

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

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In the Matter of)
Assessment and Collection of Regulatory Fees for) MD Docket No. 06-68
Fiscal Year 2006)

FCC Main Room

REPORT AND ORDER

Adopted: July 12, 2006

Released: July 17, 2006

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

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I. INTRODUCTION

1. In this *Report and Order*, we conclude a proceeding to collect \$288,771,000 in regulatory fees, pursuant to section 9 of the Communications Act of 1934, as amended (the Act), and an additional \$10,000,000 as required by section 3013 of the Deficit Reduction Act (Public Law 109-171). Section 9 regulatory fees are mandated by Congress and are collected to recover the regulatory costs associated with the Commission's enforcement, policy and rulemaking, user information, and international activities.¹

II. DISCUSSION

2. We retain the established methods, policies, and procedures for calculating regulatory fees adopted by the Commission in prior years. We have found that this assessment methodology adopted in prior regulatory fee cycles has provided a satisfactory means for collecting the Commission's annual appropriations. In addition to the assessment methodology, the Commission retains the same administrative measures used for notification and assessment of regulatory fees as in previous years, such as generating pre-completed regulatory fee assessment forms for certain regulatees.

3. The Commission is obligated to collect \$288,771,000 in regulatory fees during Fiscal Year (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, the Commission is required to assess and collect an additional \$10,000,000 to contribute toward the Nation's debt reduction in fiscal year 2006.² In our *FY 2006 Notice of Proposed Rulemaking (NPRM)*, we sought comment regarding

¹ 47 U.S.C. § 159(a).

² 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 licenses in the aggregate amount of \$10,000,000, which shall be deposited in the Treasury during fiscal year 2006 as offsetting receipts."

how the Commission should implement this provision.³ Specifically, we asked whether the Commission should assess the additional \$10,000,000 on application fees, on regulatory fees, or use some other form of assessment. We received no comment on this matter. Additionally, the legislative history of the act provides no guidance as to how Congress intends the Commission to collect these debt reduction funds. We believe that collecting the mandatory \$10,000,000 debt reduction contribution in conjunction with our FY 2006 schedule of section 9 regulatory fees will ensure the most equitable and timely collection of such fees. Therefore, in addition to the amount mandated by Congress in the appropriations law (\$288,771,000), our FY 2006 schedule of section 9 regulatory fees includes an additional \$10,000,000 allocated across all service categories. Hereafter, in this *Report and Order*, we will refer to the total \$298,771,000 as regulatory fees.

A. FY 2006 Regulatory Fee Assessment Methodology

4. On March 27, 2006, we released the *FY 2006 NPRM*. As noted in the *FY 2006 NPRM*, the section 9 regulatory fee proceeding is an annual process intended to ensure the Commission collects the amounts required by Congress. In the *NPRM*, we proposed to largely retain the section 9 regulatory fee methodology used in the prior fiscal year. Only six comments and two reply comments were filed. We address our conclusions below.

1. Development of FY 2006 Regulatory Fees

a. Calculation of Revenue and Fee Requirements

5. In our FY 2006 regulatory fee assessment, we use the same section 9 regulatory fee assessment methodology that we adopted in FY 2005. Each fiscal year, the Commission proportionally allocates the total amount that must be collected via section 9 regulatory fees. The results of FY 2006 regulatory fee assessment methodology (including a comparison to the prior year's results) are contained in Attachment C. For FY 2006, the receipts collected through FY 2005 regulatory fees will be the basis for calculating the amount the Commission must collect in FY 2006. To collect the \$298,771,000 million required by law, we first adjust the FY 2005 amount upward by 6.67 percent.⁴ Consistent with past practice, we then divide the FY 2006 amount by the number of payment units in each fee category to determine the unit fee.⁵ As in prior years, for cases involving small fees (*e.g.*, licenses that are renewed over a multiyear term), we divide the resulting unit fee by the term of the license, and then round these unit fees consistent with the requirements of section 9(b)(2).

b. Additional Adjustments to Payment Units

6. In calculating the FY 2006 regulatory fees listed in Attachment D, we further adjusted the FY 2005 list of payment units (see Attachment B for sources of payment units) based upon licensee

³ See Assessment and Collection of Regulatory Fees for Fiscal Year 2006, *Notice of Proposed Rulemaking*, 71 FR 17410 at ¶ 3 (April 6, 2006) (*FY 2006 NPRM*).

⁴ We were required to collect \$280,098,000 in FY 2005. We are required to collect \$298,771,000 in FY 2006, which is an increase of approximately 6.67 percent. Note that the required increase of approximately 6.67 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 for individual service categories is sometimes increased by a number other than 6.67 percent. For example, in industries where the number of units is declining and the expected revenue is increasing, the impact of the fee increase may be greater.

⁵ In 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.*

databases and industry and trade group projections to produce the most up-to-date and equitable regulatory fee calculations possible. Whenever possible, we verified these estimates from multiple sources to ensure accuracy. Sources include Commission licensee databases, prior year payment records, and/or industry and trade association projections.⁶ Where appropriate, we adjusted and/or rounded our final estimates to take into consideration variables that may impact the number of payment units, such as waivers and/or exemptions that may be filed in FY 2006, 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 are based on FY 2005 actual payment units, the number may have been rounded or adjusted slightly to account for these variables.

7. We consider additional factors 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 for radio stations.⁷

2. Commercial Mobile Radio Service (CMRS) Messaging Service

8. In the *FY 2006 NPRM*, we proposed to continue our policy of maintaining the CMRS Messaging Service regulatory fee at the rate originally calculated in FY 2003 (*i.e.*, \$0.08 per subscriber), noting that the subscriber base in this industry has declined more than 75% from 40.8 million to 10.1 million from FY 1997 to FY 2005.⁸ We received supporting comments from three entities and no opposing comments.⁹ All commenters endorse, at a minimum, maintaining the fee at \$0.08 per subscriber. BloostonLaw urges the Commission to reduce the fee to \$0.04 per subscriber, citing the paging industry's declining subscriber base and increasing regulatory obligations and expenditures that have been imposed on this industry since the inception of the section 9 regulatory fee program.¹⁰

9. We are cognizant of the regulatory obligations cited by BloostonLaw. The Commission has already addressed the hardships suffered by the CMRS messaging industry by freezing the fee, which would otherwise have risen significantly.¹¹ Moreover, the obligations cited by BloostonLaw are associated with significant regulatory costs and benefits that warrant increasing the fee. Therefore, we are not

⁶ The databases we consulted include, but are not limited to, the Commission's Universal Licensing System (ULS), International Bureau Filing System (IBFS), and Consolidated Database System (CDBS). We also consulted industry sources including, but not limited to, *Television & Cable Factbook* by Warren Publishing, Inc. and the *Broadcasting and Cable Yearbook* by Reed Elsevier, Inc., as well as reports generated within the Commission such as the Wireline Competition Bureau's *Trends in Telephone Service* and the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast and Annual CMRS Competition Report*. For additional information on source material, see Attachment B.

⁷ 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.

⁸ See *FY 2006 NPRM*, ¶ 7.

⁹ Comments received from the American Association of Paging Carriers (AAPC), the law firm of Blooston, Mordkofsky, Dickens, Duffy & Pendergast, LLP (BloostonLaw), and USA Mobility, Inc.

¹⁰ BloostonLaw notes the paging industry's requirement to contribute to the Universal Service Fund, the Telecommunications Relay Service (TRS) fund, the Local Number Portability (LNP) fund, and the North American Numbering Plan Administration (NANPA) fund. See BloostonLaw Comments at 3.

¹¹ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2005, Report and Order and Order on Reconsideration*, 20 FCC Rcd 12259, 12264 ¶ 5 (2005) (*FY 2005 R&O and Order on Reconsideration*).

persuaded to reduce the regulatory fee amount. In consideration of the financial hardship that could be caused by increasing the fee (shrinking profit margins, additional loss of subscribers, reduced revenue, etc.) for this service category, we adopt our proposal to maintain the CMRS Messaging Service regulatory fee this fiscal year at \$0.08 per subscriber.

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

10. In our FY 2005 regulatory fee proceeding, the National Cable and Telecommunications Association (NCTA) and American Cable Association (ACA) submitted comments¹² proposing that the Commission adopt the same per-subscriber assessment for DBS operators that applies to cable television operators.¹³ DirecTV, Inc. and Echostar Satellite L.L.C. (DirecTV and Echostar), in joint reply comments, argued that the cable operators failed to make the required showing to satisfy section 9(b)(3) of the Act for changes to the Commission's regulatory fee structure, specifically, "In making such amendments, the Commission shall add, delete, or reclassify services in the Schedule to reflect additions, deletions, or changes in the nature of its services as a consequence of Commission rulemaking proceedings or changes in law."¹⁴ We agreed that the cable commenters did not satisfy section 9 requirements.

11. As a procedural matter, we also found that, because the comments raised issues not contemplated in the *FY 2005 NPRM*, we had not provided sufficient notice for a change to the fee methodology for DBS operators.¹⁵ Therefore, we stated that we would seek further information on this issue in our FY 2006 regulatory fee proceeding in order to fully explore whether there is a legal basis for such a change, and to analyze the impact of any change in the methodology used to assess fees both for DBS providers and cable television operators.¹⁶

12. In the *FY 2006 NPRM*, we sought comment on the appropriate regulatory fee structure for both cable operators and DBS providers.¹⁷ We asked that commenters proposing a fee change identify the Commission rulemaking proceeding(s) or change(s) in law that they believe warrant a modification of the fee assessment schedule. NCTA, ACA, and the DBS industry again commented on this issue in FY 2006. While many of the economic, competition, and perceived equity arguments presented in these comments repeated those made in FY 2005, they also provided additional information regarding changes in law and subsequent Commission rulemakings.

13. NCTA argues that the Commission should modify the structure for assessing DBS regulatory fees. In particular, NCTA argues that DBS should be assessed on a per-subscriber basis, and

¹² See 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*). See also FY 2005 Comments of NCTA and FY 2005 Comments of ACA.

¹³ Since the inception of the Commission's regulatory fee program, we have assessed section 9 regulatory fees on cable operators using a per-subscriber approach, which is consistent with the original (1994) statute. By contrast, section 9 regulatory fee assessments for DBS providers are based on a per-license approach, which is also consistent with the Commission's permitted amendment to the statute that took place in 1996.

¹⁴ 47 U.S.C. § 159(b)(3). In addition, 47 U.S.C. § 159(b)(4) requires that if the Commission revises its fee schedule based upon Commission rulemaking proceedings or changes in law, it must provide Congress with 90 days notice before such an amendment of the fee schedule can be implemented. See 47 U.S.C. § 159(b)(4).

¹⁵ See 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 Reconsideration*).

¹⁶ See Assessment and Collection of Regulatory Fees for Fiscal Year 2006, *Notice of Proposed Rulemaking*, 71 FR 17410 at ¶ 8 (April 6, 2006) (*FY 2006 NPRM*).

¹⁷ See Assessment and Collection of Regulatory Fees for Fiscal Year 2006, *Notice of Proposed Rulemaking*, at ¶ 8.

that cable regulatory fees should be reduced. NCTA argues that the Commission's per-license fee scheme for DBS rests on an out-dated and faulty premise that the Commission's regulatory responsibilities with respect to DBS are unrelated to the number of end users of satellite services.¹⁸ It asserts that the regulatory landscape for Multichannel Video Programming Distributor (MVPD) has changed significantly in the past 10 years, stating that the Commission's regulatory responsibilities with respect to the cable industry have substantially diminished, while its responsibilities with respect to the DBS industry have increased.¹⁹ NCTA supports this assertion by noting that cable specific rulemakings at the Commission have been on the wane²⁰ and that rate regulation of the cable programming service tier (CPST) ended in 1999, along with all of the Commission's CPST rate review activity.²¹ NCTA then highlights areas where DBS and cable are subject to a host of comparable, and in some cases service-specific, regulations. These include mandatory carriage obligations for broadcast signals, retransmission consent for the carriage of broadcast signals, network non-duplication, syndicated exclusivity and sports programming blackout requirements.²² ACA fully supports NCTA's recommendation that the Commission impose a per-subscriber fee on DBS.²³ ACA points out the overwhelming disparity in regulatory fee assessments on small and medium-sized cable operators as compared to DBS, and states that the disparity places these operators at a structural disadvantage to their DBS competitors.²⁴

14. DirecTV, Inc. and Echostar Satellite L.L.C. (DirecTV and Echostar) filed joint reply comments opposing the arguments of NCTA and ACA. The joint commenters claim that NTCA's proposal is only one part of the cable television industry's nationwide campaign to raise taxes paid by its DBS rivals.²⁵ DirecTV and Echostar assert that the cable industry has failed to show that DBS regulatory fees are out of line with the Commission's DBS regulatory costs and that, accordingly, the cable industry has not made an argument that satisfies the standard set forth in section 9(b)(3) for "permitted amendments," to justify a change to the section 9 regulatory fees for DBS operators.²⁶ Specifically, DirecTV and Echostar maintain that before the Commission can amend the geostationary orbit (GSO) satellite space station fee category, it must, at a minimum, find²⁷ that new rulemaking proceedings or changes in law have caused additions, deletions, or changes to the nature of the GSO space station fee category such that the space station fee no longer reasonably relates to the regulatory costs caused by the GSO space station service for certain regulatory activities, as those costs may be "adjusted" by the benefits to space station operators of such activities.²⁸

15. DirecTV and Echostar maintain that the section 9 statutory conditions have not been met.²⁹

¹⁸ NCTA Comments at 2.

¹⁹ NCTA Comments at 8.

²⁰ NCTA Comments at 8.

²¹ NCTA Comments at 8.

²² NCTA Comments at 9.

²³ ACA Comments at 2.

²⁴ ACA Comments at 2.

²⁵ DirecTV and Echostar Reply Comments at 1 and fn.1.

²⁶ DirecTV and Echostar Reply Comments at 1 and 2.

²⁷ Section 9(b)(3) states: "In making such amendments, the Commission shall add, delete, or reclassify services in the Schedule to reflect additions, deletions, or changes in the nature of its services as a consequence of Commission rulemaking proceedings or changes in law." DirecTV & Echostar do not provide a citation for their interpretation of this provision.

²⁸ DirecTV and Echostar Reply Comments at 3 and 4.

²⁹ DirecTV & Echostar Reply Comments at 4.

They argue that NCTA's justifications for raising DBS section 9 fees are unrelated to the standard for amending fees, as those justifications range from items that have nothing to do with the GSO space station category (market and regulatory changes in the cable industry), to items that have nothing to do with rulemakings or law (DBS subscriber gains, cable subscriber losses), or to regulatory proceedings in which DBS participation has not changed significantly in years (video programming competition, closed captioning, *etc.*)³⁰

16. We are not persuaded by NCTA's arguments that modifications to the section 9 regulatory fee structure are warranted at this time. We agree with DirecTV and Echostar that NCTA has not shown that the requirements of section 9 would be better satisfied by the reclassification of DBS and the assessment of the DBS fee on a per subscriber basis, as proposed by NCTA. We therefore will continue to use the section 9 regulatory fee classification of DBS as a GSO service and assess the fee on a per satellite basis as adopted by the Commission in prior fiscal years. The existing regulatory fee classification and related methodology has ensured that regulatory fees are reasonably related to the benefits provided by the Commission's activities.³¹ In addition the existing classification and methodology retained herein has been proven to result in collecting the amount required by Congress in its annual appropriations for the Commission.³² Finally, as a practical matter, we do not have sufficient time available to modify the section 9 regulatory fee classification and methodology as proposed by NCTA and still comply with the 90-day congressional notification requirement before we start our regulatory fee collections in the August/September time frame. For these reasons, we decline to adopt the NCTA's proposals and instead retain the existing section 9 regulatory fee classification and methodology for DBS at this time.

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

17. On April 27, 2006, the Commission adopted a framework for BRS/EBS regulatory fees in a BRS/EBS rulemaking.³³ Briefly, the Commission adopted a MHz-based formula for BRS with tiered fees by markets, similar to our annual scale for broadcast television stations, but on a more simplified scale.³⁴ As we proposed in the *FY 2006 NPRM*,³⁵ we would not implement these changes in our FY 2006 schedule of section 9 regulatory fees because the still-pending nature of the BRS/EBS rulemaking would not afford us with sufficient notice to do so. Accordingly, for FY 2006, BRS regulatory fees will be assessed using the rules currently in effect. For EBS, the Commission decided that section 9 regulatory fees should not be assessed on this service,³⁶ which is consistent with our current policy of not assessing section 9 regulatory fees on ITFS (Instructional Television Fixed Service).

5. International Bearer Circuits

18. On February 6, 2006, VSNL Telecommunications (US) Inc. (VSNL) filed a Petition for Rulemaking urging the Commission to modify the current International Bearer Circuit Fee rules and

³⁰ DirecTV & Echostar Reply Comments at 4.

³¹ 47 U.S.C. § 159 (b)(1)(A)

³² 47 U.S.C. § 159 (b)(1)(B)

³³ 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.*, Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order, FCC 06-46, ¶¶ 367-376 (rel. April 27, 2006) (*BRS/EBS Second Report and Order*).

³⁴ See *id.*, ¶ 376.

³⁵ See *FY 2006 NPRM*, 71 FR at 17412 ¶ 9 (April 6, 2006) (proposed not to implement in the FY 2006 schedule of section 9 Regulatory Fees any changes that might be adopted in the BRS/EBS proceeding).

³⁶ See *BRS/EBS Second Report and Order* at ¶ 373.

policies as applied to non-common carrier (*i.e.*, private) submarine cable operators.³⁷ This Petition remains pending before the Commission, which issued a Public Notice designating the proceeding as RM-11312 and requesting comment on the Petition.³⁸ In the *FY 2006 NPRM*, we stated that the complex issues presented by the VSNL Petition warranted consideration separately from the Commission's annual regulatory fee proceeding process, and that any comments on these issues arising from the *FY 2006 NPRM* would be addressed with the record generated by the VSNL Petition.³⁹ Apollo Submarine Cable System, Ltd. (Apollo), one of the parties that submitted comments on the VSNL Petition, also filed comments on the International Bearer Circuit Fee issue in response to the *FY 2006 NPRM*.⁴⁰ In accordance with our stated intent in the *FY 2006 NPRM*, we incorporate Apollo's instant comments into the VSNL Petition proceeding, RM-11312.

B. Clarifications

1. Clarification Regarding When Section 9 Regulatory Fees are Collected

19. We continue to receive many inquiries each year from regulatees as to whether section 9 regulatory fees are collected in advance of our fiscal year, or whether they are collected in arrears. The Commission's fiscal year is the period of time from October 1 through September 30.⁴¹ The Commission generally collects section 9 regulatory fees in August and/or September toward the end of the fiscal year, and the Commission will maintain the same regulatory fee schedule in FY 2006.

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

20. The first eleven fee categories in our Attachment D, Schedule of Regulatory Fees, constitute a grouping known as "small wireless fees" for multi-year wireless fees.⁴² Regulatory fees for this grouping are generally paid in advance for the entire 5-year or 10-year term of the license at the time that a renewal application (or application for a new license) is filed. Because these regulatory fees are paid when a renewal application (or application for a new license) is filed, these "small wireless fees" can be paid at any time during the fiscal year whenever the relevant application is filed. As a result, there has been some confusion as to whether the prior fiscal year (prior FY) or current fiscal year (current FY) rate applies when a renewal application (or application for a new license) is filed near the effective date of the current FY regulatory fees. The Commission clarified this matter in the *FY 2005 R&O and Order on Reconsideration*⁴³ and we provide further clarification below.

21. In general, the applicable fee is the one in effect as of the date that the relevant application is filed. Thus, the current FY regulatory fee is applicable if the official filing date of the application is on or after the effective date of the current fee. The current FY regulatory fees generally become effective 30 or 60 days after publication of the regulatory fees Order in the *Federal Register*, or in some instances, 90 days after delivery of the Order to Congress. Generally, the "effective date" of the current fiscal year regulatory fees is published in a public notice soon after the Order is released.

³⁷ See Petition for Rulemaking of VSNL Telecommunications (US) Inc., RM-11312 (filed February 6, 2006).

³⁸ See Consumer and Governmental Affairs Bureau, Reference Information Center, *Public Notice*, Report No. 2759 (released February 15, 2006).

³⁹ See *FY 2006 NPRM* at footnote 20.

⁴⁰ See Apollo Comment at 2 and at footnote 6.

⁴¹ By way of example, our Fiscal Year 2006 began on October 1, 2005 and runs through September 30, 2006.

⁴² See 47 CFR § 1.1152 (note 1). "Small fees are collected in advance for the entire license term. Therefore, the annual fee amount shown in this table that is a small fee . . . must be multiplied by the 5- or 10-year license term, as appropriate to arrive at the total amount of the regulatory fees owed . . ."

⁴³ *FY 2005 R&O and Order on Reconsideration* at ¶ 26.

22. We wish to clarify the applicable filing date for wireless licenses in the fee category above. The Commission's rules for renewal of wireless licenses provide that licensees may file their renewal applications, and thus make regulatory fee payments, no more than 90 days prior to the expiration date of their licenses.⁴⁴ For the small wireless fees categories, the regulatory fee rate that applies depends upon the filing date of the application, *i.e.*, the date that the application is electronically or manually filed with the Commission in accordance with the Commission's rules. However, applicants filing electronically have varying payment options that in some cases include the option to submit the payment manually with FCC Form 159. In this case, the applicant must submit payment so that it is received within 10 days of filing the application electronically. As a result, an application that is filed shortly before the new FY fee rate becomes effective may result in payment occurring after the new FY fee rate is effective. In such cases, the fee rate will be calculated based on the prior FY fee rate because the application was electronically filed before the effective date of the current FY fee rate.

3. Clarification Regarding Experimental Licenses

23. It has come to our attention that some licensees mistakenly believe that they have a section 9 fee obligation for their experimental licenses. We clarify that holders of experimental licenses are not required to pay regulatory fees for such licenses. Any holder of an experimental license who has mistakenly paid a regulatory fee for such license may submit a refund request in accordance with the Commission's rules.⁴⁵

C. Administrative and Operational Issues

24. In our *FY 2006 NPRM*, we invited 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, administrative and operational issues do impact the process of submitting fee payments. We sought general comment on ways to improve current processes. Mr. Kenneth J. Brown submitted comments on these issues, raising concerns over past practices regarding the accuracy of the Commission's billing of earth station non-payers. Mr. Brown states that last year the Commission erroneously sent licensees of recently-granted earth stations past-due bills for FY 2005 regulatory fees despite that fact that those earth stations licenses were granted after October 1, 2004 (the effective date for FY 2005 regulatory fees).⁴⁶ Because of this, Mr. Brown urges the Commission not to act on its proposal to expand its pre-billing initiatives to the earth station service category.⁴⁷

25. In prior years the Commission's practice for issuing past-due bills was as follows. After the close of each annual regulatory fee collection cycle, we compared the FCC Registration Number (FRN) of those entities who paid with the total number of licensed entities in each fee service category and then sent those entities not having a record of payment a request for late payment or for information that clarifies their payment status. For FY 2006, we have obtained from each licensing system the names of the entities that had been granted licenses on or before October 1, 2005, prior to the start of the regulatory fee collection cycle. Using this information, we anticipate improvements in the post-regulatory fee season billing process that addresses the problem noted by Mr. Brown. Also, this fiscal year we have opted not to expand our pre-billing initiatives to the earth station category nor to any other categories, due to logistical and resource constraints.

⁴⁴ See 47 CFR § 1.949(a).

⁴⁵ See 47 C.F.R. §§1.1160(d), 1.1162. Refund requests should be sent via surface mail to: Federal Communications Commission, Office of the Managing Director, 445 12th Street, S.W., Room 1-A625, Washington, DC 20554, Attention: Regulatory Fee Refund Request.

⁴⁶ Comments of Kenneth J. Brown at 1-2.

⁴⁷ Comments of Kenneth J. Brown at 1.

26. In his comments, Mr. Brown also states that he erroneously overpaid a regulatory fee obligation through Fee Filer and complains of the length of time it has taken for the Commission to process his refund request. Entities who do not receive a timely response to their refund request should call ARINQUIRES via the FCC Financial Operations Help Desk at 1-877-480-3201, Option 4, or email ARINQUIRES@fcc.gov to obtain a status update.

1. Mandatory Use of Fee Filer

27. In our *FY 2006 NPRM*, we sought comment on the impact of instituting a mandatory usage requirement for our electronic Fee Filer software application for large-volume section 9 regulatory fee payers. We invited comments solely to establish a record on this topic, stating that any such requirement would not be put into effect until FY 2007 or later.⁴⁸ We received no comments supporting such action, one comment unfavorable to the use of Fee Filer in general,⁴⁹ and one comment requesting that, if Fee Filer usage becomes mandatory, cable television operators serving less than 5,000 subscribers should have the option to mail their regulatory fee payments instead of using Fee Filer.⁵⁰ In view of the foregoing, we will not mandate use of our Fee Filer software for large-volume section 9 regulatory fee payers either in FY 2006 or FY 2007. We continue to encourage regulatees to use Fee Filer, especially those that would otherwise submit more than twenty-five (25) hardcopy Form 159-Cs.

2. Proposals for Notification and Collection of Regulatory Fees

28. In this section, we sought 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 will 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 Help Desk at (877) 480-3201, Option 4.

29. 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 select fee categories discussed below.⁵¹ 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 regulatory fees. Eventually, we intend to expand our billing initiatives to include all regulatory fee service categories.

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

30. 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 1st of each year. Throughout FY 2002 and FY 2003, we refined the FCC Form

⁴⁸ *FY 2006 NPRM* at ¶ 11.

⁴⁹ Comments of Kenneth J. Brown at 3.

⁵⁰ American Cable Association (ACA) Comments at 6.

⁵¹ 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 47 C.F.R. §§ 1.1161(c), 1.1164(f)(5), and 1.1910.

159-W to simplify the regulatory fee payment process.⁵² 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. In the *FY 2006 NPRM*, we sought comment on this billing initiative and ways to improve it. We received no comments or reply comments on our ITSP billing initiative, and will therefore continue our ITSP, Form 159-W, billing initiative in FY 2006.

b. Satellite Space Station Licensees -- Billed

31. 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.

32. In the *FY 2006 NPRM*, we sought comment on this billing initiative and on ways to improve it. We received no comments or reply comments on the satellite billing initiative, and will therefore continue our practice of billing GSO and NGSO satellite space station fee categories for FY 2006. We emphasize that the bills that we 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.

c. Additional Service Categories for Billing or Assessing

33. We initially explored the feasibility of expanding our FY 2006 section 9 regulatory fee billing initiatives to include three additional service categories: Earth Stations, Cable Television Relay Service Stations (CARS), and the Local Multipoint Distribution Service (LMDS). We did not receive any comments supporting the billing of these three additional categories, and therefore will not pursue these additional billing initiatives in this fiscal year.

d. Media Services Licensees -- Assessed

34. 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 received no comments or reply comments to improve our assessment initiative for media services licensees. Therefore, we will continue our postcard initiative in the manner originally planned for FY 2006.⁵³

⁵² 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.

⁵³ 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.

35. Consistent with the procedures we used last year, we will 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 be furnished 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.⁵⁴

36. In the past, some media services licensees have mistakenly mailed their postcards back to the Commission stapled to payment checks. We emphasize that 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. If the licensee does not submit a completed Form 159 along with its fee payment, we will not be able to guarantee that a licensee's regulatory fee payment will be posted accurately to the licensee's account.

37. 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. If the facility ID number is not provided, we will not be able to guarantee that a licensee's regulatory fee payment will be posted accurately to the licensee's account.

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

38. In FY 2004, the Commission began using telephone number data from the Numbering Resource Utilization Forecast (NRUF) form to assess regulatory fees on CMRS providers. Specifically, telephone number data is used to determine the number of subscribers upon which a regulatory fee assessment will be based. In both FY 2004 and FY 2005, we sought and received comments and reply comments from licensees that helped us to improve the CMRS cellular/mobile assessment process. For FY 2006, we again solicited, but did not receive, any comments or reply comments regarding the use of telephone number data to determine the subscriber count of CMRS providers. We continue to find telephone numbers to be a reliable, accurate method for determining subscriber counts for regulatory fee purposes. Based on our review of FY 2005 results, the Commission first assessed regulatory fees on 184.7 million numbers. The adjustment process resulted in a minor reduction of only 0.2 percent, or approximately 0.3 million telephone numbers. Therefore, as in prior years,⁵⁵ we will send an assessment letter to CMRS providers using telephone number data based on the Numbering Resource Utilization Forecast (NRUF) form, which includes a list of the carrier's Operating Company Telephone Numbers (OCNs) upon which the assessment is based.⁵⁶ 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 will also 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.

⁵⁴ The Commission-authorized web site for media services licensees is <http://www.fccfees.com>.

⁵⁵ See *FY 2005 R&O and Order on Reconsideration*, 20 FCC Rcd 12259, 12264 ¶¶ 38-44.

⁵⁶ As described below, the NRUF figure will be adjusted for porting.

39. 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 in the letter) 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.

40. 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 as calculated using telephone number data from the NRUF report. 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.

41. 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 will include porting information (e.g., information on the number of “ports in” and “ports out”) in our “initial” assessment letter so that licensees can account for any differences between the telephone number data submitted in their NRUF report and the Commission’s assessment count.

42. Although an initial and a final assessment letter will be mailed to carriers that have filed an NRUF form, some carriers may not be sent any letters of assessment because they did not file the NRUF form. These carriers should compute their fee payment using the standard methodology⁵⁷ 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 themselves, 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.

43. In summary, we will (1) derive the subscriber count from NRUF telephone data based on “assigned” telephone 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 the subscriber count listed on the initial assessment letter, and (3) require carriers to confirm their subscriber counts on an aggregate basis using telephone number data in the NRUF report.

f. Cable Television Subscribers – Assessed

44. We adopt our proposal to generate fee assessment letters for the cable television industry consistent with the process the Commission used in FY 2005. We received one reply comment from the American Cable Association supporting the Commission’s initiative “to send out the fee assessment letters and emails to remind cable operators of their fee payment obligations.”⁵⁸ Under our proposal, we will 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, and request that they access a Commission-authorized web site to provide their aggregate basic cable subscriber count as of December 31, 2005. Also, as an additional means of notifying cable television regulatees of their section 9 regulatory fee payment obligations for FY 2006, we will send an e-mail reminder to all operators that have an e-mail address

⁵⁷ Federal Communications Commission, *Regulatory Fees Fact Sheet: What You Owe - Commercial Wireless Services for FY 2005* at 1 (rel. July 2005). (<http://www.fcc.gov/fees/regfees.html>)

⁵⁸ Reply comments from the American Cable Association at 6.

populated in the Media Bureau's Cable Operations and Licensing System (COALS).

45. 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, thereby certifying the subscriber count as of December 31, 2004; and (3) request that the operator access a 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 at (877) 480-3201, Option 4 to provide their subscriber count as of December 31, 2005.

46. 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.

47. We will also 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 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.

3. Streamlined Regulatory Fee Payment Process for CMRS Providers

48. We proposed in our *FY 2006 NPRM* to permit CMRS Cellular, Mobile, and Messaging service providers 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. Because we are requiring CMRS Cellular/Mobile providers to use the aggregate subscriber totals from their Numbering Resource Utilization Forecast report (NRUF),⁵⁹ netted for porting, it would be consistent for providers to pay their subscriber totals at the aggregate level as well without having to associate subscriber counts with their individual call signs. We received one comment from the American Association of Paging Carriers supporting the Commission's effort to eliminate the requirement of having to allocate the subscriber count with their respective call signs.⁶⁰ We believe that eliminating this requirement will improve the Commission's efficiency in processing regulatory fee payments, as well as reduce the administrative burden on licensees during the payment process. As a result, we eliminate the requirement for CMRS providers to identify their individual call signs when making their regulatory fee payment if they pay their regulatory fees at the aggregate subscriber level.

⁵⁹ For more information on our proposed regulatory fee assessment initiative for CMRS providers this fiscal year, see also Section II.C.2.e. of this *Report and Order*.

⁶⁰ Comments of American Association of Paging Carriers at 3.

III. PROCEDURAL MATTERS

A. Payment of Regulatory Fees

1. De Minimis Fee Payment Liability

49. 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

50. 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.⁶¹ 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

⁶¹ 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.

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, 2005.⁶²

3. Limitations on Credit Card Transactions

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

B. Enforcement

52. As a reminder to all licensees, section 159(c) of the Communications Act requires us to impose an additional charge as a penalty for late payment of any regulatory fee. As in years past, A LATE PAYMENT PENALTY OF 25 PERCENT OF THE AMOUNT OF THE REQUIRED REGULATORY FEE WILL BE ASSESSED ON THE FIRST DAY FOLLOWING THE DEADLINE DATE FOR FILING OF THESE FEES. REGULATORY FEE PAYMENT MUST BE RECEIVED AND STAMPED AT THE LOCKBOX BANK BY THE LAST DAY OF THE REGULATORY FEE FILING WINDOW, AND NOT MERELY POSTMARKED BY THE LAST DAY OF THE WINDOW. Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including the 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

⁶² 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 2005* at 3 (rel. July 2005) (the fact sheet is available on the FCC web-site at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-249904A4.pdf).

assessed on the portion that is not paid in a timely manner.

53. 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.⁶³ 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. Final Paperwork Reduction Act of 1995 Analysis

54. This *Report and Order* 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).

D. Congressional Review Act Analysis

55. The Commission will send a copy of this *Report and Order in MD Docket No. 06-68* in a report to be sent to Congress and the General Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

IV. ORDERING CLAUSES

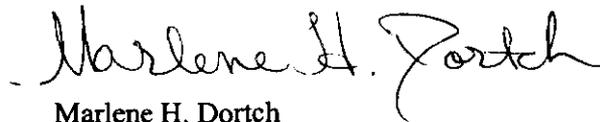
56. Accordingly, IT IS ORDERED pursuant to sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 159, and 303(r) that the FY 2006 section 9 regulatory fee assessment requirements ARE ADOPTED as specified herein.

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

58. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Report and Order in MD Docket No. 06-68*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

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

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

⁶³ See 47 CFR §§ 1.1161(c), 1.1164(f)(5), and 1.1910.

ATTACHMENT A

FINAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by the Regulatory Flexibility Act (RFA),¹ the Commission prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in its *Notice of Proposed Rulemaking, In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2006*.² Written public comments were sought on the FY 2006 fees proposal, including comments on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

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

2. This rulemaking proceeding is initiated to amend the Schedule of Regulatory Fees in the amount of \$298,771,000, the amount that Congress has required the Commission to recover, which includes the collection of an additional \$10,000,000 by the Commission to contribute toward the Nation's debt reduction in fiscal year 2006. The Commission seeks to collect the necessary amount through its revised Schedule of Regulatory Fees in the most efficient manner possible and without undue public burden.

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

3. None.

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

4. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, herein adopted.⁴ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁵ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁶ 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.⁷

¹ 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).

² See Assessment and Collection of Regulatory Fees for Fiscal Year 2006, *Notice of Proposed Rulemaking*, 71 FR 17410 at ¶ 7 (April 6, 2006) (*FY 2006 NPRM*).

³ 5 U.S.C. § 604.

⁴ 5 U.S.C. § 603(b)(3).

⁵ 5 U.S.C. § 601(6).

⁶ 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."

⁷ 15 U.S.C. § 632.

5. **Small Businesses.** Nationwide, there are a total of 22.4 million small businesses, according to SBA data.⁸

6. **Small Organizations.** Nationwide, there are approximately 1.6 million small organizations.⁹

7. **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."¹⁰ As of 1997, there were approximately 87,453 governmental jurisdictions in the United States.¹¹ 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.

8. 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."¹² 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.¹³ 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.

9. **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.¹⁴ According to Commission data,¹⁵ 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 these rules.

10. **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

⁸ See SBA, Programs and Services, SBA Pamphlet No. CO-0028, at page 40 (July 2002).

⁹ Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

¹⁰ 5 U.S.C. § 601(5).

¹¹ U.S. Census Bureau, *Statistical Abstract of the United States: 2000*, Section 9, pages 299-300, Tables 490 and 492.

¹² 15 U.S.C. § 632.

¹³ 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).

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

¹⁵ 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.¹⁶ According to Commission data,¹⁷ 820 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 these rules.

11. **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.¹⁸ According to Commission data,¹⁹ 143 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 these rules.

12. **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.²⁰ According to Commission data,²¹ 770 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 these rules.

13. **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.²² According to Commission data,²³ 654 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 these rules.

14. **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.²⁴ According to Commission data,²⁵

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

¹⁷ “Trends in Telephone Service” at Table 5.3.

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

¹⁹ “Trends in Telephone Service” at Table 5.3.

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

²¹ “Trends in Telephone Service” at Table 5.3.

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

²³ “Trends in Telephone Service” at Table 5.3.

²⁴ 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 these rules.

15. **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.²⁶ According to Commission data,²⁷ 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 these rules.

16. **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.²⁸ According to Commission data,²⁹ 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 these rules.

17. **800 and 800-Like Service Subscribers.**³⁰ 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.³¹ 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.³² 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.

18. **International Service Providers.** The Commission has not developed a small business size standard specifically for providers of international service. The appropriate size standards under SBA rules are for the two broad categories of Satellite Telecommunications and Other Telecommunications.

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²⁵ "Trends in Telephone Service" at Table 5.3.

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

²⁷ "Trends in Telephone Service" at Table 5.3.

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

²⁹ "Trends in Telephone Service" at Table 5.3.

³⁰ We include all toll-free number subscribers in this category, including those for 888 numbers.

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

³² 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).

Under both categories, such a business is small if it has \$12.5 million or less in average annual receipts.³³ 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.³⁴ 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.

19. 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.”³⁵ According to Census Bureau data for 1997, there were 439 firms in this category that operated for the entire year.³⁶ 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.

20. **Wireless Service Providers.** The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of “Paging”³⁷ and “Cellular and Other Wireless Telecommunications.”³⁸ 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.³⁹ 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.⁴⁰ 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.⁴¹ 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.⁴² Thus, under this second category and size standard, the great majority of firms can, again, be considered small.

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

³⁴ 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).

³⁵ Office of Management and Budget, North American Industry Classification System, page 513 (1997) (NAICS code 513390, changed to 517910 in October 2002).

³⁶ 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).

³⁷ 13 C.F.R. § 121.201, NAICS code 513321 (changed to 517211 in October 2002).

³⁸ 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

³⁹ 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).

⁴⁰ 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.”

⁴¹ 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).

⁴² 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.”

21. **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.”⁴³ Under the SBA size standard, such a business is small if it has average annual receipts of \$21 million or less.⁴⁴ According to Census Bureau data for 1997, there were 2,751 firms in this category that operated for the entire year.⁴⁵ Of these, 2,659 firms had annual receipts of under \$10 million, and an additional 67 firms had receipts of between \$10 million and \$24,999,999.⁴⁶ Thus, under this size standard, the great majority of firms can be considered small entities.

22. **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.”⁴⁷ 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.⁴⁸ 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.⁴⁹ 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.⁵⁰ We have estimated that 427 of these are small, under the SBA small business size standard.⁵¹

23. **Common Carrier Paging.** The SBA has developed a small business size standard for wireless firms within the broad economic census categories of “Paging.”⁵² 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 1,320 firms in this category, total, that operated for the entire year.⁵³ Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17

⁴³ 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).

⁴⁴ 13 C.F.R. § 121.201, NAICS code 518111.

⁴⁵ 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).

⁴⁶ 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).

⁴⁷ 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

⁴⁸ 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).

⁴⁹ 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.”

⁵⁰ 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.

⁵¹ 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.

⁵² 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

⁵³ 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).

firms had employment of 1,000 employees or more.⁵⁴ Thus, under this category and associated small business size standard, the great majority of firms can be considered small.

24. 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.⁵⁵ 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.⁵⁶ The SBA has approved this definition.⁵⁷ 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.⁵⁸ Fifty-seven companies claiming small business status won 440 licenses.⁵⁹ 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.⁶⁰ 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.⁶¹ Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service*, 608 private and common carriers reported that they were engaged in the provision of either paging or “other mobile” services.⁶² Of these, we estimate that 589 are small, under the SBA-approved small business size standard.⁶³ We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

25. **Wireless Communications Services.** This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined “small business” for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of \$15 million for each of the three preceding years.⁶⁴ The SBA has approved these definitions.⁶⁵

⁵⁴ 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.”

⁵⁵ 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).

⁵⁶ *Paging Second Report and Order*, 12 FCC Rcd at 2811, para. 179.

⁵⁷ *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.

⁵⁸ *See* “929 and 931 MHz Paging Auction Closes,” Public Notice, 15 FCC Rcd 4858 (WTB 2000).

⁵⁹ *See* “929 and 931 MHz Paging Auction Closes,” Public Notice, 15 FCC Rcd 4858 (WTB 2000).

⁶⁰ *See* “Lower and Upper Paging Band Auction Closes,” Public Notice, 16 FCC Rcd 21821 (WTB 2002).

⁶¹ *See* “Lower and Upper Paging Bands Auction Closes,” Public Notice, 18 FCC Rcd 11154 (WTB 2003).

⁶² *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).

⁶³ 13 C.F.R. § 121.201, NAICS code 517211.

⁶⁴ 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).

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.

26. **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.⁶⁶ Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.⁶⁷ According to the most recent *Trends in Telephone Service* data, 719 carriers reported that they were engaged in wireless telephony.⁶⁸ We have estimated that 427 of these are small under the SBA small business size standard.

27. **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.⁶⁹ 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.⁷⁰ These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.⁷¹ 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.⁷² On March 23, 1999, the Commission reaucted 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.⁷³

28. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very

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⁶⁵ 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.

⁶⁶ 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

⁶⁷ 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

⁶⁸ 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.

⁶⁹ 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).

⁷⁰ 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.

⁷¹ 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.

⁷² FCC News, "Broadband PCS, D, E and F Block Auction Closes," No. 71744 (released January 14, 1997).

⁷³ See "C, D, E, and F Block Broadband PCS Auction Closes," *Public Notice*, 14 FCC Rcd 6688 (WTB 1999).