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Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)
Assessment and Collection of Regulatory Fees for)
Fiscal Year 2007) MD Docket No. 07-81

NOTICE OF PROPOSED RULEMAKING

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I. INTRODUCTION

1. In this *Notice of Proposed Rulemaking* (Notice), we propose to collect \$290,295,160 in regulatory fees for Fiscal Year (FY) 2007, pursuant to section 9 of the Communications Act of 1934, as amended (the Act). These fees are mandated by Congress and are collected to recover the regulatory costs associated with the Commission's enforcement, policy and rulemaking, user information, and international activities.¹

II. DISCUSSION

2. In this Notice, we seek comment on the development of FY 2007 regulatory fees collected pursuant to section 9 of the Act. For FY 2007, we tentatively propose to retain the established methods and policies that the Commission has used to collect section 9 regulatory fees since FY 2003. In addition to seeking comment on the assessment methodology, the Commission typically seeks comment on various administrative and operational issues affecting the collection of regulatory fees. For the FY 2007 regulatory fee cycle, we propose to retain the vast majority of the administrative measures used for notification, assessment and pre-billing of regulatory fees in previous years, such as generating pre-completed regulatory fee assessment forms for certain regulatees. Consistent with past practice, we seek comment on ways to improve the Commission's administrative processes for notifying entities of their regulatory fee obligations and collecting their payments. Finally, we seek comment on applying the same regulatory fee obligations applicable to interstate telecommunications providers to providers of interconnected voice over Internet Protocol services.

3. The Commission is obligated to collect \$290,295,160 in regulatory fees during FY 2007 to fund the Commission's operations. Consistent with our established practice, we intend to collect these regulatory fees in the August-September 2007 time frame in order to collect the required amount by the end of the fiscal year.

A. FY 2007 Regulatory Fee Assessment Methodology

1. Development of FY 2007 Regulatory Fees

a. Calculation of Revenue and Fee Requirements

4. For our FY 2007 regulatory fee assessment, we propose to use essentially the same section 9 regulatory fee assessment methodology adopted for FY 2006. Each fiscal year, the Commission

¹ 47 U.S.C. § 159(a).

proportionally allocates the total amount that must be collected via section 9 regulatory fees. The results of our proposed FY 2007 regulatory fee assessment methodology (including a comparison to the prior year's results) are contained in Appendix C. For FY 2007, we propose to use the receipts collected through the FY 2006 regulatory fees as the basis for calculating the amount the Commission must collect in FY 2007. To collect the \$290,295,160 required by law, we propose to adjust the FY 2006 amount downward by approximately 2.84 percent.² Consistent with past practice, we propose to divide the FY 2007 amount by the number of payment units in each fee category to determine the unit fee.³ As in prior years, for cases involving small fees (e.g., licenses that are renewed over a multiyear term), we propose to divide the resulting unit fee by the term of the license. We propose to round these unit fees consistent with the requirements of section 9(b)(2).

b. Additional Adjustments to Payment Units

5. In calculating the FY 2007 regulatory fees proposed in Attachment D, we further adjusted the FY 2006 list of payment units (Attachment B) based upon licensee databases and industry and trade group projections. Whenever possible, we verified these estimates from multiple sources to ensure the accuracy of these estimates. In some instances, Commission licensee databases were used, while in other instances, actual prior year payment records and/or industry and trade association projections were used in determining the payment unit counts.⁴ Where appropriate, we adjusted and/or rounded our final estimates to take into consideration events that may impact the number of units for which regulatees submit payment, such as waivers and/or exemptions that may be filed in FY 2007, 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 2007 payment units are based on FY 2006 actual payment units, the number may have been rounded or adjusted slightly to account for these variables.

6. Additional factors are considered in determining regulatory fees for AM and FM radio stations. These factors are facility attributes and the population served by the radio station. The calculation of the population served is determined by coupling current U.S. Census Bureau data with technical and engineering data, as detailed in Attachment E. Consequently, the population served, as well as the class

² The percentage decrease of approximately 2.84 percent is based on the total amount of regulatory fees that was mandated by Congress to be collected in FY 2006, which included an amount of \$288,771,000 in regulatory fees pursuant to section 9 of the Communications Act of 1934, as amended, and an additional \$10,000,000 as required by section 3013 of the Deficit Reduction Act (Public Law 109-171). Together, the total amount of regulatory fees mandated by Congress to be collected in FY 2006 was \$298,771,000. Also, the decrease in regulatory fee payments of approximately 2.84 percent in FY 2007 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, and then adjusted for rounding, the actual fee will likely differ by an amount more or less than 2.84 percent. For example, in industries where the number of payment units is declining, the per-unit regulatory fee amount for FY 2007 may actually be more than the amount for FY 2006.

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

⁴ The databases we consulted include, but are not limited to, the Commission's Universal Licensing System (ULS), International Bureau Filing System (IBFS), Consolidated Database System (CDBS) and Cable Operations and Licensing System (COALS). 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.

and type of service (**AM** or FM), determines the regulatory fee amount to be paid.⁵

2. Commercial Mobile Radio Service (CMRS) Messaging Service

7. Since FY 2003, the Commission has maintained the CMRS Messaging regulatory fee at the rate that was established in FY 2002 (*i.e.*, \$0.08 per subscriber) to account for the messaging industry's declining subscriber base.⁶ We note that between FY 1997 and FY 2006, the CMRS Messaging subscriber base declined 79.7 percent from 40.8 million to 8.3 million, respectively.⁷ We propose to continue the same approach for regulatory fees applicable to the messaging industry in FY 2007, thereby maintaining the industry's regulatory fee at \$0.08 per subscriber. We seek comment on this proposal.

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

8. Recently, the Commission adopted a megahertz-based formula for BRS licensees with tiered fees by markets, similar to but more complex than the Commission's annual scale of regulatory fees paid by broadcast television stations.⁸ According to this formula, annual fees will be charged on a per-megahertz basis based upon three categories of Basic Trading Areas (BTA) population rankings:⁹ Licensees in BTA rankings 1-60 will pay the highest fee, licensees in BTA rankings 61-200 will pay a lesser fee, and licensees in BTA rankings 201-493 will pay the lowest fee.¹⁰ Because this formula is complex, we are assessing the impact of this methodology (using a per-megahertz formula and a BTA populating ranking) on the manner in which regulatory fees are calculated for this class of licensees. We seek comment on how to devise a simple method of calculating regulatory fees that incorporates BTA population rankings and a per-megahertz fee for future fiscal years. We specifically seek comment on a formula for calculating regulatory fees that not only incorporates BTAs and a per-megahertz fee, but a formula that is also sensitive to rural operators in less densely populated areas. We seek comment on this proposal. Due to the complexities mentioned above and the need for detailed analysis, however, we will not implement any such changes for FY 2007.

4. International Bearer Circuits

9. 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 policies

⁵ 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.

⁶ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2003*, MD Docket No. 03-83, Report and Order, 18 FCC Rcd 15985, 15992, ¶ 21 (2003).

⁷ The 40.8 million number represents a unit estimate from *Assessment and Collection of Regulatory Fees for Fiscal Year 1997*, MD Docket No. 96-186, Report and Order, 12 FCC Rcd 17161 (1997), and the 8.3 million figure represents the number of paid units as of fiscal year end 2006.

⁸ 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*, Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order, 21 FCC Rcd 5606, 5756-5759, ¶¶ 367-376 (2006) (*BRS/EBS Second Report and Order*).

⁹ For BRS licensees that are licensed by geographic licensed service area (GSA), the BTA is the geographic center point of where its GSA is located.

¹⁰ *BRS/EBS Second Report and Order*, 21 FCC Rcd 5759, ¶ 376. (Generally, BTAs ranked 1-60 have a population greater than 1 million, BTAs ranked 61-200 have a population 250,000 to 1 million, and BTAs ranked 201-493 have a population of less than 250,000.)

as applied to non-common carrier (*i.e.*, private) submarine cable operators.” We issued a Public Notice designating the proceeding as RM-11312 and requesting comment on the Petition.” We continue to review the record in that proceeding.

5. Interconnected Voice over Internet Protocol Service Providers

10. We tentatively conclude that providers of interconnected voice over *Internet Protocol* (“VoIP”) service¹³ should pay regulatory fees. During FY 2006, the Commission concluded that providers of interconnected VoIP services should contribute to the Universal Service Fund.¹⁴ Based on section 9’s broad mandate that the Commission “assess and collect regulatory fees to recover the costs” of regulatory activities” and our analysis in the 2006 Interim Contribution Methodology Order, we tentatively conclude that the Commission has the legal authority to extend regulatory fee obligations to interconnected VoIP service providers.¹⁶ We seek comment on whether we should assess regulatory fees on providers of interconnected VoIP services based on their revenue, which would be consistent with the regulatory fee methodology used for interstate telecommunications service providers, or whether we should assess regulatory fees using a numbers-based approach, which would be consistent with the methodology used for CMRS providers.

B. Administrative and Operational Issues

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

1. Use of Fee Filer

12. We continue to encourage regulatees to use the Commission’s online electronic Fee Filer application. Using the Commission’s Fee Filer application reduces paperwork burdens on payors because it eliminates the need to file a FCC Form 159. Regulatees submitting more than twenty-five (25) Form 159-Cs are strongly encouraged to use Fee Filer when sending their regulatory fee payment. We note that Fee Filer will accept credit card payments of up to \$99,999.99.

2. Proposals for Notification and Collection of Regulatory Fees

13. In this section, we seek comment on the administrative processes that the Commission uses to notify regulatees and collect regulatory fees. Each year, we generate public notices and fact sheets that

¹¹ See Petition for Rulemaking of VSNL Telecommunications (US) Inc., RM-11312 (filed Feb. 6, 2006) (VSNL Petition).

¹² See Consumer and Governmental Affairs Bureau, Reference Information Center, *Public Notice*, Report No. 2759 (rel. Feb. 15, 2006).

¹³ See 47 C.F.R. § 9.3 for the definition of interconnected VoIP service.

¹⁴ See *Universal Service Contribution Obligations for Providers of Interconnected Voice Over Internet Protocol (VoIP) Service*, WC Docket No. 06-122, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7541, ¶ 46 (2006) (2006 Interim Contribution Methodology Order).

¹⁵ 47 U.S.C. § 159(1).

¹⁶ See 2006 *Interim Contribution Methodology Order* 21 FCC Rcd at 7541, ¶¶ 46-47 (finding that Title I gives the Commission subject matter jurisdiction over interconnect VoIP services and that imposition of a universal service contribution obligation is reasonably ancillary to effective performance of the Commission’s obligations under section 254 of the Act). Here, the regulatory fee obligation would be reasonably ancillary to the Commission’s obligations under section 9 of the Act.

notify regulatees of the fee payment due date and provide additional information regarding regulatory fee payment procedures. Consistent with our established practice, we propose to provide public notices, fact sheets and all other relevant material on our website at <http://www.fcc.gov/fees/regfees.html> for the FY 2007 regulatory fee cycle. Regulatees are then expected to pay their yearly regulatory fees by filing **FCC Form 159** or by accessing the Commission's Fee Filer web application. As a general practice, we will not send regulatory fee material to regulatees via surface mail. However, in the event that regulatees do not have access to the Internet, we will mail public notices and other relevant material upon request. Regulatees and the general public may request such information by contacting the FCC Financial Operations HelpDesk at (877) 480-3201, Option 4. We seek comment on ways to improve our administrative processes.

14. As discussed above, we do not send public notices and fact sheets to regulatees *en masse*. We propose, however, to continue to send specific regulatory fee pre-bills or assessment notifications via surface mail to the select fee categories discussed **below**.¹⁷ Pre-bills are hardcopy billing statements that the Commission mails to certain regulatees. Currently, the Commission only sends pre-bills to interstate telecommunications service providers (ITSPs) and satellite space station licensees. The remaining regulatees do not receive pre-bills. We are pursuing our pre-billing initiatives as **part of our** effort to modernize our financial practices. These initiatives also provide licensees with notification of upcoming regulatory fees. We seek comment on expanding our pre-billing initiatives to include other regulatory fee service categories.

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

15. In FY 2001, we began mailing pre-completed FCC Form 159-W assessments to carriers in an effort to assist them in paying their Interstate Telecommunications Service Provider (**ITSP**) regulatory fee. The fee amount on FCC Form 159-W was calculated from the FCC Form 499-A worksheet. Beginning in FY 2004, we mailed the completed FCC Form 159-W as a pre-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. We seek comment on continuing this pre-billing process in FY 2007.

16. We also propose to round lines 14 (total subject revenues) and 16 (total regulatory fee owed) on FCC Form 159-W to the nearest dollar. Line 14 must be rounded to a whole dollar amount because this data field is linked to the FCC Form 159 Remittance Advice Block 25A (quantity), which can only accept whole numbers. It logically follows that if line 14 must be rounded, then the form's final line that calculates the total fee owed (line 16) should be rounded to the nearest dollar, as well. Also, rounding lines 14 and 16 will nominally ease the filing and payment burdens of our Form 159-W filers. We seek comment on these proposals and on other ways that we could improve our pre-billing initiative for ITSPs.

b. Satellite Space Station Licensees

17. Beginning in FY 2004, we mailed regulatory fee pre-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

¹⁷ 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 accounting system as a current debt. A pre-bill is considered an account receivable in the Commission's accounting system. Pre-bills reflect the amount owed and have a payment due date of the last day of the regulatory fee payment window. Consequently, if a pre-bill is not paid by the due date, it becomes delinquent and is subject to our debt collection procedures. See also 47 C.F.R. §§ 1.1161(c), 1.1164(f)(5), and 1.1910.

as a spare satellite). Non-geostationary orbit space station (NGSO) licensees received pre-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.

18. For FY 2007, we propose to continue mailing pre-bills for our GSO and NGSO satellite space station categories. We seek comment on this proposal. We emphasize that the pre-bills that we propose to generate for our GSO and NGSO licensees will only be for the satellite or system aspects of their respective operations. GSO and NGSO licensees typically have regulatory fee obligations in other service categories (such as earth stations, broadcast facilities, *etc.*), and we expect satellite operators to meet their full fee payment obligation for all of their FCC holdings. We seek comment on our proposal to generate regulatory fee pre-bills for our two satellite space station service categories.

c. **Additional Service Categories for Billing**

19. We propose to expand our section 9 regulatory fee pre-billing initiative to include the service categories for Earth Stations and Cable Television Relay Service (CARS) Stations, beginning in **FY 2007**. Pre-billing can be accomplished for these categories because they are comprised of relatively few payment units (relative to many other categories in our Schedule of Regulatory Fees), and because the Commission maintains licensing databases for both categories. We seek comment on *our* proposal to send regulatory fee pre-bills via surface mail to licensees of Earth Stations and CARS.

d. **Media Services Licensees**

20. Beginning in **N 2003**, we sent fee assessment notifications via surface mail to media services entities on a per-facility basis. The notifications provided the assessed fee amount for the facility in question, as well as the data attributes that determined the fee amount. We have since refined **this** initiative with improved results.¹⁸ We propose to continue our assessment initiative for media services licensees **this year**.¹⁹ We seek comment on this proposal.

21. Consistent with procedures used last year, we propose to mail assessment notifications to licensees to their primary record of contact populated in CDBS (Consolidated Database System) and to their secondary record of contact, if available. We will continue to make the Commission-authorized web site available to licensees to update or correct any information concerning their facilities and to amend their fee-exempt status, if need **be**.²⁰ We seek comment on this proposal.

22. Under **our** proposal, licensees must still submit a completed FCC Form 159 Remittance Advice with their fee payments. The assessment notifications cannot be used as a substitute for a completed Form 159.

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

¹⁸ Some of those refinements have been to provide licensees with a Commission-authorized web site to update or correct any information concerning their facilities, and to amend their fee-exempt status, if need be. Also, our notifications now provide licensees with a telephone number to call in the event that they need customer assistance. The notifications themselves have been refined so that licensees of fewer than four facilities receive individual fee assessment postcards for their facilities; whereas licensees of four or more facilities now receive a single assessment letter that lists all of their facilities and the associated regulatory fee obligation for each facility.

¹⁹ Fee assessments are proposed again 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 2007**.

²⁰ The Commission-authorized web site for media services licensees is <http://www.fccfees.com>.

Services Assessments

23. As we have done in prior years, we propose to mail an assessment letter to Commercial Mobile Radio Service (CMRS) providers using data that is based on the Numbering Resource Utilization Forecast (NRUF) form, which includes a list of the carrier's Operating Company Numbers (OCNs) upon which the assessment is based." Consistent with existing practice, the letters will not include OCNs with their respective assigned number counts, but rather, an aggregate total of assigned numbers for each carrier. We also propose to continue our procedure of giving entities an opportunity to amend their subscriber counts by sending two rounds of assessment letters – an initial assessment and a final assessment letter. We seek comment on this proposal.

24. 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 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.

25. If we receive no response or correction to our initial assessment letter, we will expect the fee payment to be based on the number of subscribers listed on the initial assessment. We will review all responses to initial assessment letters and determine whether a change in the number of subscribers is warranted. We will then generate and mail a final assessment letter. The final assessment letter will inform carriers as to whether or not we accept the changed number of subscribers. **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. We seek comment on our current procedures of assessing CMRS subscriber counts (for NRUF filers), and other ways to improve the process.

26. 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 a letter of assessment because they did not file the **NRUF** form. We propose that these carriers compute their fee payment using the standard methodology²² that is currently in place for CMRS Wireless services (e.g., compute their subscriber counts as of December 31, 2006), and submit their payment accordingly on FCC Form 159. However, regardless of whether a carrier receives an assessment letter or computes the subscriber count itself, the Commission may 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, the Commission will assess the carrier for the difference between what was paid and what should have been paid.

27. We, therefore, propose to (1) derive the subscriber count from NRUF data based on "assigned" number counts that have been adjusted for porting to net Type 0 ports ("in" and "out"); (2) provide carriers with an opportunity to revise their subscriber counts at the time when the initial assessment letter is mailed; and (3) require carriers to confirm their subscriber counts at the aggregate level using **data** in the **NRUF** report. We seek comment on these proposals.

²¹ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2005 and Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, MD Docket Nos. 05-59 and 04-73, Report and Order and Order on Reconsideration, 20 FCC Rcd 12259, 12264, ¶¶ 38-44 (2005) (*FY 2005 R&O and Order on Recon*)

²² Federal Communications Commission, *Regulatory Fees Fact Sheet: What You Owe - Commercial Wireless Services for FY 2005* at 1 (rel. Jul. 2005).

f. Cable Television Subscribers

28. We propose to continue to permit cable television operators to base their regulatory fee payment on their company's aggregate year-end subscriber count, rather than requiring them to sub-report subscriber counts on a per community unit identifier (**CUD**) basis on the FCC Form 159 Remittance Advice. We seek comment on this proposal. Operators, after providing their company's aggregate subscriber count in Block 25A of the FCC Form 159, will still be required to certify the accuracy of the subscriber count in Block 30. This practice has worked well for the Commission the past three fiscal years and has eased administrative burdens for the cable television industry.

29. Last year, for the first time, we sent a message to e-mail addresses populated in the Media Bureau's Cable Operations and Licensing System (COALS) to notify recipients of the FY 2006 regulatory fee payment due date and the fee amount for basic cable television subscribers. We propose to continue this effort for FY 2007. We also propose to discontinue our practice of sending fee assessment letters via surface mail to cable television operators who are on file as having paid regulatory fees the previous fiscal year. We seek comment on our proposals.

3. Streamlined Regulatory Fee Payment Process for Commercial Mobile Radio Service (CMRS) Cellular and Mobile Providers

30. In FY 2006, we streamlined the CMRS payment process by eliminating the requirement for CMRS providers to identify their individual calls signs when making their regulatory fee payment, requiring instead for CMRS providers to pay their regulatory fees only at the aggregate subscriber level without having to identify their various call signs.²³ We propose to continue this practice in FY 2007. We seek comment on this proposal. As an additional measure to reduce the administrative burden on CMRS licensees, we propose to consolidate the CMRS cellular and CMRS mobile fee categories into one fee category, thereby eliminating the requirement for CMRS providers to separate their subscriber counts into CMRS cellular and CMRS mobile fee categories during the regulatory fee payment process. We seek comment on this proposal.

31. In our FY 1998 *Report and Order*, the Commission classified Wireless Communications Service (WCS), which included Personal Communications Services (Part 24), as a CMRS Mobile Service, stating that the Commercial Mobile Radio Service (CMRS) is "an 'umbrella' descriptive term attributed to various existing broadband services authorized to provide interconnected mobile radio services." However, beginning in FY 1998, a separate fee code was provided for Personal Communications Service (PCS) to monitor the number of units in this category of service. In recent years, the need to track the number of units for CMRS cellular and CMRS mobile separately has become unnecessary, especially for regulatory fee purposes. Therefore, beginning in FY 2007, we propose to consolidate the CMRS cellular and CMRS mobile fee categories into one CMRS fee category. To illustrate, in FY 2007 the CMRS cellular fee category of "0711" and the CMRS mobile fee category of "0712" would be consolidated into the fee category of "0711." Licensees paying regulatory fees for CMRS cellular and CMRS mobile will need only to identify their aggregate subscriber unit totals under the fee code of "0711." We seek comment on this proposal.

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

32. We continue to welcome comments concerning our commitment to reviewing, streamlining, and modernizing our statutorily required fee assessment and collection procedures. Our areas of particular interest include: (1) the process for notifying licensees about changes in the annual Schedule

²³ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2006*, MD Docket No. 06-68, Report and Order, 21 FCC Rcd 8092, 8105, ¶ 48 (2006).

²⁴ See *Assessment and Collection of Regulatory Fees for Fiscal Year 1998*, MD Docket No. 98-36, Report and Order, 63 FR 35847, ¶ 49, and in Attachment H, Detailed Guidance on Who Must Pay Regulatory Fees, ¶ 14 (1998).

of Regulatory Fees and how it can be improved; (2) the most effective way to disseminate regulatory fee assessments and bills, *e.g.*, through surface mail, e-mail, online website, or some other mechanism; (3) the fee payment process, including how the agency's online regulatory fee filing system (Fee Filer) can be enhanced; (4) the timing of fee payments, including whether we should alter the existing section 9 regulatory fee payment window in any way; and (5) the timing of fee assessments and pre-bills.

III. PROCEDURAL MATTERS

A. Payment of Regulatory Fees

1. De Minimis Fee Payment Liability

33. 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 2007 regulatory fees.

2. Standard Fee Calculations and Payment Dates

34. The Commission will, for the convenience of payers, accept fee payments made in advance of the 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 initial construction permits that were granted on or before October **1,2006** for **AM/FM** radio stations, **VHF/UHF** television stations and satellite television stations. Regulatory fees must be paid for all broadcast facility licenses granted on or before October **1,2006**. In instances where a permit or license is transferred or assigned after October **1,2006**, responsibility for payment rests with the holder of **the** permit **or** license as of the fee due date.
- b) Wireline (Common Carrier) Services: Regulatory fees must be paid for authorizations that were granted on or before October **1,2006**. In instances where a permit **or** license is transferred or assigned after October **1,2006**, 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): Regulatory fees must be paid for authorizations that were granted on or before October **1,2006**. The number of subscribers, units or circuits on December 31, 2006 will be used as the basis from which to calculate the fee payment.

The first eleven regulatory fee categories in our Schedule of Regulatory Fees (**see** Attachment D) pay what we refer to as "small multi-year wireless regulatory fees." Entities pay these regulatory fees in advance for the entire amount of **their** 5-year or 10-year term of initial license, and only pay regulatory fees again for the license at the time its next renewal. **So** while we include these eleven categories in **our** Schedule of Regulatory Fees to publicize the fee amounts, we do not actually collect these fees on an annual basis.

- d) Multichannel Video Programming Distributor Services (cable television operators and CARS licensees): Regulatory fees must be paid for the number of basic cable

television subscribers as of December 31, 2006.²⁵ Regulatory fees also must be paid for CARS licenses that were granted on or before October 1, 2006. In instances where a CARS license is transferred or assigned after October 1, 2006, responsibility for payment rests with the holder of the license as of the fee due date.

- e) International Services: Regulatory fees must be paid for earth stations, geostationary orbit space stations and non-geostationary orbit satellite systems that were licensed and operational on or before October 1, 2006. In instances where a license is transferred or assigned after October 1, 2006, responsibility for payment rests with the holder of the license as of the fee due date. Regulatory fees must be paid for international bearer circuits, the payments of which are determined by the number of active circuits as of December 31, 2006.²⁶

B. Enforcement

35. 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

²⁵ 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 subscriberrate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers = Total annual hulk-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 2006, rather than on a count as of December 31, 2006.

²⁶ 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 camer, 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 camer services. Non-common camer 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 camer services. See *Assessment and Collection of Regulatory Fees for Fiscal Year 2001*, MD Docket No. 01-76, Report and Order, 16FCC Rcd 13525, 13593 (2001); *Regulatory Fees Fact Sheet: What You Owe – International and Satellite Services Licensees for FY 2004* at 3 (rel. July 2004) (the fact sheet is available on the FCC web-site at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-249904A4.pdf). On February 6, 2006, VSNL Telecommunications (US) Inc. filed a Petition for Rulemaking urging the Commission to reform the current International Bearer Circuit Fee rules and policies as applied to non-common carrier submarine cable operators. See Petition for Rulemaking of VSNL Telecommunications (US) Inc., RM-11312 (filed February 6, 2006). This Petition remains pending before the Commission, which has issued a Public Notice requesting comment on the petition. See Consumer and Governmental Affairs Bureau, Reference Information Center, *Public Notice*, Report No. 2759 (released February 15, 2006). The Commission intends to resolve the complex issues presented by this Petition separately, and any comments on these issues filed in the instant proceeding will be incorporated into, and addressed, with those filed on the Petition for Rulemaking.

pursuant to the DCIA and 47 C.F.R. §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. In case of partial payments (underpayments) of regulatory fees, 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, then the 25 percent late charge penalty (and other charges and/or sanctions, as appropriate) will be assessed on the portion that is not paid in a timely manner,

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

C. Initial Regulatory Flexibility Analysis

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

D. Initial Paperwork Reduction Act of 1995 Analysis

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

E. Ex Parte Rules

39. **Permit-But-Disclose.** This proceeding will be treated as a "permit-but-disclose" proceeding subject to the "permit-but-disclose" requirements under section 1.1206(b) of the Commission's rules? *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required.²⁹ Additional rules pertaining to oral and written presentations are set forth in section 1.1206(b).

F. Filing Requirements

40. **Comments and Replies.** Pursuant to sections 1.415 and 1.419 of the Commission's rules," interested parties may file comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the

²⁷ See 5 U.S.C. § 603. In addition, the Notice and the IRFA (or summaries thereof) will be published in the Federal Register.

²⁸ See 47 C.F.R. § 1.1206(b); see also 47 C.F.R. §§ 1.1202, 1.1203.

²⁹ See 47 C.F.R. § 1.1206(b)(2).

³⁰ See *id.* §§ 1.415, 1.419.

Federal Government's eRulemaking Portal, **or** (3) procedures for filing paper copies.³¹

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

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

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

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

44. **Accessibility Information.** To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to fcc504@fcc.gov **or** call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document can also be downloaded in Word and Portable Document Format (PDF) at: <http://www.fcc.gov>.

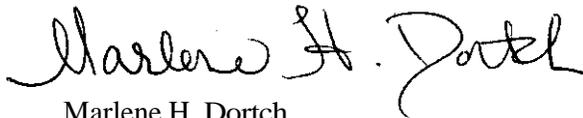
³¹ See *Electronic Filing of Documents in Rulemaking Proceedings*, 13 FCC Rcd 11322 (1998).

IV. ORDERING CLAUSES

45. Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and (j), **9**, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 159, and 303(r), this Notice of Proposed Rulemaking is **HEREBY ADOPTED**.

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

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

ATTACHMENT A

INITIAL REGULATORY FLEXIBILITY ANALYSIS

47. As required by the Regulatory Flexibility Act (RFA),³² the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible *significant* economic impact on small entities by the policies and rules in the present Notice. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed on or before the dates indicated on the first page of this Notice. The Commission will send a copy of the Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.” In addition, the Notice and IRFA (or summaries thereof) will be published in the *Federal Register*.³⁴

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

48. This rulemaking proceeding is initiated to obtain comments concerning the Commission’s proposed amendment of its Schedule of Regulatory Fees in the amount of \$290,295,160, the amount that Congress has required the Commission to recover. The Commission seeks to collect the necessary amount through its proposed Schedule of Regulatory Fees in the most efficient manner possible and without undue public burden.

II. Legal Basis:

49. This action, including publication of proposed rules, is authorized under sections (4)(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended.³⁵

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

50. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.³⁶ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”³⁷ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.” 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.³⁹

³² 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).

³³ 5 U.S.C. 603(a)

³⁴ *Id.*

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

³⁶ 5 U.S.C. § 603(b)(3).

³⁷ 5 U.S.C. § 601(6).

³⁸ 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.”

³⁹ 15 U.S.C. § 632.

51. Small Businesses. Nationwide, there are a total of 22.4 million small businesses, according to **SBA data**.⁴⁰

52. **Small Organizations.** Nationwide, there are approximately 1.6 million small organizations.⁴¹

53. Small Governmental Jurisdictions. The term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”⁴² Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.⁴³ We estimate that, of this total, 84,377 entities were “small governmental jurisdictions.” Thus, we estimate that most governmental jurisdictions are **small**.

54. 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.” 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**.⁴⁶ 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.

55. 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.⁴⁷ According to Commission data,⁴⁸ 1,303 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,303 carriers, an estimated 1,020 have 1,500 or fewer employees and 283 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our proposed action.

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

⁴¹ Independent Sector, The New Nonprofit **Almanac** & Desk Reference (2002).

⁴² 5 U.S.C. § 601(5).

⁴³ **U.S.** Census Bureau, Statistical Abstract of the United States: 2006, Section 8, page 272, Table 415.

⁴⁴ We assume that the villages, school districts, and special districts are small, and total 48,558. See **U.S.** Census Bureau, Statistical Abstract of the United States: 2006, section 8, page 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

⁴⁵ 15 U.S. C. § 632.

⁴⁶ 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).

⁴⁷ 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517110.

⁴⁸ 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.

56. Competitive Local Exchange Carriers (**CLECs**), Competitive Access Providers (**CAPs**), “Shared-Tenant Service Providers,” and “Other Local Service Providers.” Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁴⁹ According to Commission data,⁵⁰ 769 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 769 carriers, an estimated 676 have 1,500 or fewer employees and 94 have more than 1,500 employees. In addition, 12 carriers have reported that they are “Shared-Tenant Service Providers,” and all 12 are estimated to have 1,500 or fewer employees. In addition, 39 carriers have reported that they are “Other Local Service Providers.” Of the 39, an estimated 38 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, “Shared-Tenant Service Providers,” and “Other Local Service Providers” are small entities that may be affected by our proposed action.

57. 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.⁵¹ According to Commission data,⁵² 143 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 141 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by our proposed action.

58. 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.⁵³ According to Commission data,⁵⁴ 770 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 747 have 1,500 or fewer employees and 23 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our proposed action.

59. 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.⁵⁵ According to Commission data,⁵⁶ 654 Carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 652 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our proposed action.

60. 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

⁴⁹ 13 C.F.R. § 121.201, NAICS code 517110.

⁵⁰ “Trends in Telephone Service” at Table 5.3.

⁵¹ 13 CFR § 121.201, NAICS code 517310.

⁵² “Trends in Telephone Service” at Table 5.3.

⁵³ 13 CFR § 121.201, NAICS code 517310.

⁵⁴ “Trends in Telephone Service” at Table 5.3.

⁵⁵ 3 CFR § 121.201, NAICS code 517110.

⁵⁶ “Trends in Telephone Service” at Table 5.3.

standard, such a business is small if it has 1,500 or fewer employees?' According to Commission data,⁵⁸ 316 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 292 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that **may** be affected by our proposed action.

61. **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.⁵⁹ According to Commission data,⁶⁰ 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated **20** have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed action.

62. **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.⁶¹ According to Commission data,⁶² 89 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, **an** estimated 88 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by **our** proposed action.

63. **800 and 800-Like Service Subscribers.**⁶³ 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.⁶⁴ 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.⁶⁵ 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 independently owned and operated or have 1,500 **or** fewer 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.

⁵⁷ 13 C.F.R. § 121.201, NAICS code 517110.

⁵⁸ "Trends in Telephone Service" at Table 5.3.

⁵⁹ 13 C.F.R. § 121.201, NAICS code 517110.

⁶⁰ "Trends in Telephone Service" at Table 5.3.

⁶¹ 13 C.F.R. § 121.201, NAICS code 517310.

⁶² "Trends in Telephone Service" at Table 5.3.

⁶³ We include all toll-free number subscribers in **this** category, including those for 888 numbers.

⁶⁴ 13 C.F.R. § 121.201, NAICS code 517310.

⁶⁵ "Trends in Telephone Service" at Tables 18.4, 18.5, 18.6, and 18.7.

64. International Service Providers. There is no small business size standard developed specifically for providers of international service. The appropriate size standards under SBA rules are for the two broad census categories of "Satellite Telecommunications" and "Other Telecommunications." Under both categories, such a business is small if it has \$13.5 million or less in average annual receipts.⁶⁶

65. The first category of Satellite Telecommunications "comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications."⁶⁷ For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year.⁶⁸ Of this total, 307 firms had annual receipts of under \$10 million, and 26 firms had receipts of \$10 million to \$24,999,999.⁶⁹ Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

66. The second category of Other Telecommunications "comprises establishments primarily engaged in (1) providing specialized telecommunications applications, such as satellite tracking, communications telemetry, and radar station operations; or (2) 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."⁷⁰ For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year.⁷¹ Of this total, 259 firms had annual receipts of under \$10 million and 15 firms had annual receipts of \$10 million to \$24,999,999.⁷² Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

67. Wireless Service Providers. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of "Paging"⁷³ and "Cellular and ~~Other~~ Wireless Telecommunications."⁷⁴ Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year.⁷⁵ Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.⁷⁶

⁶⁶ 13 C.F.R. § 121.201, NAICS codes 517410 and 517910.

⁶⁷ U.S. Census Bureau, 2002 NAICS Definitions, "517410 Satellite Telecommunications"; <http://www.census.gov/epcd/naics02/def/NAICS57.HTM>.

⁶⁸ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 517410 (issued Nov. 2005).

⁶⁹ *Id.* An additional 38 firms had annual receipts of \$25 million or more.

⁷⁰ U.S. Census Bureau, 2002 NAICS Definitions, "517910 Other Telecommunications"; <http://www.census.gov/qcd/naics02/def/NAICS57.HTM>.

⁷¹ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 517910 (issued Nov. 2005).

⁷² *Id.* An additional 14 firms had annual receipts of \$25 million or more.

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

⁷⁴ 13 C.F.R. § 121.201, NAICS code 517212.

⁷⁵ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 517211 (issued Nov. 2005).

⁷⁶ *Id.* 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 for firms with "1000 employees or more."

Thus, under this category and associated small business size standard, the majority of **firms** can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 **firms** in this category that operated for the entire **year**.⁷⁷ Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or **more**.⁷⁸ Thus, under this second category and size standard, the majority of **firms** can, again, be considered small.

68. 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**.”⁷⁹ Under the SBA size standard, such a business is small if it has average annual receipts of \$21 million or **less**.⁸⁰ According to Census Bureau data for 1997, there were 2,751 **firms** in this category that operated for the entire **year**.⁸¹ 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**.⁸² **Thus**, under this size standard, the **great** majority of **firms** can be considered small entities.

69. Cellular Licensees. The SBA has developed a small business size standard for wireless **firms** within the two broad economic census categories of “**Paging**”⁸³ and “**Cellular and Other Wireless Telecommunications**.”⁸⁴ Under both categories, the SBA deems a wireless business to be small if it **has** 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 **firms** in this category that operated for the entire **year**.⁸⁵ Of this total, 804 **firms** had employment of 999 or fewer employees, and three **firms** had employment of 1,000 employees or **more**.⁸⁶ **Thus**, under this category and associated small business size standard, the majority of **firms** can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 **firms** in this category that operated for the entire **year**.⁸⁷ Of this total, **1,378 firms** had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or

⁷⁷ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm **Size** (Including Legal Form of Organization,” Table 5, NAICS code 517212 (issued Nov. 2005).

⁷⁸ *Id.* 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 for firms with “**1000** employees or more.”

⁷⁹ Office of Management and Budget, North American Industry Classification System, page 515 (1997). NAICS code 5181 11, “On-Line Information Services.”

⁸⁰ 13 C.F.R. § 121.201, NAICS code 5181 11.

⁸¹ 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).

⁸² U.S. Census Bureau, 1997 Economic Census, Subject Series: “Information,” Table 4, Receipts Size of Firms

more.⁸⁸ **Thus**, under this second category and size standard, the majority of firms can, again, be considered small.

70. **Common Carrier Paging.** As noted, the **SBA** has developed a small business size standard for wireless firms within *the* broad economic census categories of “Cellular and Other Wireless Telecommunications.”⁸⁹ 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.” 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.⁹¹ Thus, under this category and associated **small** business size standard, the great majority of firms can be considered **small**.

71. In addition, 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**.⁹² 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**.⁹³ The SBA has approved this definition.⁹⁴ 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.⁹⁵ Fifty-seven companies claiming small business status won 440 **licenses**.⁹⁶ 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**.⁹⁷ 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.⁹⁸ Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent **Trends in Telephone Service**, 408 private and common carriers reported that they were engaged in the provision of either paging or “other mobile” **services**.⁹⁹ Of these, we estimate that 589 are small, under the

⁸⁸ *Id.* 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 for firms with “1000 employees or more.”

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

⁹⁰ 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).

⁹¹ U.S. Census Bureau, 1997 Economic Census, Subject Series: “Information,” Table 5, Employment Size of **Finns** 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.”

⁹² 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).

⁹³ Paging Second Report and Order, 12 FCC Rcd at 2811, para. 179.

⁹⁴ See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, from Aida Alvarez, Administrator, Small Business Administration, dated Dec. 2, 1998.

⁹⁵ See “929 and 931 MHz Paging Auction Closes,” Public Notice, 15 FCC Rcd 4858 (WTB 2000).

⁹⁶ See “929 and 931 MHz Paging Auction Closes,” Public Notice, 15 FCC Rcd 4858 (WTB 2000).

⁹⁷ See “Lower and Upper Paging Band Auction Closes,” Public Notice, 16 FCC Rcd 21821 (WTB 2002).

⁹⁸ See “Lower and Upper Paging Bands Auction Closes,” Public Notice, 18 FCC Rcd 11154 (WTB 2003).

SBA-approved small business size standard.” We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

72. 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.” The SBA has approved these definitions.¹⁰² 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.

73. 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.” Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.¹⁰⁴ According to *Trends in Telephone Service* data, 437 carriers reported that they were engaged in wireless telephony.¹⁰⁵ We have estimated that 260 of these are small under the SBA small business size standard.

74. 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.¹⁰⁶ 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.¹⁰⁷ These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.¹⁰⁸ 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

(...continued from previous page)

⁹⁹ *Trends in Telephone Service* at Table 5.3.

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

¹⁰¹ *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).

¹⁰² See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Dec. 2, 1998).

¹⁰³ 13 C.F.R. § 121.201, NAICS code 517212.

¹⁰⁴ 13 C.F.R. § 121.201, NAICS code 517212.

¹⁰⁵ *Trends in Telephone Service* at Table 5.3.

¹⁰⁶ 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).

¹⁰⁷ 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.

¹⁰⁸ See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Dec. 2, 1998).

“very small” business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.¹⁰⁹ On March 23, 1999, the Commission reaucted 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.”

75. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as “small” or “very small” businesses.” Subsequent events, concerning Auction, 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. On February 15, 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction No. 58. There were 24 winning bidders for 217 licenses.¹¹² Of the 24 winning bidders, 16 claimed small business status and won 156 licenses.

76. Narrowband Personal Communications Services. The Commission held an auction for Narrowband PCS licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second auction commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, “small businesses” were entities with average gross revenues for the prior three calendar years of \$40 million or less.” Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses.¹¹⁴ To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order.” A “small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million.¹¹⁶ A “very small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million.¹¹⁷ The SBA has approved these small business size standards.”* A third auction commenced on October 3, 2001

¹⁰⁹ FCC News, “Broadband PCS, D, E and F Block Auction Closes,” No. 71744 (rel. Jan. 14, 1997).

¹¹⁰ See “C, D, E, and F Block Broadband PCS Auction Closes,” *Public Notice*, 14 FCC Rcd 6688 (WTB 1999)

¹¹¹ See “C and F Block Broadband PCS Auction Closes; Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 2339 (2001).

¹¹² See “Broadband PCS Spectrum Auction Closes; Winning Bidders Announced for Auction No. 58,” *Public Notice*, 20 FCC Rcd 3703 (2005).

¹¹³ Implementation of Section 309(j) of the Communications Act – Competitive Bidding Narrowband PCS, *Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 10 FCC Rcd 175,196, para. 46 (1994).

¹¹⁴ See “Announcing the High Bidders in the Auction of ten Nationwide Narrowband PCS Licenses, Winning Bids Total \$617,006,674,” *Public Notice*, PNWL 94-004 (rel. Aug. 2, 1994); “Announcing the High Bidders in the Auction of 30 Regional Narrowband PCS Licenses; Winning Bids Total \$490,901,787,” *Public Notice*, PNWL 94-27 (rel. Nov. 9, 1994).

¹¹⁵ Amendment of the Commission’s Rules to Establish New Personal Communications Services, Narrowband PCS, *Second Report and Order and Second Further Notice of Proposed Rule Making*, 15 FCC Rcd 10456, 10476, para. 40 (2000).

¹¹⁶ Amendment of the Commission’s Rules to Establish New Personal Communications Services, Narrowband PCS, *Second Report and Order and Second Further Notice of Proposed Rule Making*, 15 FCC Rcd 10456, 10476, para. 40 (2000).

¹¹⁷ Amendment of the Commission’s Rules to Establish New Personal Communications Services, Narrowband PCS, *Second Report and Order and Second Further Notice of Proposed Rule Making*, 15 FCC Rcd 10456, 10476, para. 40 (2000).

¹¹⁸ 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 Dec. 2, 1998.

and closed on October 16, 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses.¹¹⁹ Three of these claimed status as a small or very small entity and won 311 licenses.

77. Lower 700 MHz Band Licenses. We adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.” We have defined a “small business” as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.¹²¹ A “very small business” is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.¹²² Additionally, the lower 700 MHz Service has a third category of small business status that may be claimed for Metropolitan/Rural Service Area (MSA/RSA) licenses. The third category is “entrepreneur,” which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.” The SBA has approved these small size standards.¹²⁴ An auction of 740 licenses (one license in each of the 734 MSAs/RsAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.¹²⁵ A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses.¹²⁶ Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.¹²⁷ On July 26, 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz band (Auction No. 60). There were three winning bidders for five licenses. All three winning bidders claimed small business status.

78. Upper 700 MHz Band Licenses. The Commission released a Report and Order, authorizing service in the upper 700 MHz band.¹²⁸ This auction, previously scheduled for January 13, 2003, has been postponed.¹²⁹

79. 700 MHz Guard Band Licenses. In the 700 MHz Guard Band Order, we adopted size standards for “small businesses” and “very small businesses” for purposes of determining their eligibility

¹¹⁹ See “Narrowband PCS Auction Closes,” *Public Notice*, 16 FCC Rcd 18663 (WTB 2001).

¹²⁰ See Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Report and Order*, 17 FCC Rcd 1022 (2002).

¹²¹ See Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Report and Order*, 17 FCC Rcd 1022, 1087-88, para. 172 (2002).

¹²² See Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Report and Order*, 17 FCC Rcd 1022, 1087-88, para. 172 (2002).

¹²³ See Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Report and Order*, 17 FCC Rcd 1022, 1088, para. 173 (2002).

¹²⁴ See Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated Aug. 10, 1999.

¹²⁵ See “Lower 700 MHz Band Auction Closes,” *Public Notice*, 17 FCC Rcd 17272 (WTB 2002).

“See “Lower 700 MHz Band Auction Closes,” *Public Notice*, 18 FCC Rcd 11873 (WTB 2003).

”See “Lower 700 MHz Band Auction Closes,” *Public Notice*, 18 FCC Rcd 11873 (WTB 2003).

¹²⁸ Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, *Second Memorandum Opinion and Order*, 16 FCC Rcd 1239 (2001).

¹²⁹ See “Auction of Licenses for 747-762 and 777-792 MHz Bands (Auction No. 31) Is Rescheduled,” *Public Notice*, 16 FCC Rcd 13079 (WTB 2003).

for special provisions such as bidding credits and installment payments.” A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.¹³¹ Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.¹³² SBA approval of these definitions is not required.” An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.¹³⁴ Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.¹³⁵

80. Specialized Mobile Radio. The Commission awards “small entity” bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years.¹³⁶ The Commission awards “very small entity” bidding credits to firms that had revenues of no more than \$3 million in each of the three previous calendar years.¹³⁷ The SBA has approved these small business size standards for the 900 MHz Service.¹³⁸ The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.¹³⁹ A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder

¹³⁰ See Service Rules for the 746-764 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, *Second Report and Order*, 15 FCC Rcd 5299 (2000).

¹³¹ See Service Rules for the 746-764 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, *Second Report and Order*, 15 FCC Rcd 5299, 5343, para. 108 (2000).

¹³² See Service Rules for the 746-764 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, *Second Report and Order*, 15 FCC Rcd 5299, 5343, para. 108 (2000).

¹³³ See Service Rules for the 746-764 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, *Second Report and Order*, 15 FCC Rcd 5299, 5343, para. 108 n.246 (for the 746-764 MHz and 776-794 MHz bands, the Commission is exempt from 15 U.S.C. § 632, which requires Federal agencies to obtain SBA approval before adopting small business size standards).

¹³⁴ See “700 MHz Guard Bands Auction Closes: Winning Bidders Announced,” *Public Notice*, 15 FCC Rcd 18026 (2000).

¹³⁵ See “700 MHz Guard Bands Auction Closes: Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 4590 (WTB 2001).

¹³⁶ 47 C.F.R. § 90.814(b)(1).

¹³⁷ 47 C.F.R. § 90.814(b)(1).

¹³⁸ See Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated Aug. 10, 1999. We note that, although a request was also sent to the SBA requesting approval for the small business size standard for 800 MHz, approval is still pending.

¹³⁹ See “Correction to Public Notice DA 96-586 ‘FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,’” *Public Notice*, 18 FCC Rcd 18367 (WTB 1996).

claiming small business status won five licenses.¹⁴⁰

81. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the \$15 million size standard.¹⁴¹ In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold.¹⁴² Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

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

83. **220 MHz Radio Service – Phase I Licensees.** The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to “Cellular and Other Wireless Telecommunications” companies. This category provides that a small business is a wireless company employing no more than 1,500 persons.¹⁴³ The Commission estimates that most such licensees are small businesses under the SBA’s small business standard. For census data on these entities, see paragraph 65, *supra*.

84. **220 MHz Radio Service – Phase II Licensees.** The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz Third Report and Order, we adopted a small business size standard for defining “small” and “very small” businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.¹⁴⁴ This small business standard indicates that a “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.¹⁴⁵ A “very small business” is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed \$3 million for the preceding three years.¹⁴⁶ The SBA has approved these small size standards.¹⁴⁷ Auctions of

¹⁴⁰ See “Multi-Radio Service Auction Closes,” Public Notice, 17 FCC Rcd 1446 (WTB 2002).

¹⁴¹ See, “800 MHz Specialized Mobile Radio (SMR) Service General Category (851-854 MHz) and Upper Band (861-865 MHz) Auction Closes; Winning Bidders Announced,” Public Notice, 15 FCC Rcd 17162 (2000).

¹⁴² See, “800 MHz SMR Service Lower 80 Channels Auction Closes; Winning Bidders Announced,” Public Notice, 16 FCC Rcd 1736 (2000).

¹⁴³ 13 C.F.R. § 121.201, NAICS code 517212.

¹⁴⁴ Amendment of Part 90 of the Commission’s Rules to Provide For the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, *Third Report and Order*, 12 FCC Rcd 30943, 11068-70, paras. 291-295 (1997).

¹⁴⁵ *Id.* at 11068, paras. 291.

¹⁴⁶ *Id.*