal year and the number of actual payment units that we receive for that fiscal year. The Commission does not have a universal reporting requirement by which all cable television operators would report the number of basic cable television subscribers that they serve throughout all of their cable television systems.<sup>17</sup> Our estimates of the number of basic television subscribers are based on reviews of prior year regulatory fee payments made by cable operators and subscriber data published in publicly available data sources. As a result, the aggregate number of actual payment units made by the cable television industry may differ from the estimated number of units. We seek comments and/or proposals that address this situation.

### **3. Streamlined Regulatory Fee Payment Process for CMRS Providers**

33. We propose to allow those CMRS Cellular, Mobile, and Messaging service providers that pay using an FCC Form 159 or the automated Fee Filer system to pay their subscriber totals at the aggregate level without having to identify and associate their subscriber counts with calls signs. We are requiring CMRS Cellular/Mobile providers to use the aggregate subscriber totals from their Numbering Resource Utilization Forecast report (NRUF),<sup>18</sup> netted for porting; therefore, it is consistent for CMRS providers (Cellular, Mobile, and Messaging) to pay their subscriber totals at the aggregate level without having to associate these subscriber counts with their respective call signs. We believe that eliminating the requirement to identify subscribers at the call sign level will improve the Commission's efficiency in processing regulatory fee payments, as well as reduce the administrative burden on licensees during the payment process. We seek comment on whether eliminating the requirement for CMRS providers to

<sup>17</sup> The number of basic cable television subscribers served is the basis from which cable television operators are required to calculate their annual section 9 regulatory fee payment obligations.

<sup>18</sup> For more information on our proposed regulatory fee assessment initiative for CMRS providers this fiscal year, see also Section II.B.2.E. of this Notice.

identify their call signs when making their regulatory fee payment will in any manner disrupt the processes by which providers determine and calculate their subscriber totals.

#### 4. **Future Streamlining of the Regulatory Fee Assessment and Collection Process**

34. We continue to welcome comments concerning our commitment to reviewing, streamlining and modernizing our statutorily required fee assessment and collection procedures. Our areas of particular interest include: (1) the process for notifying licensees about changes in the annual Schedule of Regulatory Fees and how it can be improved; (2) the most effective way to disseminate regulatory fee assessments and bills, *e.g.*, through surface mail, e-mail, online website, or some other mechanism; (3) the fee payment process, including how the agency's online regulatory fee filing system (Fee Filer) can be enhanced; (4) the timing of fee payments, including whether we should alter the existing section 9 regulatory fee payment "window" in any way; and (5) the timing of fee assessments and bills.

### III. PROCEDURAL MATTERS

#### A. **Payment of Regulatory Fees**

##### 1. **De Minimis Fee Payment Liability**

35. Consistent with past practice, regulatees whose total FY 2006 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 2006 regulatory fees.

##### 2. **Standard Fee Calculations and Payment Dates**

36. The Commission will, for the convenience of payers, accept fee payments made in advance of the normal formal window for the payment of regulatory fees. Licensees are reminded that, under our current rules, the responsibility for payment of fees by service category is as follows:

- a) **Media Services:** Regulatory fees must be paid for AM/FM radio station and VHF/UHF television station initial construction permits that were issued on or before October 1, 2005, and for all broadcast facility licenses granted on or before October 1, 2005. However, in instances where a permit or license is transferred or assigned after October 1, 2005, responsibility for payment rests with the holder of the permit or license as of the Fee Due Date.
- b) **Wireline (Common Carrier) Services:** Fees must be paid for any authorization that was granted on or before October 1, 2005. However, in instances where a permit or license is transferred or assigned after October 1, 2005, responsibility for payment rests with the holder of the permit or license as of the Fee Due Date.
- 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 that was issued on or before October 1, 2005. The number of subscribers, units or circuits on December 31, 2005 will be used as the basis from which to calculate the fee payment.

The first eleven fee categories in our Attachment D, Schedule of Regulatory Fees, pay what the Commission refers to as "small multi-year wireless regulatory fees." Entities pay these regulatory fees in advance for the entire amount of the 5-year or 10-year term of initial license, and only pay fees again at the time of license renewal. As a result, the Commission does not collect regulatory fees for these eleven fee categories on an annual basis.

- d) **Multichannel Video Programming Distributor Services (cable television operators**

and CARS licensees): The number of basic cable television subscribers on December 31, 2005 will be used as the basis from which to calculate the fee payment.<sup>19</sup> For CARS licensees, fees must be paid for any license that was granted on or before October 1, 2005. In instances where a CARS license is transferred or assigned after October 1, 2005, responsibility for payment rests with the holder of the license as of the Fee Due Date.

- e) International Services: For earth stations and geostationary orbit space stations, regulatory fees must be paid for stations that were licensed and operational on or before October 1, 2005. In instances where a license is transferred or assigned after October 1, 2005, responsibility for payment rests with the holder of the license as of the Fee Due Date. For non-geostationary orbit satellite systems, fees must be paid for systems that were licensed and operational on or before October 1, 2005. In instances where a license is transferred or assigned after October 1, 2005, responsibility for payment rests with the holder of the license as of the Fee Due Date. For international bearer circuits, payment is calculated on a per-active circuit basis as of December 31, 2005.<sup>20</sup>

## B. Enforcement

37. 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

<sup>19</sup> Cable television system operators should compute their basic subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Operators may base their count on "a typical day in the last full week" of December 2005, rather than on a count as of December 31, 2005.

<sup>20</sup> 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](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-249904A4.pdf)). On February 6, 2006, VSNL Telecommunications (US) Inc. filed a Petition for Rulemaking urging the Commission to reform the current International Bearer Circuit Fee rules and policies as applied to non-common carrier submarine cable operators. See Petition for Rulemaking of VSNL Telecommunications (US) Inc., RM-11312 (filed February 6, 2006). This Petition remains pending before the Commission, which has issued a Public Notice requesting comment on the petition. See Consumer and Governmental Affairs Bureau, Reference Information Center, *Public Notice*, Report No. 2759 (released February 15, 2006). The Commission intends to resolve the complex issues presented by this Petition separately, and any comments on these issues filed in the instant proceeding will be incorporated into, and addressed, with those filed on the Petition for Rulemaking.

OF THESE FEES. REGULATORY FEE PAYMENT MUST BE RECEIVED AND STAMPED AT THE LOCKBOX BANK BY THE LAST DAY OF THE REGULATORY FEE FILING WINDOW, AND NOT MERELY POSTMARKED BY THE LAST DAY OF THE WINDOW. Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including the Commission's Red Light Rule (see 47 C.F.R. § 1.1910) and 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 not timely paid, the 25 percent late charge penalty will be assessed on the portion that is not paid in a timely manner.

38. Furthermore, our regulatory fee rules 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 entity responsible for paying the delinquent fee(s).

#### C. Initial Regulatory Flexibility Analysis

39. With respect to this *Notice*, an Initial Regulatory Flexibility Analysis ("IRFA"), is contained in Attachment A of the Appendix.<sup>21</sup> Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Notice* specified *infra*. The Commission will send a copy of the *Notice*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

#### D. Initial Paperwork Reduction Act of 1995 Analysis

40. This document does not contain proposed or modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4). Completion of the 159 family of forms required by the Commission's regulatory fee payment process is already approved by the Office of Management and Budget under information collections 3060-0589 and 3060-0949.

#### E. Ex Parte Rules

41. *Permit-But-Disclose*. This proceeding will be treated as a "permit-but-disclose" proceeding subject to the "permit-but-disclose" requirements under section 1.1206(b) of the Commission's rules.<sup>22</sup> *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally

<sup>21</sup> See 5 U.S.C. § 603. In addition, the *Notice* and the IRFA (or summaries thereof) will be published in the Federal Register.

<sup>22</sup> See 47 C.F.R. § 1.1206(b); see also 47 C.F.R. §§ 1.1202, 1.1203.

required.<sup>23</sup> Additional rules pertaining to oral and written presentations are set forth in section 1.1206(b).

#### F. Filing Requirements

42. *Comments and Replies.* Pursuant to Sections 1.415 and 1.419 of the Commission's rules,<sup>24</sup> interested parties may file comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission's Electronic Comment Filing System ("ECFS"), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.<sup>25</sup>

43. *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments. For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

44. *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington DC 20554.

45. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., CY-A257, Washington, D.C., 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.

46. *Accessibility Information.* To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This

<sup>23</sup> See 47 C.F.R. § 1.1206(b)(2).

<sup>24</sup> See *id.* §§ 1.415, 1.419.

<sup>25</sup> See *Electronic Filing of Documents in Rulemaking Proceedings*, 13 FCC Rcd 11322 (1998).

document can also be downloaded in Word and Portable Document Format (PDF) at: <http://www.fcc.gov>.

**IV. ORDERING CLAUSES**

47. Accordingly, IT IS ORDERED that, 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), this Notice of Proposed Rulemaking is hereby ADOPTED.

48. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch  
Secretary

## ATTACHMENT A

## INITIAL REGULATORY FLEXIBILITY ANALYSIS

49. As required by the Regulatory Flexibility Act (RFA),<sup>26</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules in the present *NPRM*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed on or before the dates indicated on the first page of this *Notice*. The Commission will send a copy of the *Notice*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.<sup>27</sup> In addition, the *Notice* and IRFA (or summaries thereof) will be published in the *Federal Register*.<sup>28</sup>

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

50. This rulemaking proceeding is initiated to obtain comments concerning the Commission's proposed amendment of its Schedule of Regulatory Fees in the amount of \$288,771,000, the amount that Congress has required the Commission to recover. The Commission seeks to collect the necessary amount through its proposed Schedule of Regulatory Fees in the most efficient manner possible and without undue public burden.

**II. Legal Basis:**

51. This action, including publication of proposed rules, is authorized under sections (4)(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended.<sup>29</sup>

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

52. 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.<sup>30</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>31</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>32</sup> 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.<sup>33</sup>

<sup>26</sup> 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).

<sup>27</sup> 5 U.S.C. 603(a).

<sup>28</sup> *Id.*

<sup>29</sup> 47 U.S.C. 154(i) and (j), 159, and 303(r).

<sup>30</sup> 5 U.S.C. § 603(b)(3).

<sup>31</sup> 5 U.S.C. § 601(6).

<sup>32</sup> 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."

<sup>33</sup> 15 U.S.C. § 632.

53. **Small Businesses.** Nationwide, there are a total of 22.4 million small businesses, according to SBA data.<sup>34</sup>

54. **Small Organizations.** Nationwide, there are approximately 1.6 million small organizations.<sup>35</sup>

55. **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."<sup>36</sup> As of 1997, there were approximately 87,453 governmental jurisdictions in the United States.<sup>37</sup> 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.

56. 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."<sup>38</sup> 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.<sup>39</sup> 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.

57. **Incumbent Local Exchange Carriers (ILECs).** 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.<sup>40</sup> According to Commission data,<sup>41</sup> 1,303 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,303 carriers, an estimated 1,020 have 1,500 or fewer employees and 283 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our proposed action.

58. **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

<sup>34</sup> See SBA, Programs and Services, SBA Pamphlet No. CO-0028, at page 40 (July 2002).

<sup>35</sup> Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

<sup>36</sup> 5 U.S.C. § 601(5).

<sup>37</sup> U.S. Census Bureau, *Statistical Abstract of the United States: 2000*, Section 9, pages 299-300, Tables 490 and 492.

<sup>38</sup> 15 U.S.C. § 632.

<sup>39</sup> Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small-business concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. See 13 C.F.R. § 121.102(b).

<sup>40</sup> 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517110 (changed from 513310 in October 2002).

<sup>41</sup> FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.3, Page 5-5 (June 2005) (hereinafter "Trends in Telephone Service"). This source uses data that are current as of October 1, 2004.

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.<sup>42</sup> According to Commission data,<sup>43</sup> 820 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 820 carriers, an estimated 726 have 1,500 or fewer employees and 94 have more than 1,500 employees. In addition, 12 carriers have reported that they are "Shared-Tenant Service Providers," and all 12 are estimated to have 1,500 or fewer employees. In addition, 39 carriers have reported that they are "Other Local Service Providers." Of the 39, an estimated 38 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities that may be affected by our proposed action.

59. **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.<sup>44</sup> According to Commission data,<sup>45</sup> 143 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 141 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by our proposed action.

60. **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.<sup>46</sup> According to Commission data,<sup>47</sup> 770 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 747 have 1,500 or fewer employees and 23 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our proposed action.

61. **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.<sup>48</sup> According to Commission data,<sup>49</sup> 654 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 652 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our proposed action.

62. **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.<sup>50</sup> According to Commission data,<sup>51</sup>

<sup>42</sup> 13 C.F.R. § 121.201, NAICS code 517110 (changed from 513310 in October 2002).

<sup>43</sup> "Trends in Telephone Service" at Table 5.3.

<sup>44</sup> 13 CFR § 121.201, NAICS code 517310 (changed from 513330 in October 2002).

<sup>45</sup> "Trends in Telephone Service" at Table 5.3.

<sup>46</sup> 13 CFR § 121.201, NAICS code 517310 (changed to 513330 in October 2002).

<sup>47</sup> "Trends in Telephone Service" at Table 5.3.

<sup>48</sup> 3 CFR § 121.201, NAICS code 517110 (changed from 513310 in October 2002).

<sup>49</sup> "Trends in Telephone Service" at Table 5.3.

<sup>50</sup> 13 C.F.R. § 121.201, NAICS code 517110 (changed from 513310 in October 2002).

316 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 292 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our proposed action.

63. **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.<sup>52</sup> According to Commission data,<sup>53</sup> 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 20 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed action.

64. **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.<sup>54</sup> According to Commission data,<sup>55</sup> 89 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated 88 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by our proposed action.

65. **800 and 800-Like Service Subscribers.**<sup>56</sup> 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.<sup>57</sup> The most reliable source of information regarding the number of these service subscribers appears to be data the Commission receives from Database Service Management on the 800, 866, 877, and 888 numbers in use.<sup>58</sup> According to our data, at the end of December 2004, the number of 800 numbers assigned was 7,540,453; the number of 888 numbers assigned was 5,947,789; the number of 877 numbers assigned was 4,805,568; and the number of 866 numbers assigned was 5,011,291. 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 7,540,453 or fewer small entity 800 subscribers; 5,947,789 or fewer small entity 888 subscribers; 4,805,568 or fewer small entity 877 subscribers, and 5,011,291 or fewer entity 866 subscribers.

66. **International Service Providers.** The Commission has not developed a small business

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<sup>51</sup> "Trends in Telephone Service" at Table 5.3.

<sup>52</sup> 13 C.F.R. § 121.201, NAICS code 517110 (changed from 513310 in October 2002).

<sup>53</sup> "Trends in Telephone Service" at Table 5.3.

<sup>54</sup> 13 C.F.R. § 121.201, NAICS code 517310 (changed from 513330 in October 2002).

<sup>55</sup> "Trends in Telephone Service" at Table 5.3.

<sup>56</sup> We include all toll-free number subscribers in this category, including those for 888 numbers.

<sup>57</sup> 13 C.F.R. § 121.201, NAICS code 517310 (changed from 513330 in October 2002).

<sup>58</sup> FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service", Tables 18.4, 18.5, 18.6, and 18.7, (June 2005).

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.<sup>59</sup> 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.<sup>60</sup> 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.

67. 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.”<sup>61</sup> According to Census Bureau data for 1997, there were 439 firms in this category that operated for the entire year.<sup>62</sup> 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.

68. **Wireless Service Providers.** The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of “Paging”<sup>63</sup> and “Cellular and Other Wireless Telecommunications.”<sup>64</sup> 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.<sup>65</sup> 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.<sup>66</sup> 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, U.S. Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year.<sup>67</sup> 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.<sup>68</sup> Thus, under this second category and size standard,

<sup>59</sup> 13 CFR. § 121.201, NAICS codes 517410 and 517910 (changed from 513340 and 513390 in October 2002).

<sup>60</sup> 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).

<sup>61</sup> Office of Management and Budget, North American Industry Classification System, page 513 (1997) (NAICS code 513390, changed to 517910 in October 2002).

<sup>62</sup> 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).

<sup>63</sup> 13 C.F.R. § 121.201, NAICS code 513321 (changed to 517211 in October 2002).

<sup>64</sup> 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

<sup>65</sup> 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).

<sup>66</sup> 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.”

<sup>67</sup> 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).

<sup>68</sup> 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.”

the great majority of firms can, again, be considered small.

69. **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.”<sup>69</sup> Under the SBA size standard, such a business is small if it has average annual receipts of \$21 million or less.<sup>70</sup> According to Census Bureau data for 1997, there were 2,751 firms in this category that operated for the entire year.<sup>71</sup> 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.<sup>72</sup> Thus, under this size standard, the great majority of firms can be considered small entities.

70. **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.”<sup>73</sup> 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, U.S. Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year.<sup>74</sup> 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.<sup>75</sup> 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, 604 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.<sup>76</sup> We have estimated that 427 of these are small, under the SBA small business size standard.<sup>77</sup>

71. **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.”<sup>78</sup> Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, U.S. Census Bureau data for 1997 show that there were

<sup>69</sup> 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).

<sup>70</sup> 13 C.F.R. § 121.201, NAICS code 518111.

<sup>71</sup> 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).

<sup>72</sup> 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).

<sup>73</sup> 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

<sup>74</sup> 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).

<sup>75</sup> 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.”

<sup>76</sup> FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, “*Trends in Telephone Service*” at Table 5.3, page 5-5 (June 2005). This source uses data that are current as of October 1, 2004.

<sup>77</sup> FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, “*Trends in Telephone Service*” at Table 5.3, page 5-5 (June 2005). This source uses data that are current as of October 1, 2004.

<sup>78</sup> 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

1,320 firms in this category, total, that operated for the entire year.<sup>79</sup> 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.<sup>80</sup> Thus, under this category and associated small business size standard, the great majority of firms can be considered small.

72. *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.*<sup>81</sup> A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.<sup>82</sup> The SBA has approved this definition.<sup>83</sup> 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.<sup>84</sup> Fifty-seven companies claiming small business status won 440 licenses.<sup>85</sup> 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.<sup>86</sup> 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.<sup>87</sup> Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service*, 408 private and common carriers reported that they were engaged in the provision of either paging or "other mobile" services.<sup>88</sup> Of these, we estimate that 589 are small, under the SBA-approved small business size standard.<sup>89</sup> We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

73. **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

<sup>79</sup> 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).

<sup>80</sup> 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."

<sup>81</sup> 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).

<sup>82</sup> Paging Second Report and Order, 12 FCC Rcd at 2811, para. 179.

<sup>83</sup> *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.

<sup>84</sup> *See* "929 and 931 MHz Paging Auction Closes," Public Notice, 15 FCC Rcd 4858 (WTB 2000).

<sup>85</sup> *See* "929 and 931 MHz Paging Auction Closes," Public Notice, 15 FCC Rcd 4858 (WTB 2000).

<sup>86</sup> *See* "Lower and Upper Paging Band Auction Closes," Public Notice, 16 FCC Rcd 21821 (WTB 2002).

<sup>87</sup> *See* "Lower and Upper Paging Bands Auction Closes," Public Notice, 18 FCC Rcd 11154 (WTB 2003).

<sup>88</sup> *See Trends in Telephone Service*, Industry Analysis Division, Wireline Competition Bureau, Table 5.3 (Number of Telecommunications Service Providers by Size of Business) (June 2005).

<sup>89</sup> 13 C.F.R. § 121.201, NAICS code 517211.

revenues of \$15 million for each of the three preceding years.<sup>90</sup> The SBA has approved these definitions.<sup>91</sup> 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.

74. **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.<sup>92</sup> Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.<sup>93</sup> According to the most recent *Trends in Telephone Service* data, 719 carriers reported that they were engaged in wireless telephony.<sup>94</sup> We have estimated that 427 of these are small under the SBA small business size standard.

75. **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.<sup>95</sup> 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.<sup>96</sup> These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.<sup>97</sup> 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.<sup>98</sup> On March 23, 1999, the Commission reaucted 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.<sup>99</sup>

76. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband

<sup>90</sup> 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).

<sup>91</sup> 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.

<sup>92</sup> 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

<sup>93</sup> 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

<sup>94</sup> FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.3, page 5-5 (June 2005). This source uses data that are current as of October 1, 2004.

<sup>95</sup> 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 C.F.R. § 24.720(b).

<sup>96</sup> 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.

<sup>97</sup> 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.

<sup>98</sup> FCC News, "Broadband PCS, D, E and F Block Auction Closes," No. 71744 (released January 14, 1997).

<sup>99</sup> See "C, D, E, and F Block Broadband PCS Auction Closes," Public Notice, 14 FCC Rcd 6688 (WTB 1999).

PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as “small” or “very small” businesses.<sup>100</sup> 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.

77. **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.<sup>101</sup> Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses.<sup>102</sup> To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*.<sup>103</sup> A “small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million.<sup>104</sup> A “very small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million.<sup>105</sup> The SBA has approved these small business size standards.<sup>106</sup> A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses.<sup>107</sup> Three of these claimed status as a small or very small entity and won 311 licenses.

78. **Lower 700 MHz Band Licenses.** We adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.<sup>108</sup> We have defined a “small business” as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.<sup>109</sup> A “very small business”

<sup>100</sup> See “C and F Block Broadband PCS Auction Closes; Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 2339 (2001).

<sup>101</sup> 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).

<sup>102</sup> See “Announcing the High Bidders in the Auction of ten Nationwide Narrowband PCS Licenses, Winning Bids Total \$617,006,674,” *Public Notice*, PNWL 94-004 (released Aug. 2, 1994); “Announcing the High Bidders in the Auction of 30 Regional Narrowband PCS Licenses; Winning Bids Total \$490,901,787,” *Public Notice*, PNWL 94-27 (released Nov. 9, 1994).

<sup>103</sup> Amendment of the Commission’s Rules to Establish New Personal Communications Services, *Narrowband PCS, Second Report and Order and Second Further Notice of Proposed Rule Making*, 15 FCC Rcd 10456, 10476, para. 40 (2000).

<sup>104</sup> Amendment of the Commission’s Rules to Establish New Personal Communications Services, *Narrowband PCS, Second Report and Order and Second Further Notice of Proposed Rule Making*, 15 FCC Rcd 10456, 10476, para. 40 (2000).

<sup>105</sup> Amendment of the Commission’s Rules to Establish New Personal Communications Services, *Narrowband PCS, Second Report and Order and Second Further Notice of Proposed Rule Making*, 15 FCC Rcd 10456, 10476, para. 40 (2000).

<sup>106</sup> 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.

<sup>107</sup> See “Narrowband PCS Auction Closes,” *Public Notice*, 16 FCC Rcd 18663 (WTB 2001).

<sup>108</sup> See Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Report and Order*, 17 FCC Rcd 1022 (2002).

<sup>109</sup> See Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Report and Order*, 17 FCC Rcd 1022, 1087-88, para. 172 (2002).

is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.<sup>110</sup> Additionally, the lower 700 MHz Service has a third category of small business status that may be claimed for Metropolitan/Rural Service Area (MSA/RSA) licenses. The third category is "entrepreneur," which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.<sup>111</sup> The SBA has approved these small size standards.<sup>112</sup> An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.<sup>113</sup> A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses.<sup>114</sup> Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.<sup>115</sup>

79. **Upper 700 MHz Band Licenses.** The Commission released a Report and Order, authorizing service in the upper 700 MHz band.<sup>116</sup> This auction, previously scheduled for January 13, 2003, has been postponed.<sup>117</sup>

80. **700 MHz Guard Band Licenses.** In the 700 MHz Guard Band Order, we adopted size standards for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.<sup>118</sup> A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.<sup>119</sup> Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.<sup>120</sup> SBA approval of these definitions is not required.<sup>121</sup> An auction of

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<sup>110</sup> See Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Report and Order*, 17 FCC Rcd 1022, 1087-88, para. 172 (2002).

<sup>111</sup> See Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Report and Order*, 17 FCC Rcd 1022, 1088, para. 173 (2002).

<sup>112</sup> See Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999.

<sup>113</sup> See "Lower 700 MHz Band Auction Closes," *Public Notice*, 17 FCC Rcd 17272 (WTB 2002).

<sup>114</sup> See "Lower 700 MHz Band Auction Closes," *Public Notice*, 18 FCC Rcd 11873 (WTB 2003).

<sup>115</sup> See "Lower 700 MHz Band Auction Closes," *Public Notice*, 18 FCC Rcd 11873 (WTB 2003).

<sup>116</sup> Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Memorandum Opinion and Order*, 16 FCC Rcd 1239 (2001).

<sup>117</sup> See "Auction of Licenses for 747-762 and 777-792 MHz Bands (Auction No. 31) Is Rescheduled," *Public Notice*, 16 FCC Rcd 13079 (WTB 2003).

<sup>118</sup> See Service Rules for the 746-764 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Report and Order*, 15 FCC Rcd 5299 (2000).

<sup>119</sup> See Service Rules for the 746-764 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Report and Order*, 15 FCC Rcd 5299, 5343, para. 108 (2000).

<sup>120</sup> See Service Rules for the 746-764 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Report and Order*, 15 FCC Rcd 5299, 5343, para. 108 (2000).

<sup>121</sup> See Service Rules for the 746-764 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Report and Order*, 15 FCC Rcd 5299, 5343, para. 108 n.246 (for the 746-764 MHz and 776-794 MHz bands, the  
(continued...))

52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.<sup>122</sup> Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.<sup>123</sup>

81. **Specialized Mobile Radio.** The Commission awards "small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years.<sup>124</sup> The Commission awards "very small entity" bidding credits to firms that had revenues of no more than \$3 million in each of the three previous calendar years.<sup>125</sup> The SBA has approved these small business size standards for the 900 MHz Service.<sup>126</sup> The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.<sup>127</sup> A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.<sup>128</sup>

82. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the \$15 million size standard.<sup>129</sup> In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold.<sup>130</sup> Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small

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Commission is exempt from 15 U.S.C. § 632, which requires Federal agencies to obtain SBA approval before adopting small business size standards).

<sup>122</sup> See "700 MHz Guard Bands Auction Closes: Winning Bidders Announced," *Public Notice*, 15 FCC Rcd 18026 (2000).

<sup>123</sup> See "700 MHz Guard Bands Auction Closes: Winning Bidders Announced," *Public Notice*, 16 FCC Rcd 4590 (WTB 2001).

<sup>124</sup> 47 C.F.R. § 90.814(b)(1).

<sup>125</sup> 47 C.F.R. § 90.814(b)(1).

<sup>126</sup> See Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999. We note that, although a request was also sent to the SBA requesting approval for the small business size standard for 800 MHz, approval is still pending.

<sup>127</sup> See "Correction to Public Notice DA 96-586 'FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,'" *Public Notice*, 18 FCC Rcd 18367 (WTB 1996).

<sup>128</sup> See "Multi-Radio Service Auction Closes," *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

<sup>129</sup> See, "800 MHz Specialized Mobile Radio (SMR) Service General Category (851-854 MHz) and Upper Band (861-865 MHz) Auction Closes; Winning Bidders Announced," *Public Notice*, 15 FCC Rcd 17162 (2000).

<sup>130</sup> See, "800 MHz SMR Service Lower 80 Channels Auction Closes; Winning Bidders Announced," *Public Notice*, 16 FCC Rcd 1736 (2000).

business.

83. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

84. **220 MHz Radio Service – Phase I Licensees.** The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to “Cellular and Other Wireless Telecommunications” companies. This category provides that a small business is a wireless company employing no more than 1,500 persons.<sup>131</sup> According to the Census Bureau data for 1997, only twelve firms out of a total of 1,238 such firms that operated for the entire year in 1997, had 1,000 or more employees.<sup>132</sup> If this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA’s small business standard.

85. **220 MHz Radio Service – Phase II Licensees.** The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz Third Report and Order, we adopted a small business size standard for defining “small” and “very small” businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.<sup>133</sup> This small business standard indicates that a “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.<sup>134</sup> A “very small business” is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed \$3 million for the preceding three years.<sup>135</sup> The SBA has approved these small size standards.<sup>136</sup> Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.<sup>137</sup> In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold.<sup>138</sup> Thirty-nine small businesses won 373 licenses in the first 220 MHz auction. A second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen

<sup>131</sup> 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

<sup>132</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 5, NAICS code 513322 (October 2000).

<sup>133</sup> Amendment of Part 90 of the Commission’s Rules to Provide For the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, *Third Report and Order*, 12 FCC Rcd 10943, 11068-70, paras. 291-295 (1997).

<sup>134</sup> *Id.* at 11068, paras. 291.

<sup>135</sup> *Id.*

<sup>136</sup> See Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated January 6, 1998.

<sup>137</sup> See generally “220 MHz Service Auction Closes,” *Public Notice*, 14 FCC Rcd 605 (WTB 1998).

<sup>138</sup> See “FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made,” *Public Notice*, 14 FCC Rcd 1085 (WTB 1999).