

DOCKET FILE COPY ORIGINAL Before the Federal Communications Commission Washington, D.C. 20554

In the Matter of )
Assessment and Collection of Regulatory Fees for Fiscal Year 2008 )
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 )

MD Docket No. 08-65
RM No.-11312

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NOTICE OF PROPOSED RULEMAKING AND ORDER

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By the Commission:

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## I. INTRODUCTION

1. Section 9 of the Communications Act of 1934, as amended (“the Act”), requires the Commission to assess fees to recover the regulatory costs associated with the Commission’s enforcement, policy and rulemaking, user information, and international activities.<sup>1</sup> In this Notice of Proposed Rulemaking (“Notice”), we propose to collect \$312,000,000 in regulatory fees for Fiscal Year (“FY”) 2008. In this proceeding we seek comment on several regulatory fee issues for FY 2008 and also announce the new lock box address for payments to the Commission.

## II. DISCUSSION

2. In this Notice, we seek comment on the development of FY 2008 regulatory fees collected pursuant to section 9 of the Act. For FY 2008, we propose to retain the established methods and policies that the Commission has used to collect regulatory fees in the past except as discussed below. For the FY 2008 regulatory fee cycle, we propose to retain most of the administrative measures used for notification, assessment, and pre-billing of regulatory fees of previous years. As we have in previous years, we seek comment on ways to improve the Commission’s administrative processes for notifying entities of their regulatory fee obligations and collecting their payments.

3. The Commission is obligated to collect \$312,000,000 in regulatory fees during FY 2008 to fund the Commission’s operations. Consistent with our established practice, we intend to collect these fees in the August-September 2008 time frame in order to collect the required amount by the end of the fiscal year.

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<sup>1</sup> 47 U.S.C. § 159.

**A. FY 2008 Regulatory Fee Assessment Methodology -- Development of FY 2008 Regulatory Fees**

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

4. For our FY 2008 regulatory fee assessment, we propose to use essentially the same section 9 regulatory fee assessment methodology adopted for FY 2007, except as discussed below. Each fiscal year, the Commission proportionally allocates to fee categories the total amount that must be collected through our section 9 regulatory fees.<sup>2</sup> Consistent with past practice, we propose to divide the FY 2008 payment amount by the number of payment units in each fee category to calculate the unit fee. For cases involving small fees, we propose to divide the resulting unit fee by the term of the license. We propose to round these fees consistent with the requirements of section 9(b)(2) of the Act. We seek comment on these proposals.

**2. Additional Adjustments to Payment Units**

**a. Commercial Mobile Radio Service ("CMRS") Messaging Service**

5. CMRS Messaging Services, which replaced the CMRS One-Way Paging fee category in FY 1997, includes all narrowband services.<sup>3</sup> Since FY 2002, we have proposed to continue our policy of maintaining the CMRS Messaging Service regulatory fee at the rate that was first established in FY 2002<sup>4</sup> (*i.e.*, \$0.08 per subscriber), noting that the subscriber base in this industry has declined significantly.<sup>5</sup> We found that maintaining the CMRS Messaging regulatory fee rate at \$0.08 per subscriber, rather than allowing it to increase, was the appropriate level of relief to be afforded to the messaging industry.<sup>6</sup> In this Notice we propose to maintain the messaging service regulatory fee at \$0.08 per subscriber. We seek comment on this proposal. Commenters suggesting a different approach, *i.e.*, a proposal other than keeping the fee at \$0.08 per subscriber, should provide industry data to support their position.

**b. Regulatory Fee Obligations for AM Expanded Band Broadcasters**

6. The Commission initiated the migration of existing standard band AM stations to the expanded band to reduce interference and congestion in the existing standard band.<sup>7</sup> AM expanded band radio stations, in the 1610-1700 kHz range, are currently exempt from payment of regulatory fees as a matter of policy. Standard band AM stations, in the 540-1600 kHz range, are subject to regulatory fees. Our decision several years ago not to require section 9 regulatory fee payments for AM expanded band

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<sup>2</sup> See Appendix C for the proposed FY 2008 regulatory fee assessment methodology, including a comparison to the FY 2007 results.

<sup>3</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 1997*, MD Docket No. 96-186, Report and Order, 12 FCC Rcd 17161, 17184-85, ¶ 60 (1997) ("*FY 1997 Report and Order*").

<sup>4</sup> 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) ("*FY 2003 Report and Order*").

<sup>5</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, MD Docket No. 07-81, Notice of Proposed Rulemaking, 22 FCC Rcd 7975, 7978, ¶ 7 (2007) ("*FY 2007 NPRM*"). The subscriber base in the paging industry declined 83 percent from 40.8 million to 7.1 million, from FY 1997 to FY 2007, according to FY 2007 collection data, as of September 30, 2007.

<sup>6</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, MD Docket No. 07-81, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15712, 15715, ¶ 9 (2007) ("*FY 2007 Report and Order*").

<sup>7</sup> 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, 12267, ¶ 25 (2005) ("*FY 2005 Report and Order*").

stations was not a permanent exemption from regulatory fees for AM expanded band radio service.<sup>8</sup>

7. We now seek comment on the most efficient methods of assessing a regulatory fee on expanded band AM licenses. We seek comment particularly regarding those instances where the licensee chooses to retain the expanded band service while giving up the standard band station.<sup>9</sup> We also seek comment on whether we should impose a separate regulatory fee on an expanded band licensee that holds a standard band license and continues to operate both stations (*i.e.*, the licensee is not migrating to the expanded band but is keeping two licenses).

#### **B. International Bearer Circuits**

8. In our *FY 2006 NPRM*,<sup>10</sup> we noted that VSNL Telecommunications (US) Inc. (“VSNL”) had filed a Petition for Rulemaking urging the Commission to revise its regulatory fee methodology for bearer circuits;<sup>11</sup> and that we issued a Public Notice designating the proceeding as RM-11312 and requesting comment on the Petition.<sup>12</sup> We stated in our *FY 2006 Report and Order* that the issues presented in the Petition warrant consideration separately from the Commission’s annual regulatory fee proceeding.<sup>13</sup> In our *FY 2007 NPRM*, we received a set of joint comments filed by seven submarine cable landing licensees urging the Commission to take similar action.<sup>14</sup> We grant VSNL’s petition and seek comment herein on the methodology used to calculate regulatory fees for providers of international bearer circuits. We seek comment on whether the Commission should retain the current methodology used to these regulatory fees, or change or modify the methodology (and if so, how?).

#### **C. Administrative and Operational Issues**

9. We seek comment on the administrative and operational processes used to collect the annual section 9 regulatory fees. These issues do not affect the amount of regulatory fees parties are obligated to submit; however, 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**

10. 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 paper FCC Form 159. It also allows payors to make a single payment for pre-billed and non-billed regulatory fees. Regulatees submitting more than ten (10) Form 159-Cs are strongly encouraged to use Fee Filer when sending their regulatory fee payment.

11. Regulatees who file their FCC Form 159 information online via Fee Filer may choose to

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<sup>8</sup> *FY 2005 Report and Order*, 20 FCC Rcd at 12267, ¶ 25.

<sup>9</sup> *See Assessment and Collection of Regulatory Fees for Fiscal Year 2005*, MD Docket No. 05-59, Notice of Proposed Rulemaking, 20 FCC Rcd 3885, 3896, ¶ 36 (2005).

<sup>10</sup> *See Assessment and Collection of Regulatory Fees for Fiscal Year 2006*, MD Docket No. 06-68, Notice of Proposed Rulemaking, 21 FCC Rcd 3708, 3718, n.20 (2006) (“*FY 2006 NPRM*”).

<sup>11</sup> *See* Petition for Rulemaking of VSNL Telecommunications (US) Inc., RM-11312 (filed Feb. 6, 2006) (“VSNL Petition”).

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

<sup>13</sup> *See Assessment and Collection of Regulatory Fees for Fiscal Year 2006*, MD Docket No. 06-68, Report and Order, 21 FCC Rcd 8092, 8098-99, ¶ 18 (2006) (“*FY 2006 Report and Order*”).

<sup>14</sup> *See* Joint Comments at 1.

pay by online ACH debit from a bank account, by online credit card, by check or money order, by wire, or by credit card on paper. Payors wishing to remit payment via check, money order, wire, or credit card on paper must print a Fee Filer-generated Form 159-E Remittance Voucher to accompany payment, in lieu of Form 159. We note that Fee Filer will accept credit card payments of up to \$99,999.99; the FCC accepts ACH debits (via Fee Filer) from a bank account in any denomination. All online payments are considered received by the FCC at the time that the FCC accepts the payor's bank account information or authorizes the payor's credit card.

## 2. New Lock Box Bank

12. We advise all regulatees that the Commission has a new lock box bank. All lock box payments to the Commission for FY 2008 will be processed by U.S. Bank, St. Louis, Missouri, and payable to the FCC. For all regulatory fees, the address is: Federal Communications Commission, Regulatory Fees, P.O. Box 979084, St. Louis, MO 63197-9000.

## 3. New Receiving Bank for Wire Payments

13. We also advise all regulatees that the Commission has a new receiving bank for wire payments. The new receiving bank is the Federal Reserve Bank, New York, New York (TREAS NYC). When making a wire transfer, regulatees must fax a copy of their completed remittance instrument to U.S. Bank, St. Louis, Missouri at (314) 418-4232 at least one hour before initiating the wire transfer (but on the same business day), so as to not delay crediting their account. Wire transfers initiated after 6:00 p.m. (EDT) will be credited the next business day. Complete instructions for making wire payments are posted at <http://www.fcc.gov/fees/wiretrans.html>.

## 4. Proposals for Notification and Collection of Regulatory Fees

14. *Public Notices and fact sheets.* In this section, we seek comment on the administrative processes that the Commission uses to notify regulatees and collect regulatory fees. Each year we post public notices and fact sheets pertaining to regulatory fees on our web site. These documents contain information about the payment due date and the regulatory fee payment procedures. We will continue to post this information on <http://www.fcc.gov/fees/regfees.html>. We seek comment on ways to improve our regulatory fee public notices and fact sheets.

15. Regulatees are expected to pay their yearly regulatory fees by filing FCC Form 159 or by accessing the Commission's online Fee Filer application.<sup>15</sup> 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 Help Desk at (877) 480-3201, Option 4. We seek comment on ways to improve our administrative processes.

16. *Pre-bills.* We will not send public notices and fact sheets to regulatees en masse; however, we propose to continue to send specific regulatory fee pre-bills or assessment notifications via surface mail to the select fee categories discussed below.<sup>16</sup> Pre-bills are hardcopy billing statements that the Commission mails to certain regulatees. The Commission currently sends pre-bills to interstate telecommunications service providers ("ITSPs"), satellite space station licensees (both geostationary and

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<sup>15</sup> <http://www.fcc.gov/fees/feefiler.html>.

<sup>16</sup> An assessment is a proposed statement of the amount of regulatory fees owed by an entity to the Commission (or proposed subscriber count to be ascribed for purposes of setting the entity's regulatory fee) but it is not entered into the Commission's 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.

non-geostationary), to holders of Cable Television Relay Service (“CARS”) licenses, and earth station licensees. The remaining regulatees do not receive pre-bills. We seek comment on ways to improve this practice. Commenters should discuss whether we should add other regulatory fee categories to our pre-bill procedures.

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

17. In FY 2001, we began mailing pre-completed FCC Form 159-W assessments to carriers in an effort to assist them in paying their 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 whether we should continue this pre-billing process for ITSPs in FY 2008.

18. In FY 2007, we adopted a proposal to round lines 14 (total subject revenues) and 16 (total regulatory fee owed) on FCC Form 159-W to the nearest dollar. This revision enabled the Commission to process the ITSP regulatory fee payments more quickly because rounding was no longer a hindrance that slowed the processing of payments. In FY 2008, we will continue to round lines 14 and 16 on FCC Form 159-W to the nearest dollar. We seek comment on other ways that we can improve our pre-billing initiative for ITSPs.

**b. Satellite Space Station Licensees**

19. 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 received bills requesting regulatory fee payment for satellites that (1) were licensed by the Commission and operational on or before October 1 of the respective fiscal year; and (2) were not co-located with and technically identical to another operational satellite on that date (*i.e.*, were not functioning as a spare satellite). Non-geostationary orbit space station (“NGSO”) licensees received 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.

20. For FY 2008, 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 (*e.g.*, earth stations, broadcast facilities), 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. Media Services Licensees**

21. Beginning in FY 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.<sup>17</sup> We propose to continue our assessment initiative for media services

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<sup>17</sup> 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.

licensees in FY 2008.<sup>18</sup> We seek comment on this proposal.

22. Consistent with procedures used last year, we propose to mail assessment notifications to licensees to their primary record of contact populated in our Consolidated Database System (“CDBS”) and to their secondary record of contact, if available. We seek comment on this proposal. 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.<sup>19</sup> If there is a change of address for the facility, it is the licensee’s responsibility to make the address change in the Media Bureau’s CDBS system, as well as in the Commission’s Registration System (“CORES”).

23. Under our proposal, licensees must still submit a completed FCC Form 159 Remittance Advice with their fee payments. The assessment notifications, whether in the form of a letter or postcard, cannot be used as a substitute for a completed Form 159.

**d. CMRS Cellular and Mobile Services Assessments**

24. As we have done in prior years, we propose to mail an assessment letter to Commercial Mobile Radio Service (“CMRS”) providers using data from the Numbering Resource Utilization Forecast (“NRUF”) report that is based on “assigned” number counts that have been adjusted for porting to net Type 0 ports (“in” and “out”).<sup>20</sup> This letter will include a listing of the carrier’s Operating Company Numbers (“OCNs”) upon which the assessment is based.<sup>21</sup> 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 revise their subscriber counts by sending two rounds of assessment letters – an initial assessment and a final assessment letter. We seek comment on this proposal.

25. 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. 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.

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<sup>18</sup> We again propose to issue fee assessments 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 2008.

<sup>19</sup> The Commission-authorized web site for media services licensees is <http://www.fccfees.com>.

<sup>20</sup> 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).

<sup>21</sup> *Id.*

26. Some carriers may not be sent a letter of assessment because they had not filed the NRUF form. We propose that these carriers compute their fee payment using the standard methodology<sup>22</sup> that is currently in place for CMRS Wireless services (e.g., compute their subscriber counts as of December 31, 2007), and submit their payment accordingly on FCC Form 159. The Commission may audit the number of subscribers for which regulatory fees are paid, whether a carrier receives an assessment letter or computes the subscriber count itself. 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.

**e. 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 (“CUID”) 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. Beginning in FY 2006, we sent an electronic message to e-mail addresses populated in the Media Bureau’s Cable Operations and Licensing System (“COALS”) to notify them of the amount and due date of regulatory fees for basic cable television subscribers. We propose to continue this effort for FY 2008, but we are not sure if this notification practice is effective. We seek comment on whether this practice of sending electronic e-mail notification to cable operators should be continued.

**5. Streamlined Regulatory Fee Payment Process for 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.<sup>23</sup> We propose to continue this practice in FY 2008. We seek comment on this proposal. In addition, to lessen the administrative burden on licensees, we proposed in FY 2007 to consolidate the CMRS cellular and CMRS mobile fee categories into one fee category and as one fee code, 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. This consolidation of fee categories enabled the Commission to process payments more quickly and accurately. For FY 2008, we propose to continue this practice of combining the CMRS cellular and CMRS mobile fee categories into one regulatory fee category. We seek comment on this proposal.

**6. Future Streamlining of the Regulatory Fee Assessment and Collection**

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

<sup>23</sup> 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).

### Process

31. We continue to welcome comments concerning our commitment to reviewing, streamlining, and modernizing our statutorily required fee assessment and collection procedures. Our areas of particular interest include: (1) the process for notifying licensees about changes in the annual Schedule of Regulatory Fees and how it can be improved; (2) the most effective way to disseminate regulatory fee assessments and bills, *e.g.*, through surface mail, e-mail, list server using Listserv, 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

32. Consistent with past practice, regulatees whose total FY 2008 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 2008 regulatory fees.

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

33. 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:<sup>24</sup>

- *Media Services*: Regulatory fees must be paid for initial construction permits that were granted on or before October 1, 2007 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, 2007. In instances where a permit or license is transferred or assigned after October 1, 2007, responsibility for payment rests with the holder of the permit or license as of the fee due date.
- *Wireline (Common Carrier) Services*: Regulatory fees must be paid for authorizations that were granted on or before October 1, 2007. In instances where a permit or license is transferred or assigned after October 1, 2007, responsibility for payment rests with the holder of the permit or license as of the fee due date.
- *Wireless Services*: 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, 2007. The number of subscribers, units or circuits on December 31, 2007 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 five-year or ten-year term of initial

<sup>24</sup> As we noted earlier in our request for comments in possible adjustments to payment units, *e.g.*, ¶¶ 6-12, we seek comment addressing several areas in our regulatory fees. Such comments may result in modification of the fee calculations discussed above and the methodology stated below. *See, e.g.*, note 24.

license, and only pay regulatory fees again when the license is renewed or a new license is obtained. We include these eleven categories in our Schedule of Regulatory Fees to publicize our estimates of the number of “small multi-year wireless” licenses that will be renewed or newly obtained in FY 2008.

- *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, 2007.<sup>25</sup> Regulatory fees also must be paid for CARS licenses that were granted on or before October 1, 2007. In instances where a CARS license is transferred or assigned after October 1, 2007, responsibility for payment rests with the holder of the license as of the fee due date.
- *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, 2007. In instances where a license is transferred or assigned after October 1, 2007, 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 based on the number of active circuits as of December 31, 2007.<sup>26</sup>

## B. Enforcement

34. 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. As a reminder to all licensees, section 9(c) of the Act requires us to impose an additional charge as a penalty for late payment of any regulatory fee.<sup>27</sup> 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. Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including

<sup>25</sup> Cable television system operators should compute their basic subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Operators may base their count on “a typical day in the last full week” of December 2007, rather than on a count as of December 31, 2007. *But see* ¶¶ 8-12 above.

<sup>26</sup> Regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers that have active international bearer circuits in any transmission facility for the provision of service to an end user or resale carrier, which includes active circuits to themselves or to their affiliates. In addition, non-common carrier satellite operators must pay a fee for each circuit sold or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. Non-common carrier submarine cable operators are also to pay fees for any and all international bearer circuits sold on an indefeasible right of use (“IRU”) basis or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. Non-common carrier submarine cable operators are also to pay fees for any and all international bearer circuits provided as a private line service to an international common carrier authorized by the Commission to provide U.S. international common carrier services. *See Assessment and Collection of Regulatory Fees for Fiscal Year 2001*, MD Docket No. 01-76, Report and Order, 16 FCC Rcd 13525, 13593 (2001); *Regulatory Fees Fact Sheet: What You Owe – International and Satellite Services Licensees for FY 2004* at 3 (rel. July 2004) (the fact sheet is available on the FCC web-site at: [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-249904A4.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-249904A4.pdf)).

<sup>27</sup> 47 U.S.C. § 159(c).

the Commission's Red Light Rule<sup>28</sup> and the provisions set forth in the Debt Collection Improvement Act of 1996 ("DCIA").<sup>29</sup> We also assess administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the related debt pursuant to the DCIA and section 1.1940(d) of the Commission's rules.<sup>30</sup> 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.

35. 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.<sup>31</sup> 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).<sup>32</sup>

### C. Initial Regulatory Flexibility Analysis

36. An initial regulatory flexibility analysis ("IRFA") is contained in Attachment A of the Appendix. Comments to the IRFA must be identified as responses to the IRFA and filed by the deadlines for comments on the Notice. 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 Analysis

37. This Notice does not contain proposed or modified information collections subject to the Paperwork Reduction Act of 1995 ("PRA"), Public Law 104-13. This Notice 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.<sup>33</sup> The forms already required by the Commission's regulatory fee process have been approved by the Office of Management and Budget under information collection 3060-0589.

### E. Ex Parte Rules

38. This is as a "permit-but-disclose" proceeding subject to the requirements under section 1.1206(b) of the Commission's rules.<sup>34</sup> *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a

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<sup>28</sup> See 47 C.F.R. § 1.1910.

<sup>29</sup> Delinquent debt owed to the Commission triggers application of the "red light rule" which requires offsets or holds on pending disbursements. 47 C.F.R. § 1.1910. In 2004, the Commission adopted rules implementing the requirements of the DCIA. See *Amendment of Parts 0 and 1 of the Commission's Rules*, MD Docket No. 02-339, Report and Order, 19 FCC Rcd 6540 (2004); 47 C.F.R. Part 1, Subpart O, Collection of Claims Owed the United States.

<sup>30</sup> 47 C.F.R. § 1.1940(d).

<sup>31</sup> See 47 C.F.R. §§ 1.1161(c), 1.1164(f)(5), and 1.1910.

<sup>32</sup> See also ¶ 122, below.

<sup>33</sup> See 44 U.S.C. § 3506(c)(4).

<sup>34</sup> See 47 C.F.R. § 1.1206(b); see also 47 C.F.R. §§ 1.1202, 1.1203.

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.<sup>35</sup> Additional rules pertaining to oral and written presentations are set forth in section 1.1206(b).

#### F. Filing Requirements

39. *Comments and Replies.* Pursuant to sections 1.415 and 1.419 of the Commission's rules,<sup>36</sup> interested parties may file comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission's Electronic Comment Filing System ("ECFS"), (2) the Federal Government's eRulemaking Portal, or (3) procedures for filing paper copies.<sup>37</sup>

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

41. *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.

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

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<sup>35</sup> See 47 C.F.R. § 1.1206(b)(2).

<sup>36</sup> See *id.* §§ 1.415, 1.419.

<sup>37</sup> See *Electronic Filing of Documents in Rulemaking Proceedings*, 13 FCC Rcd 11322 (1998).

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

#### IV. ORDER

44. In WT Docket No. 03-66 (the "*BRS/EBS Proceeding*"), the Commission sought comment on proposed changes to the regulatory fee structure for BRS.<sup>38</sup> In 2006, the Commission adopted a new regulatory fee structure for BRS (the "*2006 Decision*").<sup>39</sup> Specifically, as noted in the *FY 2007 NPRM*, the Commission adopted a megahertz-based approach for BRS regulatory fees and, using a concept similar to the Commission's annual scale of regulatory fees for broadcast television stations, established in the *2006 Decision* three rate tiers based on the BTA ranking of each license.<sup>40</sup> Under the *2006 Decision*, BRS regulatory fees will use a MHz-based formula with three tiers of fees by markets. Instead of a flat fee amount per BRS license, BRS licensees will pay a fee in one of three fee categories based on Basic Trading Areas ("BTA") ranked by population size.<sup>41</sup> The highest fee will be assessed to licenses in BTAs ranked 1-60, licenses in BTAs ranked 61-200 will have a lesser fee, and licenses for BTAs ranked 201-493 will pay the lowest fee.<sup>42</sup>

45. In the *FY 2007 NPRM*, we sought comment on the implementation of the new BRS fee structure. Specifically, we invited commenters to suggest a simple method of calculating BRS regulatory fees that incorporates the complexity of using both elements of the *2006 Decision*, namely, the three rate tiers, to be based on the BTA ranking of each license, and the per megahertz fee.<sup>43</sup> In particular, we invited comment on a formula or method for calculating regulatory fees that incorporates the *2006 Decision* in a manner "sensitive to rural operators in less densely populated areas."<sup>44</sup>

46. In a *Further Notice of Proposed Rulemaking*, we proposed to use a weighted average approach based on the *2006 Decision* to establish three tiers of regulatory fees using a 3:2:1 ratio, *i.e.*, 3x for Tier 1, 2x for Tier 2, and 1x for Tier 3, where x equals the base fee amount (Pro-rated FY Revenue Requirement for BRS divided by the weighted total number of BRS payment units).<sup>45</sup> In adopting three

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<sup>38</sup> See *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, WT Docket No. 03-66, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165, 14296, ¶ 357 (2004) ("*BRS/EBS Report and Order and FNPRM*").

<sup>39</sup> See *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, WT Docket No. 03-66, Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order, 21 FCC Rcd 5606, 5756-59, ¶¶ 367-376 (2006) ("*2006 Decision*").

<sup>40</sup> See *FY 2007 NPRM*, 22 FCC Rcd at 7978, ¶ 8 n.8, citing the *2006 Decision*. The three tiers are based on three categories of Basic Trading Areas ("BTA") population rankings: BTAs 1-60, BTAs 61-200, and BTAs 201-493. 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. See *2006 Decision*, 21 FCC Rcd at 5759, ¶ 376.

<sup>41</sup> See *2006 Decision*, 21 FCC Rcd at 5759, ¶ 376.

<sup>42</sup> *Id.*

<sup>43</sup> *FY 2007 NPRM*, 22 FCC Rcd at 7978, ¶ 8.

<sup>44</sup> *Id.*

<sup>45</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, MD Docket No. 07-81, Report and Order and (continued....)

fee tiers for BRS, the Commission considered that BTAs ranked 1-60 generally have a population of greater than one million, BTAs ranked 61-200 generally have population of 250,000 to one million, and BTAs ranked 201-493 have a population of less than 250,000.<sup>46</sup>

47. The second element of the *2006 Decision* involved setting a fee per megahertz of licensed BRS spectrum. However, throughout the nation, BTA-by-BTA, the BRS radio service and its licensees are in the midst of a multi-year transition to a new band plan that, among other things, is modifying the amount of spectrum designated and licensed for BRS.<sup>47</sup> Given the complexities associated with this “moving target,” we tentatively concluded that the public interest would be best served by implementing the fee per megahertz approach after the BRS transition concludes nationwide.<sup>48</sup>

48. Comments on the *2007 FNPRM* were filed by WCA<sup>49</sup> and by the law firm of Blooston, Mordkofsky, Dickens, Duffy, & Prendergast, LLP (“BloostonLaw”).<sup>50</sup> WCA continues to advocate basing regulatory fees on a licensee’s MHz/population, which the Commission has previously rejected.<sup>51</sup> WCA also advocates making no changes until the transition is complete.<sup>52</sup> BloostonLaw argues that there is insufficient information in the record to conclude that this proposal would benefit rural operators.<sup>53</sup> BloostonLaw also contends that the fee should be based on the population within the licensee’s geographic service area.<sup>54</sup>

49. After reviewing the record, we now conclude that we will continue the current practice of charging a flat fee per license until the BRS/EBS transition to the new band plan. Neither of the commenters supported the proposal contained in the *2007 FNPRM*. Furthermore, WCA urges that no changes be made until the transition is complete. We also note that the transition is proceeding quickly. Transition initiation plans have been filed in 355 out of 493 BTAs, and the transition has been completed in 207 BTAs.<sup>55</sup> Any changes we adopt could not take effect until we adopt the changes, the Commission sends a report to Congress, and 90 days passes. If the transition is complete in 2009 or 2010, which seems possible, the interim system proposed in the *2007 FNPRM* could only be in place for one year. This effort would risk confusing licensees, and we believe that devoting Commission resources to implementing this interim system would be difficult to justify. Accordingly, we conclude that we will

(Continued from previous page) \_\_\_\_\_

Further Notice of Proposed Rulemaking, 22 FCC Rcd 15712, 15726-15727, ¶¶ 46-50 (2007) (“*2007 FNPRM*”).

<sup>46</sup> *Id.*, 22 FCC Rcd at 15724-15725, ¶ 49.

<sup>47</sup> The transition plan creates a process for relocating Educational Broadband Service (“EBS”) licensees and BRS licensees from their current channel locations to their new spectrum blocks in the Lower Band Segment (“LBS”), Middle band Segment (“MBS”), or Upper Band Segment (“UBS”). The transition occurs by BTA and is undertaken by a proponent or multiple proponents. A proponent(s) must pay the cost of transitioning EBS licensees. The transition occurs in the following three phases: the Initiation Phase, the Transition Planning Phase, and the Transition Completion Phase.

<sup>48</sup> *FY 2007 FNPRM*, 22 FCC Rcd at 15727, ¶ 50.

<sup>49</sup> Comments of the Wireless Communications Association International, Inc., MD Docket No. 07-81 (filed Sep. 17, 2007) (“WCA Comments”).

<sup>50</sup> Comments, Blooston, Mordkofsky, Dickens, Duffy, & Prendergast, LLP, MD Docket No. 07-81 (filed Sep. 17, 2007) (“BloostonLaw Comments”).

<sup>51</sup> WCA Comments at 3-5.

<sup>52</sup> WCA Comments at 1.

<sup>53</sup> BloostonLaw Comments at 1-3.

<sup>54</sup> *Id.* at 3-4.

<sup>55</sup> As of 2/1/08.

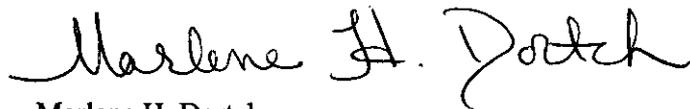
maintain the current system of charging a flat, per-license fee until the transition to the new band plan is complete.

**V. ORDERING CLAUSES**

50. 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 and Order is HEREBY ADOPTED.

51. 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 U.S. Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch  
Secretary

**Attachment A**  
**Initial Regulatory Flexibility Analysis**

52. As required by the Regulatory Flexibility Act (“RFA”),<sup>56</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis (“IRFA”) of the possible significant economic impact on small entities by the policies and rules in the present 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.<sup>57</sup> In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.<sup>58</sup>

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

53. This rulemaking proceeding is initiated to obtain comments concerning the Commission’s proposed amendment of its Schedule of Regulatory Fees in the amount of \$312,000,000, the amount that Congress has required the Commission to recover. The Commission seeks to collect the necessary amount through its proposed Schedule of Regulatory Fees in the most efficient manner possible and without undue public burden.

**II. Legal Basis:**

54. This action, including publication of proposed rules, is authorized under sections (4)(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended.<sup>59</sup>

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

55. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.<sup>60</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>61</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>62</sup> A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in

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<sup>56</sup> 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612 has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104-121, 110 Stat. 847 (1996) (“CWAAA”). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”).

<sup>57</sup> 5 U.S.C. 603(a).

<sup>58</sup> *Id.*

<sup>59</sup> 47 U.S.C. 154(i) and (j), 159, and 303(r).

<sup>60</sup> 5 U.S.C. § 603(b)(3).

<sup>61</sup> 5 U.S.C. § 601(6).

<sup>62</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>63</sup>

56. **Small Businesses.** Nationwide, there are a total of 22.4 million small businesses, according to SBA data.<sup>64</sup>

57. **Small Organizations.** Nationwide, there are approximately 1.6 million small organizations.<sup>65</sup>

58. **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.”<sup>66</sup> Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.<sup>67</sup> We estimate that, of this total, 84,377 entities were “small governmental jurisdictions.”<sup>68</sup> Thus, we estimate that most governmental jurisdictions are small.

59. We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a “small business” under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”<sup>69</sup> The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not “national” in scope.<sup>70</sup> We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

60. **Incumbent Local Exchange Carriers (“ILECs”).** Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>71</sup> According to Commission data,<sup>72</sup> 1,303 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,303 carriers, an estimated 1,020 have 1,500 or fewer employees and

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<sup>63</sup> 15 U.S.C. § 632.

<sup>64</sup> See SBA, Programs and Services, SBA Pamphlet No. CO-0028, at p. 40 (July 2002).

<sup>65</sup> Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

<sup>66</sup> 5 U.S.C. § 601(5).

<sup>67</sup> U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, Section 8, p. 272, Table 415.

<sup>68</sup> 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, p. 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.*

<sup>69</sup> 15 U.S.C. § 632.

<sup>70</sup> Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of “small-business concern,” which the RFA incorporates into its own definition of “small business.” See 15 U.S.C. § 632(a) (“Small Business Act”); 5 U.S.C. § 601(3) (“RFA”). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. See 13 C.F.R. § 121.102(b).

<sup>71</sup> 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517110.

<sup>72</sup> FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, “*Trends in Telephone Service*” at Table 5.3, Page 5-5 (June 2005) (“*Trends in Telephone Service*”). This source uses data that are current as of October 1, 2004.

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.

61. **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.<sup>73</sup> According to Commission data,<sup>74</sup> 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.

62. **Local Resellers.** The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>75</sup> According to Commission data,<sup>76</sup> 143 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 141 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by our proposed action.

63. **Toll Resellers.** The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>77</sup> According to Commission data,<sup>78</sup> 770 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 747 have 1,500 or fewer employees and 23 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our proposed action.

64. **Payphone Service Providers (“PSPs”).** Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>79</sup> According to Commission data,<sup>80</sup> 654 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 652 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our proposed action.

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<sup>73</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>74</sup> “Trends in Telephone Service” at Table 5.3.

<sup>75</sup> 13 C.F.R. § 121.201, NAICS code 517310.

<sup>76</sup> “Trends in Telephone Service” at Table 5.3.

<sup>77</sup> 13 C.F.R. § 121.201, NAICS code 517310.

<sup>78</sup> “Trends in Telephone Service” at Table 5.3.

<sup>79</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>80</sup> “Trends in Telephone Service” at Table 5.3.

65. **Interexchange Carriers (“IXCs”).** Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>81</sup> According to Commission data,<sup>82</sup> 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.

66. **Operator Service Providers (“OSPs”).** Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>83</sup> According to Commission data,<sup>84</sup> 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 20 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed action.

67. **Prepaid Calling Card Providers.** Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>85</sup> According to Commission data,<sup>86</sup> 89 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated 88 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by our proposed action.

68. **800 and 800-Like Service Subscribers.**<sup>87</sup> Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (“toll free”) subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>88</sup> The most reliable source of information regarding the number of these service subscribers appears to be data the Commission receives from Database Service Management on the 800, 866, 877, and 888 numbers in use.<sup>89</sup> According to our data, at the end of December 2004, the number of 800 numbers assigned was 7,540,453; the number of 888 numbers assigned was 5,947,789; the number of 877 numbers assigned was 4,805,568; and the number of 866 numbers assigned was 5,011,291. We do not have data specifying the number of these subscribers that are 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

<sup>81</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>82</sup> “Trends in Telephone Service” at Table 5.3.

<sup>83</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>84</sup> “Trends in Telephone Service” at Table 5.3.

<sup>85</sup> 13 C.F.R. § 121.201, NAICS code 517310.

<sup>86</sup> “Trends in Telephone Service” at Table 5.3.

<sup>87</sup> We include all toll-free number subscribers in this category.

<sup>88</sup> 13 C.F.R. § 121.201, NAICS code 517310.

<sup>89</sup> “Trends in Telephone Service” at Tables 18.4, 18.5, 18.6, and 18.7.

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.

69. **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.<sup>90</sup>

70. 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.”<sup>91</sup> For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year.<sup>92</sup> Of this total, 307 firms had annual receipts of under \$10 million, and 26 firms had receipts of \$10 million to \$24,999,999.<sup>93</sup> Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

71. 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.”<sup>94</sup> For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year.<sup>95</sup> 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.<sup>96</sup> Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

72. **Wireless Service Providers.** The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of “Paging”<sup>97</sup> and “Cellular and Other Wireless Telecommunications.”<sup>98</sup> 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

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<sup>90</sup> 13 C.F.R. § 121.201, NAICS codes 517410 and 517910.

<sup>91</sup> U.S. Census Bureau, 2002 NAICS Definitions, “517410 Satellite Telecommunications”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

<sup>92</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 517410.

<sup>93</sup> *Id.* An additional 38 firms had annual receipts of \$25 million or more.

<sup>94</sup> U.S. Census Bureau, 2002 NAICS Definitions, “517910 Other Telecommunications”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

<sup>95</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 517910.

<sup>96</sup> *Id.* An additional 14 firms had annual receipts of \$25 million or more.

<sup>97</sup> 13 C.F.R. § 121.201, NAICS code 517211.

<sup>98</sup> 13 C.F.R. § 121.201, NAICS code 517212.

show that there were 807 firms in this category that operated for the entire year.<sup>99</sup> Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.<sup>100</sup> 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.<sup>101</sup> Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.<sup>102</sup> Thus, under this second category and size standard, the majority of firms can, again, be considered small.

73. **Internet Service Providers.** The SBA has developed a small business size standard for Internet Service Providers. This category comprises establishments “primarily engaged in providing direct access through telecommunications networks to computer-held information compiled or published by others.”<sup>103</sup> Under the SBA size standard, such a business is small if it has average annual receipts of \$21 million or less.<sup>104</sup> According to Census Bureau data for 1997, there were 2,751 firms in this category that operated for the entire year.<sup>105</sup> Of these, 2,659 firms had annual receipts of under \$10 million, and an additional 67 firms had receipts of between \$10 million and \$24,999,999.<sup>106</sup> Thus, under this size standard, the great majority of firms can be considered small entities.

74. **Cellular Licensees.** The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of “Paging”<sup>107</sup> and “Cellular and Other Wireless Telecommunications.”<sup>108</sup> 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.<sup>109</sup> Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.<sup>110</sup> Thus, under this category and associated small business size standard, the majority of firms can

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<sup>99</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 5, NAICS code 517211.

<sup>100</sup> *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.”

<sup>101</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 5, NAICS code 517212.

<sup>102</sup> *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.”

<sup>103</sup> Office of Management and Budget, North American Industry Classification System, p. 515 (1997). NAICS code 518111, “On-Line Information Services.”

<sup>104</sup> 13 C.F.R. § 121.201, NAICS code 518111.

<sup>105</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: “Information,” Table 4, Receipts Size of Firms Subject to Federal Income Tax: 1997, NAICS code 514191.

<sup>106</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: “Information,” Table 4, Receipts Size of Firms Subject to Federal Income Tax: 1997, NAICS code 514191.

<sup>107</sup> 13 C.F.R. § 121.201, NAICS code 517211.

<sup>108</sup> 13 C.F.R. § 121.201, NAICS code 517212.

<sup>109</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 5, NAICS code 517211.

<sup>110</sup> *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.”

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.<sup>111</sup> Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.<sup>112</sup> Thus, under this second category and size standard, the majority of firms can, again, be considered small.

75. **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.”<sup>113</sup> Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, U.S. Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year.<sup>114</sup> Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more.<sup>115</sup> Thus, under this category and associated small business size standard, the great majority of firms can be considered small.

76. 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.<sup>116</sup> A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.<sup>117</sup> The SBA has approved this definition.<sup>118</sup> An auction of Metropolitan Economic Area (“MEA”) licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold.<sup>119</sup> Fifty-seven companies claiming small business status won 440 licenses.<sup>120</sup> An auction of MEA and Economic Area (“EA”) licenses commenced on October 30, 2001, and closed on December 5, 2001. Of the 15,514 licenses auctioned, 5,323 were sold.<sup>121</sup> One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction,

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<sup>111</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization,” Table 5, NAICS code 517212.

<sup>112</sup> *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.”

<sup>113</sup> 13 C.F.R. § 121.201, NAICS code 517212.

<sup>114</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: “Information,” Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321.

<sup>115</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: “Information,” Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321. The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is “Firms with 1000 employees or more.”

<sup>116</sup> *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems*, Second Report and Order, 12 FCC Rcd 2732, 2811-2812, paras. 178-181 (“*Paging Second Report and Order*”); see also *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems*, Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 10030, 10085-10088, paras. 98-107 (1999).

<sup>117</sup> *Paging Second Report and Order*, 12 FCC Rcd at 2811, para. 179.

<sup>118</sup> See Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau (“WTB”), FCC (Dec. 2, 1998) (“*Alvarez Letter 1998*”).

<sup>119</sup> See “929 and 931 MHz Paging Auction Closes,” Public Notice, 15 FCC Rcd 4858 (WTB 2000).

<sup>120</sup> See *id.*

<sup>121</sup> See “Lower and Upper Paging Band Auction Closes,” Public Notice, 16 FCC Rcd 21821 (WTB 2002).

consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs commenced on May 13, 2003, and closed on May 28, 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.<sup>122</sup> Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service*, 408 private and common carriers reported that they were engaged in the provision of either paging or “other mobile” services.<sup>123</sup> Of these, we estimate that 589 are small, under the SBA-approved small business size standard.<sup>124</sup> We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

77. **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.<sup>125</sup> The SBA has approved these definitions.<sup>126</sup> The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

78. **1670-1675 MHz Services.** An auction for one license in the 1670-1675 MHz band commenced on April 30, 2003 and closed the same day. One license was awarded. The winning bidder was not a small entity.

79. **Wireless Telephony.** Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The SBA has developed a small business size standard for “Cellular and Other Wireless Telecommunications” services.<sup>127</sup> Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.<sup>128</sup> According to *Trends in Telephone Service* data, 437 carriers reported that they were engaged in wireless telephony.<sup>129</sup> We have estimated that 260 of these are small under the SBA small business size standard.

80. **Broadband Personal Communications Service.** The broadband personal communications services (“PCS”) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.<sup>130</sup> For Block F, an additional small business size standard for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross

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<sup>122</sup> See “Lower and Upper Paging Bands Auction Closes,” Public Notice, 18 FCC Rcd 11154 (WTB 2003).

<sup>123</sup> “Trends in Telephone Service” at Table 5.3.

<sup>124</sup> 13 C.F.R. § 121.201, NAICS code 517211.

<sup>125</sup> *Amendment of the Commission’s Rules to Establish Part 27, the Wireless Communications Service (WCS)*, Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

<sup>126</sup> See *Alvarez Letter 1998*.

<sup>127</sup> 13 C.F.R. § 121.201, NAICS code 517212.

<sup>128</sup> 13 C.F.R. § 121.201, NAICS code 517212.

<sup>129</sup> “Trends in Telephone Service” at Table 5.3.

<sup>130</sup> See *Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, Report and Order, 11 FCC Rcd 7824, 7850-7852, paras. 57-60 (1996) (“PCS Report and Order”); see also 47 C.F.R. § 24.720(b).

revenues of not more than \$15 million for the preceding three calendar years.<sup>131</sup> These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.<sup>132</sup> No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 “small” and “very small” business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.<sup>133</sup> On March 23, 1999, the Commission reaucted 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.<sup>134</sup>

81. 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.<sup>135</sup> Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. 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.<sup>136</sup> Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. On May 21, 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction No. 71.<sup>137</sup> Of the 14 winning bidders, six were designated entities.<sup>138</sup>

82. **Narrowband Personal Communications Services.** The Commission held an auction for Narrowband PCS licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second auction commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, “small businesses” were entities with average gross revenues for the prior three calendar years of \$40 million or less.<sup>139</sup> Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses.<sup>140</sup> To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order.<sup>141</sup> A “small business” is an

<sup>131</sup> See *PCS Report and Order*, 11 FCC Rcd at 7852, para. 60.

<sup>132</sup> See *Alvarez Letter 1998*.

<sup>133</sup> FCC News, “Broadband PCS, D, E and F Block Auction Closes,” No. 71744 (rel. Jan. 14, 1997).

<sup>134</sup> See “C, D, E, and F Block Broadband PCS Auction Closes,” *Public Notice*, 14 FCC Rcd 6688 (WTB 1999).

<sup>135</sup> See “C and F Block Broadband PCS Auction Closes; Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 2339 (2001).

<sup>136</sup> See “Broadband PCS Spectrum Auction Closes; Winning Bidders Announced for Auction No. 58,” *Public Notice*, 20 FCC Rcd 3703 (2005).

<sup>137</sup> See “Auction of Broadband PCS Spectrum Licenses Closes; Winning Bidders Announced for Auction No. 71,” *Public Notice*, 22 FCC Rcd 9247 (2007).

<sup>138</sup> *Id.*

<sup>139</sup> *Implementation of Section 309(j) of the Communications Act – Competitive Bidding Narrowband PCS*, Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 10 FCC Rcd 175, 196, para. 46 (1994).

<sup>140</sup> See “Announcing the High Bidders in the Auction of ten Nationwide Narrowband PCS Licenses, Winning Bids Total \$617,006,674,” *Public Notice*, PNWL 94-004 (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).

<sup>141</sup> *Amendment of the Commission’s Rules to Establish New Personal Communications Services, Narrowband PCS*, Second Report and Order and Second Further Notice of Proposed Rule Making, 15 FCC Rcd 10456, 10476, para. 40 (2000) (“*Narrowband PCS Second Report and Order*”).

entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million.<sup>142</sup> A “very small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million.<sup>143</sup> The SBA has approved these small business size standards.<sup>144</sup> A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses.<sup>145</sup> Three of these claimed status as a small or very small entity and won 311 licenses.

83. **Lower 700 MHz Band Licenses.** The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.<sup>146</sup> The Commission defined a “small business” as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.<sup>147</sup> 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.<sup>148</sup> Additionally, the lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area (“MSA/RSA”) licenses. The third category is “entrepreneur,” which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.<sup>149</sup> The SBA approved these small size standards.<sup>150</sup> An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.<sup>151</sup> A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses.<sup>152</sup> Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.<sup>153</sup> 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.

84. The Commission recently reexamined its rules governing the 700 MHz band in the 700

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<sup>142</sup> *Narrowband PCS Second Report and Order*, 15 FCC Rcd at 10476, para. 40.

<sup>143</sup> *Id.*

<sup>144</sup> *See Alvarez Letter 1998*.

<sup>145</sup> *See* “Narrowband PCS Auction Closes,” *Public Notice*, 16 FCC Rcd 18663 (WTB 2001).

<sup>146</sup> *See Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, Report and Order, 17 FCC Rcd 1022 (2002) (“*Channels 52-59 Report and Order*”).

<sup>147</sup> *See Channels 52-59 Report and Order*, 17 FCC Rcd at 1087-88, para. 172.

<sup>148</sup> *See id.*

<sup>149</sup> *See id.*, 17 FCC Rcd at 1088, para. 173.

<sup>150</sup> *See* Letter from Aida Alvarez, Administrator, SBA, to Thomas Sugrue, Chief, WTB, FCC (Aug. 10, 1999) (“*Alvarez Letter 1999*”).

<sup>151</sup> *See* “Lower 700 MHz Band Auction Closes,” *Public Notice*, 17 FCC Rcd 17272 (WTB 2002).

<sup>152</sup> *See* “Lower 700 MHz Band Auction Closes,” *Public Notice*, 18 FCC Rcd 11873 (WTB 2003).

<sup>153</sup> *See id.*