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

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AUG 13 2008

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In the Matter of)	
)	
Assessment and Collection of Regulatory Fees for)	MD Docket No. 08-65
Fiscal Year 2008)	RM-11312
)	

**REPORT AND ORDER
AND FURTHER NOTICE OF PROPOSED RULEMAKING**

Adopted: August 1, 2008

Released: August 8, 2008

Comment Date: [30 days after date of Federal Register publication]
Reply Comment Date: [60 days after date of Federal Register publication]

By the Commission: Chairman Martin and Commissioners Copps, Adelstein, Tate and McDowell
issuing separate statements.

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Attachment E FY 2007 Schedule of Regulatory Fees

I. INTRODUCTION

1. In this Report and Order we conclude a proceeding to collect \$312,000,000 in regulatory fees for Fiscal Year ("FY") 2008, pursuant to section 9 of the Communications Act of 1934, as amended (the "Act"). Section 9 regulatory fees are mandated by Congress and are collected to recover the regulatory costs associated with the Commission's enforcement, policy and rulemaking, user information, and international activities.¹ In this annual regulatory fee proceeding, we retain the established methods, policies, and procedures for collecting section 9 regulatory fees adopted by the Commission in prior years. Consistent with our established practice, we intend to collect these regulatory fees during a filing

¹ 47 U.S.C. § 159(a).

window in September 2008 in order to collect the required amount by the end of our fiscal year.

2. As a general matter, our annual regulatory fee rulemakings must be concluded in a short time frame to allow regulatees to make their payments for the relevant fiscal year that fund Commission operations. These yearly rulemaking proceedings are not conducive to exploring more general regulatory fee issues. We have not conducted an in-depth review of our regulatory fee methodology since 1994.² We, however, adopt a Further Notice of Proposed Rulemaking ("FNPRM") to explore how we can comprehensively make the Commission's regulatory fee process more equitable.

II. REPORT AND ORDER

3. On May 8, 2008, we released a Notice of Proposed Rulemaking and Order ("*FY 2008 NPRM*") seeking comment on regulatory fee issues for FY 2008.³ The section 9 regulatory fee proceeding is an annual rulemaking process to ensure the Commission collects the fee amount required by Congress each year. In the *FY 2008 NPRM*, we proposed to largely retain the section 9 regulatory fee methodology used in the prior fiscal year. We received nine comments and 12 reply comments.⁴ We address the issues raised in our *FY 2008 NPRM* below.

A. Calculation of Revenue and Fee Requirements

4. In our FY 2008 regulatory fee assessment, we use the same section 9 regulatory fee assessment methodology adopted for FY 2007. Each fiscal year, the Commission proportionally allocates the total amount that must be collected via section 9 regulatory fees. The results of our FY 2008 regulatory fee assessment methodology (including a comparison to the prior year's results) are contained in Attachment B. To collect the \$312,000,000 required by Congress, we adjust the FY 2007 amount upward by approximately 7.5 percent. Consistent with past practice, we then divide the FY 2008 amount by the number of payment units in each fee category to determine the unit fee.⁵ As in prior years, for cases involving small fees, e.g., licenses that are renewed over a multiyear term, we divide the resulting unit fee by the term of the license and then round these unit fees consistent with the requirements of section 9(b)(2) of the Act.

B. Additional Adjustments to Payment Units

5. In calculating the FY 2008 regulatory fees listed in Attachment C, we further adjusted the FY 2007 list of payment units (Attachment A) based upon licensee databases and industry and trade group projections. In some instances, Commission licensee databases were used; in other instances, actual prior year payment records and/or industry and trade association projections were used in determining the payment unit counts.⁶ Where appropriate, we adjusted and rounded our final estimates to take into

² See *Implementation of Section 9 of the Communications Act*, Report and Order, 9 FCC Rcd 5333 (1994).

³ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Notice of Proposed Rulemaking and Order, 23 FCC Rcd 7987 (2008) ("*FY 2008 NPRM*").

⁴ See Appendix C for the list of commenters and abbreviated names.

⁵ In many instances, the regulatory fee amount is a flat fee per licensee or regulatee. 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 ("ITSP") fee). The payment unit is the measure upon which the fee is based, such as a licensee, regulatee, or subscriber fee.

⁶ 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 (continued....)

consideration events that may impact the number of units for which regulatees submit payment, such as waivers and exemptions that may be filed in FY 2008, and fluctuations in the number of licensees or station operators due to economic, technical, or other reasons. Therefore, our estimated FY 2008 payment units are based on FY 2007 actual payment units, but the number may have been rounded or adjusted slightly to account for these variables.

6. We consider additional factors in determining regulatory fees for AM and FM radio stations. These factors are facility attributes and the population served by the radio station. The calculation of the population served is determined by coupling current U.S. Census Bureau data with technical and engineering data, as detailed in Attachment D. Consequently, the population served, as well as the class and type of service (AM or FM), determines the regulatory fee amount to be paid.⁷

1. Commercial Mobile Radio ("CMRS") Messaging Service

7. CMRS Messaging Service, which replaced the CMRS One-Way Paging fee category in 1997, includes all narrowband services.⁸ In the *FY 2008 NPRM*, we proposed maintaining the messaging service regulatory fee at \$0.08 per subscriber; the rate first established for this service in FY 2002.⁹

8. One commenter, AAPC, addressed this issue.¹⁰ AAPC agrees with our proposal and observes that maintaining the fee at the existing level is a reasonable and appropriate action due to the paging industry's declining subscriber base.¹¹ We conclude that for FY 2008 we should continue this regulatory fee rate at \$0.08 per subscriber due to the declining subscriber base in this industry.¹²

2. Private Land Mobile Radio Service ("PLMRS")

9. Commenters observe that the proposed FY 2008 fees for a PLMRS applicant are \$40 per year for exclusive use PLMRS and \$20 per year for shared use PLMRS.¹³ Regulatory fees for this service have increased significantly over the past three years;¹⁴ however, there are 74 percent fewer licensees in 2008 than there were in 2005.¹⁵ PCIA also "perceives" a decline in Commission staffing devoted to

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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*.

⁷ In addition, beginning in FY 2005, we established a procedure by which we set regulatory fees for AM and FM radio and VHF and UHF television Construction Permits each year at an amount no higher than the lowest regulatory fee in that respective service category. For example, the regulatory fee for a Construction Permit for an AM radio station will never be more than the regulatory fee for an AM Class C radio station serving a population of less than 25,000.

⁸ See *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*").

⁹ *FY 2008 NPRM* at ¶ 5.

¹⁰ AAPC Comments at 1-4.

¹¹ *Id.* at 2.

¹² 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 Sept. 30, 2007.

¹³ PCIA Comments at 2; Enterprise Reply Comments at 2-3.

¹⁴ PCIA Comments at 2.

¹⁵ PCIA Comments at 3; Enterprise Reply Comments at 3.

PLMRS, which would correlate with the reduction in licensees.¹⁶ Enterprise observes that there are few rulemakings associated with these licensees and the Commission has not allocated additional spectrum for these users since the mid-1980s.¹⁷ In addition, because these licenses are site-specific, licensees often require multiple authorizations, which further increases the regulatory fee assessment.¹⁸ Further, these Part 90 licenses are generally private internal systems used to support businesses and are not commercial communications systems with a substantial revenue stream.¹⁹ For these reasons, commenters contend that we should not substantially increase the regulatory fees for PLMRS.

10. Instead of freezing the regulatory fees, we are going to address this matter more comprehensively in the attached FNPRM in the context of our entire regulatory fee structure. At this time; however, we are adopting the proposals in the *FY 2008 NPRM* for FY 2008.

3. Regulatory Fee Obligations for AM Expanded Band Broadcasters

11. Currently, AM expanded band stations in the 1610-1700 kHz range are exempt from regulatory fees, as a matter of Commission policy. In the *FY 2008 NPRM*, we sought comment on the most efficient way of assessing a regulatory fee on expanded band AM stations.²⁰ We sought comment on whether we should assess regulatory fees when the licensee has chosen to retain the expanded band station while no longer keeping the standard AM station as well as where the licensee continues to operate the standard AM station as well as the expanded band station.²¹

12. Two commenters addressed the AM expanded band issue. MRB is concerned with the situation where an expanded band licensee has relinquished its expanded band license but continues to operate under special temporary authority ("STA").²² In such a situation, the licensee is operating the standard band and the expanded band stations, but only holds a license to the standard band station. The five-year transition period for allowing lower band AM licensees to continue to operate the AM expanded band and the lower band has not yet expired for all licensees.²³

13. There is no compelling reason to permanently exempt AM expanded band licensees from paying regulatory fees. As a general matter, it would be appropriate to treat the AM expanded band and the AM standard band similarly for regulatory fee purposes. We note, however, that currently only 20 licensees out of 54 have surrendered one of their dual licenses. The remaining 34 licensees have either conditionally surrendered one license and are operating under an STA permitting dual operation or have retained both licenses and are continuing dual operation under STAs. The Commission has before it the pending issue of whether we should permit licensees to continue to hold both standard band and expanded band licenses.²⁴ This issue should be resolved before we can assess regulatory fees on the expanded band

¹⁶ PCIA Comments at 3.

¹⁷ Enterprise Reply Comments at 4.

¹⁸ Enterprise Reply Comments at 4-5.

¹⁹ Enterprise Reply Comments at 5-6.

²⁰ *FY 2008 NPRM* at ¶ 7.

²¹ *Id.*

²² MRB has petitioned the Commission to waive the requirement that either the expanded band or the standard band license be returned.

²³ Chisholm Reply Comments at 1.

²⁴ See Petition for Stay of Effective Dates, filed Mar. 27, 2006; Request for Waiver of Rules Requiring Return of AM Licenses," filed Mar. 27, 2006.

AM licensees; therefore, we are not assessing regulatory fees on expanded band AM licenses at this time.

4. International Bearer Circuits

a. Background

14. In our *FY 2006 NPRM*,²⁵ we observed that VSNL Telecommunications (US) Inc. ("VSNL") had filed a Petition for Rulemaking urging the Commission to revise its regulatory fee methodology for international bearer circuits ("IBCs").²⁶ In the Petition, VSNL proposes that the Commission: (1) reclassify non-common carrier submarine cable service as a new fee category²⁷ (all other carriers subject to IBC fees would be in the second category);²⁸ (2) apportion the IBC fee revenue requirement between the two categories, based on a comparative assessment of the regulatory services used by the entities in each category;²⁹ and (3) assess a flat annual fee per cable system for non-common carrier submarine cable operators.³⁰

15. In our *FY 2008 NPRM*, we granted VSNL's petition and sought comment on the methodology used to calculate regulatory fees for providers of international bearer circuits.³¹ We

²⁵ 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*").

²⁶ See Petition for Rulemaking of VSNL Telecommunications (US) Inc., RM-11312 (filed Feb. 6, 2006) ("VSNL Petition"). VSNL Telecommunications is now Tata Communications. We released a Public Notice designating the proceeding as RM-11312 and seeking comment on the Petition. See Consumer and Governmental Affairs Bureau, Reference Information Center, *Public Notice*, Report No. 2759 (rel. Feb. 15, 2006). In our *FY 2006 Report and Order* we stated that the issues presented in the Petition warranted consideration separately from the Commission's annual regulatory fee proceeding. 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*").

²⁷ Petition at 5. See also Apollo RM-11312 Comments at 2-4. AT&T filed comments disagreeing with this proposal and observing that the proposed new fee category would likely exclude all or most facilities-based carrier circuits on non-common carrier cables as well as the international bearer circuits on common carrier cables. AT&T RM-11312 Comments at 6. SIA agrees that regulatory fee reform is needed, but contends that such reform should extend to the treatment on non-common carrier satellite operators as well. SIA RM-11312 Comments at 1-4.

²⁸ Petition at 5.

²⁹ *Id.* at 5-6. See also Level 3 RM-11312 Comments at 6-7.

³⁰ Petition at 6. See also Hibernia Atlantic RM-11312 Comments at 7-8; Level 3 RM-11312 Comments at 8-10 (supporting a flat per-system fee on all submarine cable systems); Level 3 RM-11312 Reply Comments at 8-9.

³¹ The Commission's website provides the following information regarding International and Satellite License Fees, for FY 2007:

International Bearer Circuits

Who Must Pay: Regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers that have active international bearer circuits as of December 31, 2006 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. If you are required to pay regulatory fees, you should pay based on your active 64 KB circuit count as of December 31, 2006.

(continued....)

specifically sought comment on whether the Commission should retain the current methodology used to assess these regulatory fees, or modify the methodology.³² In addition to the comments filed to the FY 2008 NPRM, a Revised Joint Proposal for amending our IBC regulatory fee methodology was filed as an ex parte by a group of carriers on July 11, 2008.³³

16. This proposal modified the earlier joint proposal to address several concerns raised by the parties. The Revised Joint Proposal would do the following: (1) Create a new regulatory fee category for submarine cable systems, a new SCS fee, for both common carrier and non-common carrier systems.³⁴ The new SCS fee would be a flat fee, per cable landing license, with a reduced fee amount for "small-capacity systems." In addition, a consortium would be considered one cable landing license for SCS fee purposes, regardless of how many licensees were members of the consortium. (2) The SCS fee would be based originally on one-half of the current IBC category. According the Revised Joint Proposal, this would subsequently be revised downward based on the Commission's internal calculations of regulatory effort expended to regulate this industry.³⁵ (3) In addition, there would be a new IBC fee based on active circuits, originally based on the remaining one-half of the current fee category, for common carriers. Thus, under the Revised Joint Proposal, common carriers would pay the flat SCS per license fee and a per circuit fee and non-common carriers would pay only the flat SCS per license fee.

17. Our current rules provide that 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.³⁶ 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
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For more information regarding compliance with regulatory fee payment requirements for international bearer circuits, refer to *FCC Public Notice: Compliance with Regulatory Fee Requirements by Cable Landing Licensees Operating on a Non-Common Carrier Basis (DA 04-2027, released July 6, 2004)*.

Fee Calculation: \$1.05 per active 64 KB circuit or equivalent.

See http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-275938A6.pdf.

³² FY2008 NPRM at ¶ 8. Comments filed earlier in response to the VSNL Petition are referred to as "RM-11312 Comments." Many of the same commenters filed comments on this issue in response to our FY 2008 NPRM. On May 30, 2008, a joint proposal for reforming International Bearer Circuit fees was submitted by Level 3 Communications, LLC, Brasil Telecom of America, Inc., Columbus Networks USA, Inc., ARCOS-1 USA, Inc., A.SUR Net, Inc., Hibernia Atlantic US LLC, Pacific Crossing Limited, and PC Landing Corp. See Joint Proposal, MD Docket No. 08-65, Attach. (filed May 30, 2008).

³³ See Letter from Kent D. Bressie, Counsel, Level 3 Communications, LLC to Marlene H. Dortch, Secretary, FCC, MD Docket No. 08-65, Attach. (filed July 11, 2008). This revised joint proposal was submitted by Brasil Telecom of America, Inc., Columbus Networks USA, Inc., ARCOS-1 USA Inc., A.SUR Net, Inc., Global Crossing Ltd., Level 3 Communications, LLC, Hibernia-Atlantic US LLC, Marine Cable Corp., Pacific Crossing Limited and PC Landing Corp., Reliance Globalcom Limited (fka FLAG Telecom Group Limited), and Tata Communications (US) Inc. (formerly VSNL International (US) Inc.) ("Revised Joint Proposal").

³⁴ Revised Joint Proposal at 1.

³⁵ *Id.*

³⁶ See *Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for Fiscal Year 2006*, Report and Order, 21 FCC Rcd 8092, 8107, n. 62 (2006) ("FY 2006 Report and Order"); *Assessment and Collection of Regulatory Fees for Fiscal Year 2001*, MD Docket No. 01-76, Report and Order, 16 FCC Rcd 13525, 13593 (2001); *Regulatory Fees Fact Sheet: What You Owe – International and Satellite Services Licensees for FY 2005* at 3 (rel. July 2005) (the fact sheet is available on the FCC web-site at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-249904A4.pdf).

customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services.³⁷ Regulatory fees are based on the number of active 64 kbps international bearer circuits as of December 31 of the previous year.

18. We agree with the commenters who argue that our methodology for calculating IBC regulatory fees needs to be reformed and we intend to adopt a revised methodology to be effective for FY 2009. We recognize that an in-depth review of our IBC regulatory fee methodology may be long overdue. We also note that there appears to be significant non-compliance with our current regulatory fee requirements. One issue raised by several commenters is that the regulatory fee for IBCs is far too high. We will need to address the issue of non-compliance to determine if the fee is still considered unreasonably high after non-payers are contributing as well.³⁸ As we mentioned earlier, if some do not pay their share of regulatory fees, the amount of fees due is increased for the remaining parties. We consider rule non-compliance a serious issue affecting all regulatees.

b. Discussion

19. Several commenters argue that non-common carrier submarine cable operators generate only a fraction of the regulatory costs common carriers generate, yet they pay the same per unit regulatory fees.³⁹ AT&T and Verizon disagree, and argue that due to recent deregulation such as elimination of tariff filing requirements, the reduced disparities between the Commission's treatment of these services support the continued application of the same regulatory fees to all international bearer circuits.⁴⁰ AT&T observes that the private carriers' argument ignores the regulatory costs incurred in connection with the Commission's international representational activities, work with foreign regulators, and other activities in support of the Commission's international regulatory goals to promote effective competition in the global marketplace.⁴¹ AT&T contends that the same fees should be applied to all types of submarine cable systems.⁴² The difference in size between common carrier systems and private carrier systems, contends AT&T, is even larger now than when VSNL filed its petition.⁴³ AT&T, Verizon, and Qwest oppose any new fee structure that would impose higher fees on facilities-based common carriers, such as the proposal that non-common carriers would no longer pay fees on active circuits.⁴⁴

20. VSNL argues in its Petition that the number of active 64 kbps circuits bears no

³⁷ *FY 2006 Report and Order*, 21 FCC Rcd at 8107, n. 62.

³⁸ We note that the flat fee proposed by commenters may address the non-compliance issue as well.

³⁹ *See, e.g.*, Petition at 10; Flag RM-11312 Comments at 3; SIA RM-11312 Comments at 4; Level 3 RM-11312 Reply Comments at 6-7; Level 3 Comments at 11-14.

⁴⁰ AT&T RM-11312 Comments at 8; Verizon RM-11312 Reply Comments at 2-3; Verizon Reply Comments at 4.

⁴¹ AT&T RM-11312 Comments at 9; Verizon RM-11312 Reply Comments at 3; AT&T Reply Comments at 17; Verizon Reply Comments at 5.

⁴² AT&T RM-11312 Reply Comments at 7.

⁴³ AT&T Comments at 3. AT&T observes that that the average capacity of the 27 U.S.-licensed non-common carrier systems is approximately 3.2 million circuits, almost ten times larger than the average capacity of U.S. common carrier systems. *Id.* at note 4.

⁴⁴ AT&T Reply Comments at 1-6; Verizon Reply Comments at 2; Qwest Reply Comments at 2.

relationship to the regulatory costs that operators generate.⁴⁵ For example, one commenter explains, if a licensee doubles its cable's capacity through a technology upgrade, the regulatory fee obligations will nearly double even though the regulatory costs to the Commission do not change.⁴⁶ Pacific contends that there is no correlation between cable system size and the Commission's regulatory effort.⁴⁷ Commenters observe that the 64 kbps increment measurement is an artifact of the original channelized telephone systems, but is not relevant to the current broadband environment where data passes unchannelized in packetized form.⁴⁸

21. The flat annual fee proposed by VSNL as an alternative to our current circuit-based fee would be derived by dividing the revenue requirement for non-common carrier submarine cable systems by the number of licensed systems.⁴⁹ The Joint Proposal suggested by Level 3 and others and the Revised Joint Proposal *ex parte* would assess a per-system fee on common carriers and private carriers (regardless of system size) and would also impose a per-circuit fee for active circuits common carriers own or lease.⁵⁰ The net effect of either of the flat fee proposals would be to provide significant advantages to private carriers.⁵¹ Global Crossing observes that the Joint Proposal would result in double counting where a common carrier has capacity from an affiliated private operator.⁵² Common carriers disagree with the flat fee proposal on the grounds that this would require smaller systems to pay higher fees per circuit and would adversely affect common carrier systems which are generally smaller than non-common carrier systems.⁵³ The Joint Commenters contend that a flat per-system fee would discourage investment in the

⁴⁵ Petition at 7-8. Level 3 contends that this fee timing issue can make owners base their capacity turn-up decisions on non-market factors, such as activating circuits only at certain times of the year. Level 3 RM-11312 Comments at 5.

⁴⁶ Flag RM-11312 Comments at 6. Reliance observes that, with respect to high-capacity leases, the per 64 kbps circuit fee distorts the market. Reliance Reply Comments at 5.

⁴⁷ Pacific Reply Comments at 5.

⁴⁸ Joint Commenters RM-11312 Reply Comments at 4-5; Global Crossing Comments at 2; Pacific Comments at 11; Tata Comments at 2-4. Commenters also observe that IBC operators sell services as a "back up" or restoration service, which does not fit the definition of "active" circuits. Level 3 Comments at 15. AT&T and Qwest, on the other hand, contend that IBC fees are based on "active" capacity, which provides a reasonable and nondiscriminatory method to allocate fees and is similar to the fee structure for other licensees. AT&T RM-11312 Comments at 11-13; Qwest Reply Comments at 3.

⁴⁹ Petition at 6. Apollo agrees with VSNL and argues that a fee per cable landing license, rather than a per 64 kbps international bearer circuit, should be adopted. Apollo RM-11312 Comments at 6. SIA suggests assessing a flat fee based on section 214 authorizations and cable landing licenses. SIA RM-11312 Comments at 2. Pacific agrees that a per system fee would be fair, equitable, and easily administrated. Pacific Comments at 4. Telstra suggests that if we adopt a flat fee, we should establish a two-year ramp up period for newly-licensed systems. Telstra Reply Comments at 2-3.

⁵⁰ Level 3 Comments at 18; Level 3 Reply Comments at 5; Verizon Reply Comments at 3; Global Crossing Reply Comments at 2-3; Qwest Reply Comments at 4. Reliance supports the Joint Proposal. Reliance Reply Comments at 7.

⁵¹ AT&T Reply Comments at 5. Qwest observes that the Joint Proposal contains different fee structures for submarine cable operators based on their common carrier or non-common carrier status and is not competitively neutral. Qwest Reply Comments at 5.

⁵² Global Crossing Reply Comments at 2.

⁵³ AT&T RM-11312 Comments at 10-11; Qwest RM-11312 Reply Comments at 4; AT&T Comments at 3; AT&T Reply Comments at 1-6; Verizon Reply Comments at 1-3. The Joint Commenters, who operate smaller systems, contend that they would be unfairly prejudiced by a flat per-system fee. Joint Commenters at 2.

deployment of new submarine cable systems in the Caribbean or South America.⁵⁴ Instead, the Joint Commenters argue, the Commission should adopt a two-tiered approach.⁵⁵

22. Pacific contends that the rate proposed in our *FY 2008 NPRM* of \$1.09 is too high because the number of active circuits used in the calculation was far too low.⁵⁶ According to Pacific, international common carriers alone maintained 7.55 million active 64 kpbs circuits, so our estimate of 7.5 million for common carrier and non-common carrier combined must be revised upward.⁵⁷ Pacific concludes that if the Commission used more realistic estimates of active circuits, the per unit fee would be \$.20 per circuit instead of \$1.09 per circuit.⁵⁸ Several commenters observe that the prices for higher-capacity circuits have dropped more steeply than the prices for low-capacity circuits, thus the regulatory fee is an increasing percentage of the price of higher-capacity circuits.⁵⁹ The current IBC regulatory fee methodology discourages new investment to increase the capacity of existing undersea cables.⁶⁰ Verizon observes that under our current regulatory fee methodology, the IBC fee has dropped from \$7.00 per circuit in 2000 to \$1.09 per circuit in 2008, showing that increased demand has resulted in lower per circuit fees.⁶¹ AT&T notes that private carriers have continued to rapidly expand their U.S. underseas cable capacity.⁶²

23. Commenters also observe that the Commission has no way to monitor active IBCs and therefore cannot enforce compliance with regulatory fee requirements.⁶³ More stringent reporting requirements, generally opposed by private carriers, could eliminate the fee avoidance problem and further reduce the per circuit fee.⁶⁴ Pacific contends that the total number of active circuits is more than five times the number of payment units counted by the Commission.⁶⁵ Such significant undercounting of active circuits results in certain providers overpaying while others are underpaying.⁶⁶ Qwest observes that the Commission's reliance on section 43.82 reports of active circuits do not capture the circuits of private carriers.⁶⁷ The current practice of assessing fees based on a snapshot of active capacity on December 31 encourages operators to take capacity off line on December 31st to avoid having such capacity considered

⁵⁴ Joint Commenters at 2.

⁵⁵ *Id.* at 3.

⁵⁶ Pacific Comments at 7-8.

⁵⁷ *Id.* citing the Commission's "International Bureau Report on 2006 Section 43.82 Circuit Status Data," at 29, table 5.

⁵⁸ Pacific Comments at 8.

⁵⁹ Hibernia Atlantic RM-11312 Comments at 6-7; Apollo RM-11312 Comments at 6-7; Level 3 RM-11312 Comments at 3; Joint Commenters RM-11312 Reply Comments at 3-7; Global Crossing Comments at 3; Reliance Reply Comments at 5-6; Qwest Reply Comments at 2.

⁶⁰ Reliance Reply Comments at 6.

⁶¹ Verizon Reply Comments at 5.

⁶² AT&T Reply Comments at 10.

⁶³ Level 3 Comments at 16. Nonpayment by some operators raises the costs for others. Verizon Reply Comments at 5-6.

⁶⁴ AT&T Reply Comments at 7-8; Qwest Reply Comments at 3, note 9.

⁶⁵ Pacific Reply Comments at 3.

⁶⁶ Pacific Reply Comments at 4.

⁶⁷ Qwest Reply Comments at 3.

active.⁶⁸

24. We agree with the commenters who argue that our methodology for calculating IBC regulatory fees needs to be reformed. We intend to resolve this issue within 60 days of adoption of this Order. Our rules should treat all providers subject to our regulatory fees in a nondiscriminatory and competitively neutral manner. If our rules permit certain entities to avoid complying with our regulatory fee requirements, the remaining carriers must pay a higher amount to compensate for those within the fee category who avoid payment. For FY 2008, however, we are using our current methodology and the rate set forth in Attachment C.⁶⁹

III. FURTHER NOTICE OF PROPOSED RULEMAKING

A. Background

25. Each year Congress requires the Commission to collect regulatory fees “to recover the costs of ... enforcement activities, policy and rulemaking activities, user information services, and international activities.”⁷⁰ The Act states that fees are to “be derived by determining the full-time equivalent number of employees performing” these activities “adjusted to take into account factors that are reasonably related to the benefits provided to the payer of the fee by the Commission’s activities....”⁷¹ Regulatory fees recover: direct costs, such as salary and expenses; indirect costs, such as overhead functions; and support costs, such as rent, utilities, or equipment.⁷² Congress sets the amount the Commission collects each year in the annual appropriations law.⁷³

26. Section 9 requires the Commission to make certain changes to the regulatory fee schedule “if the Commission determines that the schedule requires amendment to comply with the requirements” of section 9(b)(1)(A), cited above. The Commission must add, delete, or reclassify services in the fee schedule to reflect additions, deletions, or changes in the nature of its services “as a consequence of Commission rulemaking proceedings or changes in law.” These “permitted amendments” require Congressional notification⁷⁴ and resulting changes in fees are not subject to judicial review.⁷⁵ Neither of these provisions requires amendment of the fee schedule to mirror all changes in regulatory costs.⁷⁶

27. To calculate regulatory fees, the Commission allocates the total collection target, as mandated by Congress each year, to each regulatory fee category. Each regulatee within a fee category must pay its proportionate share based on some objective measure, *e.g.*, revenues or subscribers. The first step, allocating fees to fee categories, is based on the Commission’s 1994 calculation of full time employees (“FTEs”) devoted to each regulatory fee category. We recognize that the communications

⁶⁸ Level 3 Comments at 17.

⁶⁹ \$0.93 per active 64 KB circuit.

⁷⁰ 47 U.S.C. § 159(a).

⁷¹ 47 U.S.C. § 159(b)(1)(A).

⁷² See *Assessment and Collection of Regulatory Fees for Fiscal Year 1997*, MD Docket No. 96-186, Report and Order, 12 FCC Rcd 17161, 17170-71, ¶ 23 (1997) (“*FY 1997 Report and Order*”). Regulatory fees also recover costs attributable to regulatees that Congress has exempted from the fees as well as costs attributable to licensees granted fee waivers. *FY 1997 Report and Order*, 12 FCC Rcd at 17170, ¶ 22.

⁷³ See, *e.g.*, Consolidated Appropriations Act, 2008, P.L. 110-161.

⁷⁴ 47 U.S.C. § 159(b)(4)(B).

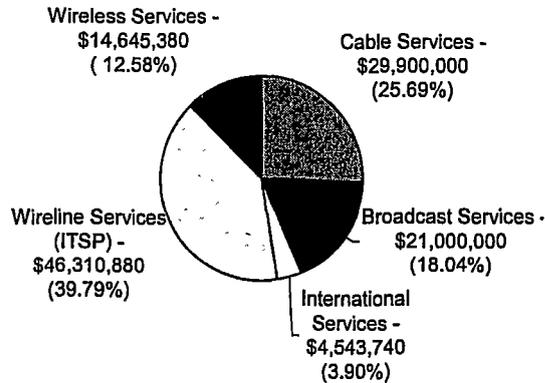
⁷⁵ 47 U.S.C. § 159(b)(3).

⁷⁶ *FY 2004 Report and Order*, 19 FCC Rcd at 11666, ¶ 9.

industry has changed considerably since we adopted our regulatory fee schedule in 1994.⁷⁷ Services such as wireless, broadband, and voice over Internet protocol ("VoIP") have exploded in growth in recent years. The Commission itself has reorganized several times since 1994 to reflect industry changes.

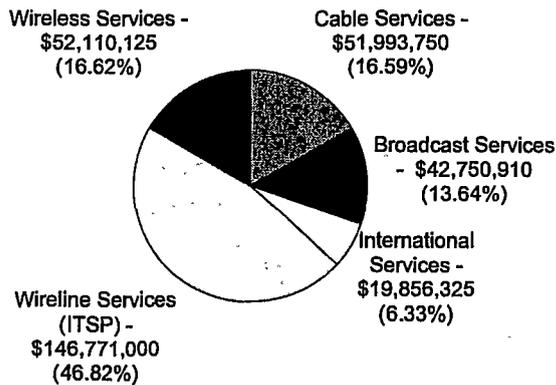
28. As the following charts show, regulatory fee burdens have shifted significantly since 1995:

FY 1995 Regulatory Fees to be Collected



Source: *Assessment and Collection of Regulatory Fees for Fiscal Year 1995*, Report and Order, 60 FR 34004 (June 29, 1995). (FY 2005 was the first year in which payment units were included in the Report and Order.)

FY 2008 Regulatory Fees to be Collected



⁷⁷ See *Implementation of Section 9 of the Communications Act*, Report and Order, 9 FCC Rcd 5333 (1994).

Source: Percentages and dollar amounts based on preliminary calculations while drafting the *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Report and Order and Further Notice of Proposed Rulemaking.

29. Historically, and in this year's proceeding, parties have challenged the Commission's regulatory fees for certain categories of services by claiming that the fees are not appropriately based on the Commission's regulatory costs.⁷⁸ Regulatory fees cannot, however, be precisely calibrated, on a service-by-service basis, to the actual costs of the Commission's regulatory activities for that service.⁷⁹ The initial Schedule of Regulatory Fees that Congress enacted in section 9(g) reflects this approach. Two specific examples are satellite regulatory fees and radio and television regulatory fees.⁸⁰ Congress required that satellite fees be based on the number of satellites the regulatee has in operation; however, the number of satellites may or may not relate to the actual costs in terms of FTEs of regulating that particular entity.⁸¹ Similarly, radio and television fees are based on the size of the markets served, which also may have no relationship to the Commission's costs.⁸²

30. Notwithstanding that regulatory fees cannot be precisely calibrated to our actual costs of our regulatory activities, there may be several areas in which we can revise and improve our regulatory fee process to better reflect the industry today. Industry, regulatory, and Commission organizational changes may mean that the FTE estimates the Commission has used since 1994 to allocate fees to industry segments require updating. In addition, certain services may be excluded from the regulatory fee process because those services were not offered when the fee schedule was adopted and other services may be paying a disproportionate share of regulatory fees because in the past those services had a larger share of the communications market. We adopt this FNPRM to explore more equitable and reasonable approaches to assessing regulatory fees.

B. Discussion

31. The regulatory fees assessed each year are to recover a fixed amount set by Congress. Thus, increasing the regulatory fee for one category will reduce the fee for the remaining categories and vice versa. We seek comment on ways to improve our regulatory fee process regarding any and all categories of service. In light of the industry changes since 1994, how can we better determine the regulatory fees for services in a way that is aligned with the Commission's regulatory activities? We seek comment on whether we should continue to collect our regulatory fees based on the allocations noted above for FY 2008, or if we should revert to a percentage allocation closer to our FY 1995 regulatory fee allocation, or if we should adopt a different allocation based on the communications marketplace that exists today. We also seek comment on possible methodologies for re-calculating the regulatory fee allocation.

32. Commenters should discuss the fee categories that bear a too heavy regulatory fee burden. For example, some services, such as paging and PLMRS, have declining subscriber bases.

⁷⁸ See, e.g., *Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, MD Docket No. 04-146, Report and Order, 19 FCC Rcd 11662, 11665-67, ¶¶ 5-11 (2004) ("*FY 2004 Report and Order*").

⁷⁹ See, e.g., *FY 1997 Report and Order*, 12 FCC Rcd at 17171-72, ¶ 27.

⁸⁰ *FY 2004 Report and Order*, 19 FCC Rcd at 11666, ¶ 8.

⁸¹ *Id.*

⁸² *Id.*

Conversely, we seek comment on whether there are categories that should pay higher regulatory fees. In addition, are there categories that should be added, deleted, or reclassified? Would such changes result in a system that is more (or less) equitable and reasonable?

33. We also seek comment on whether we should review the entire regulatory fee process, apart from the annual regulatory fee orders, on a periodic basis. Should the Commission undertake a comprehensive analysis of its resource allocations as it did in 1994? Should the Commission allocate regulatory fees to each category based on the proportionate use of full time equivalent ("FTE") within the Commission? We seek comment on whether we should examine FTE allocation by industry segment or some other basis, such as strategic goal.⁸³

34. Currently, the Commission uses different bases to allocate regulatory fees to entities in different regulatory fee categories. For example, fees for wireless companies are based on subscribers and wireline companies are based on revenues. Should the Commission move to harmonize these bases? Would it be more equitable to allocate fees on a single basis across all regulatory fee categories? Commenters should address the incentives or disincentives of using a particular basis for allocation. For example, do wireless companies have less incentive to sign up subscribers because each new subscriber will increase their regulatory fees?

35. As we discuss below, there are various services or entities that may not be paying their share of regulatory fees. Including more services would lessen the regulatory fee burden on the remaining regulates. We seek comment on whether, and if so how, to include additional services. Increasing compliance with our rules also would lessen the regulatory fee burden on the remaining regulatees. We seek comment on ways to improve compliance with our rules. In addition, we seek comment on whether we should adopt additional oversight measures, such as an audit regime to ascertain that payments are in accordance with our rules.

36. We seek comment on whether we should modify our administration of regulatory fees, such as our collection processes, as well as the forms that we use for regulatory fee payors. We seek comment on whether we should modify our Form 159. Should we use a different procedure for billing and prebilling? Should our regulatory fee procedures be combined with other filing and reporting requirements? We seek comment on whether we should adopt additional performance metrics or measurements pertaining to regulatory fees. Commenters should discuss whether we should adopt additional performance measurements and publish this information regarding, for example, timeliness of payment. We also seek comment on whether there are certain categories of licensees who should qualify for reduced regulatory fees or be exempt entirely.

37. We also invite comment on several specific regulatory fee issues discussed below.

1. Interstate Telecommunications Service Providers ("ITSPs")

38. ITSPs generally identify themselves as interexchange carriers, incumbent local exchange carriers, toll resellers, or some other provider of interexchange service on the FCC Form 499-A. The FCC Form 499-A is filed each year on April 1 with the interstate revenues from the previous year; the ITSP regulatory fee is based on billed interstate and international end-user revenues.⁸⁴

39. In FY 1995, the ITSP fee rate amounted to a fee factor of .00088 per revenue dollar,

⁸³ See *Federal Communications Commission Fiscal Year 2007 Performance and Accountability Report* at 31-90 (<http://www.fcc.gov/Reports/ar2007.pdf>).

⁸⁴ This is explained in our fact sheet, available at <http://www.fcc.gov/fees/regfees.html>.

representing approximately 40 percent of the revenues to be collected in FY 1995.⁸⁵ Carriers were required in FY 1995 to multiply their adjusted gross revenues (gross revenue reduced by the total amount of payments to underlying common carriers for telecommunications facilities or services) by 0.00088 to determine the appropriate regulatory fee. In the Commission's FY 1997 regulatory fee proceeding, the Commission calculated that regulation of ITSPs⁸⁶ accounted for approximately 36 percent of all Commission costs.⁸⁷ Since FY 1995, the ITSP fee factor rate has increased from .00088 per revenue dollar to .00266 in FY 2007.⁸⁸

40. ITTA, an association of mid-size local exchange carriers, filed comments to the *FY 2008 NPRM*, contending that from 1999 to 2008 the Commission's overall budget has increased by 81 percent yet the percentage of ITSP revenues used to support Commission activities has nearly tripled.⁸⁹ ITTA contends that regulatory fees for wireless carriers have decreased and the disparity in regulatory fee treatment between wireline and wireless services continues to widen.⁹⁰ ITTA recommends that the Commission extend the process by which it added interconnected Voice over Internet Protocol ("VoIP") providers to the ITSP category and also include wireless providers in the ITSP category.⁹¹ We seek comment on this recommendation.

41. Relative to other services that pay regulatory fees, we recognize that the ITSP market has changed since the Commission calculated the cost of ITSP regulation in FY 1997. We agree that it is appropriate to review our methodology for assessing regulatory fees on ITSPs. We seek comment on whether ITSPs current share of regulatory fees, which has not been revised significantly since 1997, is appropriate. Commenters should discuss the ITSP market and how it has changed since 1997 relative to the other services that pay regulatory fees such as wireless and broadcast services. Commenters suggesting a change in the proportionate share for ITSPs should propose a methodology. For example, would it be more appropriate to return to the original Schedule of Regulatory Fees and assess fees per 1,000 access lines? We note that we have experienced significant success and accuracy with a number-based approach for CMRS. Would number of access lines be most appropriate?

2. International and Interstate Toll Services

42. International and interstate toll calls can originate from either a wireless or a landline telephone; if such calls are made from a wireless telephone they are considered wireless revenue and not interstate or international revenue for regulatory fee purposes. Commercial mobile radio services ("CMRS") regulatory fees are determined on a per unit basis rather than on a revenue basis. For FY 1995, the CMRS regulatory fee was \$0.15 per unit; for FY 2007, the CMRS regulatory fee was \$0.18 per unit. Thus, international and interstate toll calls made on a wireless telephone, even if billed separately to the customer as international or interstate toll calls, are not paid on a revenue basis for CMRS regulatory

⁸⁵ See *Assessment and Collection of Regulatory Fees for Fiscal Year 1995*, Report and Order, 60 FR 34004 at 34025 (Table 4) (June 29, 1995) ("1995") ("*FY 1995 Report and Order*").

⁸⁶ ITSPs generally identify themselves as interexchange carriers, incumbent local exchange carriers, toll resellers, or some other provider of interexchange service on the FCC Form 499-A which is filed each year on April 1 with the interstate revenues from the previous year; the ITSP regulatory fee is based on billed interstate and international end-user revenues.

⁸⁷ See *FY 1997 Report and Order*, 12 FCC Rcd at 17176, ¶ 39.

⁸⁸ *Id.*, 12 FCC Rcd at 17246.

⁸⁹ ITTA Reply Comments at 1-2.

⁹⁰ ITTA Reply Comments at 2.

⁹¹ ITTA Reply Comments at 4-5.

fee purposes, but on a subscriber basis. Whereas, international and interstate toll calls made on a landline telephone are considered international and interstate revenue for ITSP regulatory fee purposes. We seek comment on whether this disparity is equitable.

43. Specifically, we seek comment on whether we should include interstate and international toll calls made from wireless handsets as international and interstate revenue for regulatory fee purposes. Commenters should also discuss whether, for example, a wireless international call to Canada or Mexico, even though the call would be carried for the most part on the wireline network, should be considered wireless revenue and feeable for CMRS regulatory fee purposes. To the extent that wireless carriers bill their customers a separate charge for the international call (apart from minutes), should this be considered a call subject to regulatory fees regardless of whether the call originated from a landline or a wireless handset? Commenters should discuss why including (or excluding) revenues from interstate and international calls is reasonable. Commenters should also address the effect on CMRS and ITSP regulatory fees if wireless revenues from interstate and international toll calls become subject to regulatory fees. We seek comment on this proposal.

3. Regulatory Fee Obligations for Digital Broadcasters

44. After February 17, 2009, full-power television broadcast stations must transmit only in digital signals and may no longer transmit analog signals.⁹² Digital television ("DTV") licensees are subject to section 8 application fees but our current schedule of regulatory fees does not include a specific service category for digital broadcasters.⁹³ Licensees in the broadcast industry pay regulatory fees based on their analog facilities. For licensees that broadcast in both the analog and digital formats, the only regulatory fee obligation at present is for their analog facility. A licensee that has fully transitioned to digital broadcasting and has surrendered its analog spectrum currently has no regulatory fee obligation.

45. In our *FY 2005 Report and Order* we stated that we had sought comment on whether to establish a regulatory fee category for digital broadcasters but received no comments on the issue and therefore we did not establish regulatory fee obligations for digital broadcasters.⁹⁴ At that time we recognized the Commission's initiatives to transition analog broadcasters to digital spectrum and that we should address these issues from a regulatory fee perspective. We seek comment on whether we should now establish a specific regulatory fee service category for digital broadcasters.

46. Our rules do not state that regulatory fees are required for analog licenses only,⁹⁵ but we have consistently assessed regulatory fees on analog licenses only.⁹⁶ We seek comment on whether we should clarify that regulatory fees are required for analog and digital broadcasters, based on their markets. We seek comment on whether a rule change is necessary under these circumstances. We do not intend to assess regulatory fees for both digital and analog licenses from a licensee in the process of transitioning from analog to digital. Our goal is to efficiently and seamlessly account for the collection of fee revenue from digital broadcasters without harming early transitioners to digital spectrum or late transitioners from analog spectrum. We seek comment on ways to achieve this goal.

⁹² 47 U.S.C. §§ 309(j)(14) and 337(e).

⁹³ *Assessment and Collection of Regulatory Fees for Fiscal Year 2003*, MD Docket No. 03-83, Report and Order, 18 FCC Rcd 15985, 15993, ¶ 25 (2003) ("*FY 2003 Report and Order*").

⁹⁴ *See Assessment and Collection of Regulatory Fees for Fiscal Year 2005*, MD Docket No. 05-59, Report and Order and Order on Reconsideration, 20 FCC Rcd 12259, 12266-67, ¶ 23 (2005) ("*FY 2005 Report and Order*").

⁹⁵ 47 C.F.R. § 1.1153, "Schedule of annual regulatory fees and filing locations for mass media services" provides the fee amounts due for television stations based on the market where the station is broadcast.

⁹⁶ The table in section 1.1153 of our rules does, however, refer to "UHF" and "VHF".

4. Per-Subscriber Fees for Video Services in Addition to Cable Television Operators

47. We seek comment on whether service providers other than cable operators, such as incumbent local exchange carriers (ILEC) providing video service, should also pay regulatory fees on a per-subscriber basis or otherwise.⁹⁷ For example, should ILECs as well as cable providers pay a per-subscriber regulatory fee because ILECs are providing a service similar to cable service? Presently, ILECs that provide video service are not subject to regulatory fees for their video service, unless they are classified as a cable provider. We seek comment on this proposal.

a. Internet Protocol TV ("IPTV")

48. From the customer's perspective, there is likely not much difference between IPTV and other video services, such as cable service. The IPTV service could be offered to the customer bundled with the customer's internet and landline telephone service.⁹⁸ We seek comment on whether this video service should be subject to regulatory fees, and if so, should the IPTV provider count this service for regulatory fee purposes in the same manner as cable services, which is on a subscriber basis? Also, we seek comment on the likely outcome of taking no regulatory fee action for IPTV. Commenters should discuss the impact on cable services and the equities of treating similar services differently for regulatory fee purposes if no regulatory fees are imposed.

49. We also note that any carrier offering this service would pay regulatory fees for the interstate telecommunications service that may be offered together with the IPTV service. We tentatively conclude that in such a situation, the carrier should pay regulatory fees for the ITSP service exclusive of the IPTV service, *i.e.*, the IPTV revenues should not be combined into the ITSP revenue-based regulatory fee. We seek comment on this tentative conclusion. Commenters should discuss the ease or difficulty of separating the ITSP revenues from the IPTV revenues.

b. Direct Broadcast Service ("DBS") Providers

50. Currently cable service providers pay approximately \$0.75 per subscriber in regulatory fees; DBS providers do not pay a per-subscriber fee. Previously, the Commission declined to adopt the same per-subscriber fee for DBS.⁹⁹ We seek comment on whether we should impose the same per subscriber fee on DBS that cable providers pay, or continue to assess a space station regulatory fee for the DBS industry and a subscriber-based regulatory fee structure for the cable industry.

5. Cable Television Services – Calculation of Subscriber Numbers

51. In FY 1995, when the Commission assessed payments of \$0.49 per cable television subscriber, the Commission explained how cable service providers should calculate their number of subscribers:¹⁰⁰

Cable Systems should determine their subscriber numbers by calculating the number of single family dwellings, the number of individual households in multiple dwelling units,

⁹⁷ See "FCC Adopts 13th Annual Report to Congress on Video Competition and Notice of Inquiry for the 14th Annual Report," MB Docket No. 07-269, Press Release, Nov. 27, 2007.

⁹⁸ According to AT&T, "[t]he AT&T U-verse portfolio of IP-based services integrates digital video, AT&T Yahoo! High Speed Internet U-verse Enabled, and in the future, voice over IP services." See <http://www.att.com/gen/press-room?pid=5838>.

⁹⁹ *FY 2005 Report and Order*, 20 FCC Rcd at 12264, ¶¶ 10-11.

¹⁰⁰ See *Assessment and Collection of Regulatory Fees for Fiscal Year 1995*, MD Docket No. 95-3, Report and Order, 10 FCC Rcd 13512, 13579, Appendix H, ¶ 28 (1995).

e.g., apartments, condominiums, mobile home parks, etc., paying at the basic subscriber rate, the number of bulk rate customers and the number of courtesy or fee customers. In order to determine the number of bulk rate subscribers, a system should divide its bulk rate charge by the annual subscription rate for individual households.¹⁰¹

52. Cable service providers are still required to pay regulatory fees on a per subscriber basis.¹⁰² We recognize that it may be difficult to identify the number of subscribers that reside in multiple dwelling units ("MDUs") (*e.g.*, condominiums, apartment buildings, university dormitories) when residents do not contract directly with a cable service provider. We seek comment on whether the "bulk rate" calculation described above should be modified to more accurately reflect the number of subscribers in the MDU. If the "bulk rate" calculation does need to be revised, commenters should recommend a more accurate way to calculate the number of subscribers in a MDU. We note that if some cable operators are undercounting their subscribers, the remaining cable operators are paying more. Commenters should discuss whether the "bulk rate" charge is consistent with the requirement that cable service providers pay regulatory fees on the number of subscribers.¹⁰³, and if not, commenters should discuss why it is important for "bulk rate" counts to remain separate from subscriber counts. We seek comment on this proposal.

6. Private Land Mobile Radio Services ("PLMRS")

53. PLMRS, which includes both Exclusive and Shared Services, is contending with a declining unit base and an ever increasing regulatory fee obligation. In its FY 2003 *Report and Order*, the Commission decided to freeze the Commercial Mobile Radio Service (CMRS) Messaging fee rate at the FY 2002 level.^[1] The Commission argued in FY 2003 that because the decline in the CMRS Messaging industry was a unique circumstance, and it was not a temporary phenomenon, it was appropriate to provide such relief. However, the PLMRS industry may not be the only industry that is facing a permanent declining unit base. As a result, it may be necessary for the Commission to consider guidelines for assessing regulatory fees on such industries. For example, what would constitute a declining industry, and under what basis should the Commission provide regulatory fee relief? Should the Commission propose to provide regulatory fee relief in any and all circumstances in which an industry is in decline? We seek comment on this proposal.

7. Other Telecommunications Services

54. We seek comment on whether to add, delete, or reclassify services. We seek comment on adding other services that were not included in our regulatory fee schedule initially that should be included now. For example, should we assess regulatory fees on Wi-Fi service providers? Are there other services available today that should share the regulatory fee burden and thus lessen the burden on the more established services? If so, how should we assess the regulatory fees on these services? We also seek comment on whether there are fee categories that should be eliminated.

55. *International Fixed Public Radio*.¹⁰⁴ There is only one licensee in this category and we

¹⁰¹ *Id.*

¹⁰² 47 C.F.R. § 1.1155.

¹⁰³ We recognize that there may be other methods to determine the number of subscribers in an MDU, such as counting the number of set top boxes or the premium channels ordered, that may be more accurate than the "bulk rate" calculation.

¹⁰⁴ See 47 C.F.R. Part 23.

do not expect any additional licensees or applications. We propose to eliminate this category from our schedule of regulatory fees in order to reduce the administrative burden on the Commission in assessing this fee category. We seek comment on this proposal.

56. *International High Frequency Broadcast Stations.*¹⁰⁵ There are only 25 licensed stations in this category. Most of these licensees are tax-exempt organizations that are exempt from payment of regulatory fees. We propose to eliminate this category from our schedule of regulatory fees in order to reduce the administrative burden on the Commission in assessing this fee category. We seek comment on this proposal.

57. *General Mobile Radio Service ("GMRS").* GMRS is a two-way radio service licensed to individuals.¹⁰⁶ Prospective licensees pay a \$50 license application fee for a five-year license term as well as a \$25 regulatory fee. Such costs may be larger than the price of the GMRS device. In addition, other individual radio devices, such as the Family Radio Service,¹⁰⁷ do not pay such fees. These issues may contribute to the low rate of compliance with our licensing requirements for GMRS. We therefore propose to eliminate the regulatory fees for GMRS devices. The application fee would continue to apply for this service. We seek comment on this proposal.

58. The above three services are perhaps more well known to the Commission, but it is possible that there may be additional services that should be consolidated or eliminated because they are based on outmoded technology. We seek comment on this issue.

IV. ADMINISTRATIVE AND OPERATIONAL ISSUES

59. In our *FY 2008 NPRM*, we sought comment on the administrative and operational processes used to collect the annual section 9 regulatory fees.¹⁰⁸ These issues do not affect the amount of regulatory fees parties are obligated to submit; rather the administrative and operational issues affect the process of submitting payment.

A. Use of Fee Filer

60. We strongly encourage regulatees to electronically file their FY 2008 regulatory fee payments via Fee Filer, rather than submitting payment with a completed hardcopy Form 159, Form 159-B, and/or Form 159-W.¹⁰⁹ The benefits of electronically filing via Fee Filer are expeditious payment submissions that are less expensive (no U.S. postage if paying online) and less prone to error. It also results in improved record keeping and payment reconciliation efforts, and reduces paperwork burdens on payers and Commission staff.

¹⁰⁵ See 47 C.F.R. Part 73, Subpart F.

¹⁰⁶ In 1988, the Commission amended the GMRS rules to provide flexibility to the individual user and limit eligibility for new GMRS licenses to individuals. See *Amendment of Subparts A and E of Part 95 to Improve the General Mobile Radio Service ("GMRS")*, Report and Order, PR Docket No. 87-265, 3 FCC Rcd 6554, 6554, ¶ 3 (1988).

¹⁰⁷ In 1996, the Commission established the Family Radio Service ("FRS") as a very short range, two-way voice personal radio service that provides an affordable and convenient means of communications among small groups of persons, including families, with minimal regulation. See *Amendment of Part 95 of the Commission's Rules to Establish a Very Short Distance Two-way Voice Radio Service*, Report and Order, WT Docket No. 95-102, 11 FCC Rcd 12977, 12977, ¶ 2, 12983, ¶ 17, 12984, ¶ 19 (1996). The FRS shares seven frequencies in the 462 MHz band with the GMRS and has seven channels that are offset from GMRS channels in the 467 MHz band. Specifically, FRS channels 1-7 are also GMRS frequencies and FRS channels 8-14 are offset from GMRS frequencies.

¹⁰⁸ *FY 2008 NPRM* at ¶ 9.

¹⁰⁹ Fee Filer can be accessed at <http://www.fcc.gov/fees/feefiler.html>.

61. Traditionally, we have received hardcopy Form 159-Cs (Continuation Sheets) from our regulatees needing to make voluminous payment transactions. These voluminous payers will benefit by using Fee Filer. Fee Filer relieves regulatees of the need to mail several different pre-bills or to follow different filing instructions for different fees; and enables all fee obligations to be paid simply either online or by following pre-printed instructions on a Fee Filer-produced voucher.

62. Fee Filer accepts electronic credit card transactions of up to \$99,999.99 and ACH payment transactions from a bank account of an unlimited dollar amount. Fee Filer also facilitates payment by check or wire transfer by producing a one-page Remittance Voucher Form 159-E which can be mailed to our lockbox bank.

B. Proposals for Notification and Collection of Regulatory Fees

63. In our *FY 2008 NPRM*, we sought comment on the administrative processes that the Commission uses to notify regulatees and collect regulatory fees.¹¹⁰ We did not receive comment on this issue. Each year, we generate public notices and fact sheets that notify regulatees of the fee payment due date and provide additional information regarding regulatory fee payment procedures.¹¹¹ We will continue 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 2008 regulatory fee cycle.

64. As a general practice, we will not send regulatory fee material to regulatees via surface mail. Regulatees without access to the Internet can receive public notices and other relevant material by mail upon request. Regulatees and the general public may request such information by contacting the FCC Financial Operations HelpDesk at (877) 480-3201, Option 4.

65. We will continue to send specific regulatory fee pre-bills or assessment notifications via surface mail to the select fee categories discussed below.¹¹² Pre-bills are hardcopy billing statements that the Commission mails to certain regulatees.

1. Interstate Telecommunications Service Providers

66. 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 converted our usage of the FCC Form 159-W from an "assessment of amount due" to a pre-bill. We have successfully used the Form 159-W as a pre-billing instrument in the fiscal years following. In FY 2007 we started rounding lines 14 and 16 on the Form 159-W to the nearest dollar. We will continue rounding lines 14 and 16 in FY 2008.

2. Satellite Space Station Licensees

67. Beginning in FY 2004, we mailed regulatory fee pre-bills via surface mail to licensees in our two satellite space station service categories. Geostationary orbit space station ("GSO") licensees received bills requesting regulatory fee payment for satellites that were licensed by the Commission and

¹¹⁰ *FY 2008 NPRM* at ¶ 14.

¹¹¹ *Id.*

¹¹² 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.

operational on or before October 1 of the respective fiscal year; and 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. In our *FY 2008 NPRM* we sought comment on continuing to mail prebills to the GSO and NGSO licensees.¹¹³ We did not receive comment on this issue. We conclude that we will continue to mail pre-bills to our GSO and NGSO satellite space station categories.

3. Media Services Licensees

68. 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.¹¹⁴ We will mail assessment notifications to licensees to their primary record of contact populated in the 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.¹¹⁵ Licensees opting not to file their fee payment electronically through Fee Filer must submit a completed hardcopy FCC Form 159 with their fee payment; *i.e.*, the assessment notifications cannot be used as a substitute for a completed Form 159.

4. Commercial Mobile Radio Service Cellular and Mobile Services Assessments

69. In the *FY 2008 NPRM* we sought comment on our practice of mailing assessment letters to CMRS providers using Numbering Resource Utilization Forecast ("NRUF") data.¹¹⁶ We proposed using NRUF data based on "assigned" number counts that have been adjusted for porting to net Type 0 ports ("in" and "out").¹¹⁷ We proposed that the letters will not include Operating Company Numbers ("OCNs") with their respective assigned number counts, but rather, OCNs with an aggregate total of assigned numbers for each carrier. We did not receive comment on this issue. We therefore adopt our proposal.

70. The provider may correct its subscriber count if the number of subscribers on the assessment letter differs from the subscriber count the service provider provided on its NRUF form. The provider may return the assessment letter or contact 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 the provider does not correct the

¹¹³ *FY 2008 NPRM* at ¶ 20.

¹¹⁴ 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.

¹¹⁵ The Commission-authorized web site for media services licensees is <http://www.fccfees.com>.

¹¹⁶ *FY 2008 NPRM* at ¶ 24.

¹¹⁷ 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 FGC Rcd 12259, 12264, ¶¶ 38-44 (2005).

subscriber count, the section 9 regulatory fee payment should be based on the number of subscribers listed on that letter. We will review all amendments to 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 amended subscriber count.

71. An initial and a final assessment letter will be mailed to CMRS providers that have filed an NRUF form; some providers may not be sent assessment letters if they did not file the NRUF form. These providers shall compute their section 9 regulatory fee payment using the standard methodology¹¹⁸ 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, either via Fee Filer, or attached to a completed hardcopy FCC Form 159. 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.

5. Cable Television Subscribers

72. In the *FY 2008 NPRM* we sought comment on whether we should 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.¹¹⁹ We also sought comment on whether we should continue to send email messages to the addresses in the Media Bureau's Cable Operations and Licensing System ("COALS") to notify cable television operators of the amount and due date of regulatory fees for basic cable television subscribers.¹²⁰ We did not receive comment on these issues. We therefore adopt these proposals. These practices have worked well for the Commission in the past and eased administrative burdens for the cable television industry.

6. Streamlined Regulatory Fee Payment Process for CMRS Cellular and Mobile Providers

73. In the *FY 2008 NPRM* we sought comment on whether we should continue the practice adopted in FY 2006¹²¹ of streamlining the CMRS payment process by eliminating the requirement for CMRS providers to identify their individual call signs when making regulatory fee payments.¹²² Instead, we would require CMRS providers to pay their regulatory fees only at the aggregate subscriber level, without having to identify their various call signs.¹²³ We also proposed to continue our practice of combining the CMRS cellular and CMRS mobile fee categories into one category.¹²⁴ AAPC, the only commenter addressing this issue, "strongly supports" our proposal to continue to allow reporting of aggregate subscriber levels for fee payment.¹²⁵ We therefore adopt our proposal. These streamlined

¹¹⁸ Federal Communications Commission, *Regulatory Fees Fact Sheet: What You Owe - Commercial Wireless Services for FY 2007* at 1 (rel. Aug. 2007).

¹¹⁹ See *FY 2008 NPRM* at para. 28.

¹²⁰ See *id.* at para. 29.

¹²¹ 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).

¹²² See *FY 2008 NPRM* at para. 30.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ AAPC Comments at 3.

procedures allow us to process payments more quickly and accurately.

V. PROCEDURAL MATTERS

A. Payment of Regulatory Fees

1. De Minimis Fee Payment Liability

74. 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

75. 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

76. 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.

b. Wireline (Common Carrier) Services

77. 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.

c. Wireless Services

78. 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.

79. The first eleven regulatory fee categories in our Schedule of Regulatory Fees (*see* Attachment C) 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 10-year term of initial license, and only pay regulatory fees again for the license at the time its next renewal. We include these eleven categories in our Schedule of Regulatory Fees to publicize the fee amounts; however, we do not actually collect these fees on an annual basis.

d. Multichannel Video Programming Distributor Services (cable television operators and CARS licensees)

80. Regulatory fees must be paid for the number of basic cable television subscribers as of December 31, 2007.¹²⁶ Regulatory fees also must be paid for CARS licenses that were granted on or

¹²⁶ 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 2006, rather than on a count as of December 31, 2006.

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.

e. International Services

81. 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, the payments of which are determined by the number of active circuits as of December 31, 2007.¹²⁷

B. Enforcement

82. As a reminder to all licensees, section 159(c) of the 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.

83. Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including the Commission's Red Light Rule¹²⁸ and the provisions set forth in the Debt Collection Improvement Act of 1996 ("DCIA"). We also assess administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the related debt pursuant to the DCIA and 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.

84. 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.¹²⁹ Failure to pay regulatory fees can also result in the initiation of a proceeding to revoke any and all authorizations held by

¹²⁷ Regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers that have active international bearer circuits in any transmission facility for the provision of service to an end user or resale carrier, which includes active circuits to themselves or to their affiliates. In addition, non-common carrier satellite operators must pay a fee for each circuit sold or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. Non-common carrier submarine cable operators are also to pay fees for any and all international bearer circuits sold on an indefeasible right of use ("IRU") basis or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. *See Assessment and Collection of Regulatory Fees for Fiscal Year 2001*, MD Docket No. 01-76, Report and Order, 16 FCC Rcd 13525, 13593 (2001); *Regulatory Fees Fact Sheet: What You Owe – International and Satellite Services Licensees for FY 2004* at 3 (rel. July 2004) (the fact sheet is available on the Commission's web-site at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-249904A4.pdf).

¹²⁸ See 47 C.F.R. § 1.1910.

¹²⁹ See 47 C.F.R. §§ 1.1161(c), 1.1164(f)(5), and 1.1910.

the entity responsible for paying the delinquent fee(s).

C. Final Paperwork Reduction Act of 1995 Analysis

85. This Report and Order contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 ("PRA"), Public Law 104-13. It will be submitted to the Office of Management and Budget ("OMB") for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

D. Congressional Review Act Analysis

86. The Commission will send a copy of this Report and Order in a report to be sent to Congress and the General Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

E. Ex Parte Rules

87. *Permit-But-Disclose*. This is as a "permit-but-disclose" proceeding subject to the requirements under section 1.1206(b) of the Commission's rules.¹³⁰ *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.¹³¹ Additional rules pertaining to oral and written presentations are set forth in section 1.1206(b).

F. Filing Requirements

88. *Comments and Replies*. Pursuant to sections 1.415 and 1.419 of the Commission's rules,¹³² 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.¹³³

89. *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

¹³⁰ *See* 47 C.F.R. § 1.1206(b); *see also* 47 C.F.R. §§ 1.1202, 1.1203.

¹³¹ *See* 47 C.F.R. § 1.1206(b)(2).

¹³² *See id.* §§ 1.415, 1.419.

¹³³ *See Electronic Filing of Documents in Rulemaking Proceedings*, 13 FCC Rod 11322 (1998).

be sent in response.

90. *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.

91. *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, 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.

92. *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 Commission'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>.

VI. ORDERING CLAUSES

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

94. IT IS FURTHER ORDERED that the FY 2008 section 9 regulatory fee assessment requirements ARE ADOPTED as specified herein.

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