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

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FCC Mail Room

In the Matter of )  
)  
Assessment and Collection of Regulatory Fees for ) MD Docket No. 11-76  
Fiscal Year 2011 )  
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**NOTICE OF PROPOSED RULEMAKING**

**Adopted: May 3, 2011**

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By the Commission:

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## I. INTRODUCTION

1. In this *Notice of Proposed Rulemaking*, we propose to collect \$335,794,000 in regulatory fees for Fiscal Year (“FY”) 2011, 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.<sup>1</sup> The annual regulatory fee amount to be collected is established each year in the Commission’s Annual Appropriations Act which is adopted by Congress and signed by the President and which funds the Commission.<sup>2</sup> In this annual regulatory fee proceeding, we retain many of 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 September 2011 filing window in order to collect the required amount by the end of our fiscal year.

### A. FY 2011 Regulatory Fee Assessment Methodology

2. In our FY 2011 regulatory fee assessment, we will use the same Section 9 regulatory fee assessment methodology adopted in FY 2010 and in prior years. Each fiscal year, the Commission proportionally allocates the total amount that must be collected via Section 9 regulatory fees. The results of our FY 2011 regulatory fee assessment methodology (including a comparison to the prior year’s results) are contained in Appendix A. To collect the \$335,794,000 required by Congress, we adjusted the FY 2010 amount upward by 4.7 percent and allocated this amount across the various fee categories. Consistent with past practice, we then divided the FY 2011 amount by the number of estimated payment units in each fee category to determine the unit fee.<sup>3</sup> As in prior years, for cases involving small fees,

<sup>1</sup> 47 U.S.C. § 159(a).

<sup>2</sup> See Consolidated Appropriations Act, 2010, Public Law 111-117 for the FY 2010 appropriations act language for the Commission establishing the amount of \$335,794,000 of offsetting collections to be assessed and collected by the Commission pursuant to Section 9 of the Communications Act.

<sup>3</sup> 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.

e.g., licenses that are renewed over a multiyear term, we divided the resulting unit fee by the term of the license and then rounded these unit fees consistent with the requirements of Section 9(b)(2) of the Act.

3. In calculating the FY 2011 regulatory fees listed in Appendix B, we adjusted the FY 2011 list of payment units (see Appendix C) based upon licensee databases, industry and trade group projections, as well as prior year payment information. In some instances, Commission licensee databases are used; in other instances, actual prior year payment records and/or industry and trade association projections are used in determining the payment units.<sup>4</sup> Where appropriate, we adjusted and rounded our final estimates to take into consideration events that may impact the number of units for which regulatees submit payment, such as waivers and exemptions that may be filed in FY 2011, and fluctuations in the number of licenses or station operators due to economic, technical, or other reasons. Our estimated FY 2011 payment units, therefore, are based on several variable factors that are relevant to each fee category. The fee rate may also be rounded or adjusted slightly to account for these variables.

4. When calculating the fee methodology for AM and FM radio stations, we consider many factors, such as facility attributes and the population served by each station. The calculation of the population served is determined by coupling current United States Census Bureau data with technical and engineering data, as detailed in Appendix D. In FY 2011, we will begin to incorporate new Census data that was taken in 2010, and this could have an impact in altering the fees of some radio stations. Hence, the population served, as well as the class and type of service (AM or FM), will continue to be the principal variables in determining the amount of regulatory fees to be paid.<sup>5</sup>

#### **B. Regulatory Fee Obligations for Digital Low Power, Class A, and TV Translators /Boosters**

5. The digital transition to full-service television stations was completed on June 12, 2009, but the digital transition for Low Power, Class A, and TV Translators/Boosters remains voluntary, and there is presently no set date for the completion of this transition. Historically, the discussion of digital transition conversion with respect to regulatory fees has applied only to full-service television stations. As a result, the “digital only” exemption does not impact this class of regulatees. Because the digital transition in the Low Power, Class A, and TV Translators/Booster facilities is still voluntary and the transition will occur over a period time, some facilities may still be in the process of converting from an analog to a digital service. During this transition period, licensees of Low Power, Class A, and TV Translator/Booster facilities may be operating in analog mode, in digital mode, or in an analog and digital simulcast mode. For regulatory fee purposes, a fee will be assessed for each facility operating either in an analog or digital mode. In instances in which a licensee is operating in both an analog and digital mode as a simulcast, a single regulatory fee will be assessed for this analog facility that has a digital companion channel. As greater numbers of facilities convert to digital mode, the Commission will provide revised instructions on how regulatory fees will be assessed.

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<sup>4</sup> The databases we consulted are the following: 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 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*, as well as industry sources including, but not limited to, *Television & Cable Factbook* by Warren Publishing, Inc. and the *Broadcasting and Cable Yearbook* by Reed Elsevier, Inc.

<sup>5</sup> In addition, beginning in FY 2005, we established a procedure by which we set regulatory fees for AM and FM radio and VHF and UHF television Construction Permits each year at an amount no higher than the lowest regulatory fee for a licensed station in that respective service category. For example, in FY 2010 the regulatory fee for an AM radio station Construction Permit was no higher than the regulatory fee for an AM Class C radio station serving a population of less than 25,000.

**C. Commercial Mobile Radio Service Messaging Service**

6. Commercial Mobile Radio Service (“CMRS”) Messaging Service, which replaced the CMRS One-Way Paging fee category in 1997, includes all narrowband services.<sup>6</sup> Since 1997, the number of subscribers has declined from 40.8 million to 4.9 million, and there does not appear to be any sign of recovery to the subscriber levels of 1997-1999.<sup>7</sup> Maintaining the fee at the existing level of \$.08 per subscriber is the minimum reasonable and appropriate action to take under the prevailing circumstances in the paging industry. We propose in FY 2011 to continue maintaining the regulatory fee rate at \$.08 per subscriber due to the declining subscriber base in this industry. We seek comment on this proposal.

**D. Interstate Telecommunications Service Provider (ITSP)**

7. In our FY 2010 Regulatory Fee *Report and Order*<sup>8</sup>, we acknowledged that the revenue base upon which the ITSP fee is calculated has been decreasing for several years.<sup>9</sup> Because of this continued decline, we limited the increase in the FY 2010 ITSP fee rate from \$.00342 to \$.00349, and assessed a slightly higher fee across all other fee categories. In FY 2011, the ITSP revenue base has experienced an even more significant decline. Over the past six months, we note an additional decline of nine percent (9%) in the ITSP base revenue, which would increase the ITSP fee rate for FY 2011 to \$.00402<sup>10</sup>, an increase of 15% from the fee rate adopted in FY 2010.<sup>11</sup> This increase in the FY 2011 ITSP fee rate from \$.00349 to \$.00402 will be detrimental to the operations of many small and medium ITSP providers, and will further burden a regulatory fee category already bearing the majority of the agency’s overall regulatory fee burden. Therefore, as we did in FY 2010, we propose to limit the increase of the FY 2011 ITSP fee rate to \$.00361 per revenue dollar, and assess a slightly higher fee across all other regulatory fee categories. We seek comment on this proposal.

8. Each year, the Commission downloads 499-A revenue data<sup>12</sup> onto a FCC Form 159-W to establish an ITSP regulatory fee bill. These bills are then loaded into the Commission’s electronic payment and filing system (“Fee Filer”) so that providers can view and pay their annual regulatory fee bill. Historically, in creating ITSP regulatory fee bills, the Commission separated 499-A filers into two categories: 1) those whose primary revenue stream categorized them as interstate telecommunications

<sup>6</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>7</sup> Between FY 1997 and FY 2010, the subscriber base in the paging industry declined 89 percent from 40.8 million to 4.9 million subscribers, according to FY 2010 collections data as of September 30, 2010.

<sup>8</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 2010*, MD Docket No. 10-87, Report and Order, 25 FCC Rcd 9278 at ¶ 31 (2010) (“FY 2010 Report and Order”).

<sup>9</sup> In FY 2010 ITSP, the fee factor in the FY 2010 NPRM of \$.00351 was based on December 2009 ITSP revenue data. April 2010 ITSP revenue data, however, reflected revenues 3.4 percent lower than projections. This revenue decrease would have resulted in an increase in the resulting fee factor from the projected \$.00351 to a fee factor of \$.00364. Thus, based on the proposed methodology of the FY 2010 NPRM and the revised revenue numbers, the ITSP fee factor would have increased from \$.00342 (FY 2009 ITSP fee rate) to \$.00364. The concerns of these providers, which collectively represent 46.82 percent of all regulatory fees paid in any given year, resulted in the adoption, as an interim measure, an ITSP fee rate at \$.00349, which is a 2.1% increase from FY 2009. We find this to be a reasonable interim measure pending our review of whether part of that 46.82 percent of the regulatory fee burden might be moved from ITSP in the context of fundamental reform.

<sup>10</sup> If the Commission did not provide any relief or consider changes in the ITSP revenue stream, the fee factor rate would be \$.00402 per revenue dollar.

<sup>11</sup> See *FY 2010 Report and Order* at Appendix C, Page 28.

<sup>12</sup> FCC Form 499-A is filed annually with USAC on April 1<sup>st</sup>, but it can be revised many times for up to a year of the April 1<sup>st</sup> filing.

service providers (ITSP), and 2) those whose primary revenue stream was considered to be non-ITSP, such as wireless, satellite, and other service providers. Simply stated, the logic here was to categorize 499-A filers into two regulatory fee paying categories – those that pay ITSP regulatory fees on the basis of a fee factor per revenue dollar, and those whose primary revenue stream would place them in a category other than ITSP (“non-ITSP providers”), such as wireless or satellite carriers, that pay regulatory fees on some other basis (e.g. wireless carriers pay regulatory fees on a per subscriber basis). By separating 499-A filers into these two categories (ITSP providers and non-ITSP providers), the Commission was not assessing the ITSP revenues of certain particular entities (non-ITSP providers) simply because these entities were paying another form of regulatory fee (e.g. wireless or satellite fees). After more careful consideration, we realize that this treatment resulted in predominantly ITSP providers paying fees on both ITSP revenues and, if they also provided other services, a per unit subscriber fee on other services (e.g. wireless services), while non-ITSP paid on a per unit basis only (e.g. for wireless services), and were not assessed fees on their ITSP revenues. There is no basis for this disparate treatment; it is only logical that these wireless providers and other non-ITSP providers be subject to ITSP fees based on their ITSP revenues, similar to the fees that are currently paid by wireline carriers. Therefore, instead of separating 499-A filers into these two categories of regulatory fee payers, we propose to assess ITSP regulatory fees on all ITSP revenues, regardless of the predominant classification of the payor. More specifically, we find that a more equitable way of assessing ITSP regulatory fees is to assess an ITSP fee on 499-A reported ITSP revenue items regardless of whether the payor is predominantly an ITSP or a non-ITSP provider. If FCC Form 499-A has revenues identified on lines 412 (e), 420 (d), and/or 420 (e), the provider would be subject to ITSP regulatory fees.<sup>13</sup>

9. FCC Form 159-W was established in FY 2001 to assist providers in transposing revenue information from their FCC Form 499-A to a worksheet that would assist them in computing their regulatory fee obligation. Initially, the Form 159-W worksheet was left blank for the provider to complete and mail it in along with their check. In later years, the Commission provided a pre-completed Form 159-W based on revenue information directly from FCC Form 499-A. In this *Notice of Proposed Rulemaking*, the Commission proposes to assess a regulatory fee on all providers that have subject revenues on Line 14 of Form 159-W, which after the fee factor is applied, results in a regulatory fee obligation of \$10 or greater. By assessing regulatory fees on all providers (\$10 or greater), we believe we can achieve a more equitable assessment of ITSP regulatory fees across all providers, and reduce the subjective factor involved in identifying some providers as non-ITSP because their primary business is cellular or a satellite provider. If ITSP revenues are derived from the service and identified on the appropriate lines of Form 499-A (and subsequently transposed to Form 159-W), then a regulatory fee would be assessed on those revenues. In FY 2011, we believe our proposal will add \$2.0 billion to the unit base estimate, which will help to support maintaining the FY 2011 ITSP fee factor rate at \$0.00361, reducing the impact of this limitation on all other regulatory fee categories. We seek comment on this proposal of assessing regulatory fees on ITSP revenues from all providers.

#### **E. Fee Waiver Policies**

10. As our rules expressly provide, petitions for waiver of a regulatory fee must be accompanied by the required fee “unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.”<sup>14</sup> Similarly, petitions for reduction of fees filed with less than the full fee due must be accompanied by a request for deferral “supported by

<sup>13</sup> See FCC Form 159-W on page 7 of the Commission’s Interstate Telecommunications Service Provider (ITSP) Fact Sheet, August 2010. 499-A Form Line 412 (e) corresponds with Line 1 of FCC Form 159-W; 499-A Form Line 420 (d) corresponds with Line 2 of FCC Form 159-W; and 499-A Form Line 420 (e) corresponds with Line 3 of FCC Form 159-W. However, from FCC Form 159-W revenue Lines 1 through 3, a provider can also subtract Lines 5 through 12, resulting in a net revenue amount upon which regulatory fees would be due.

<sup>14</sup> 47 C.F.R. §1.1166 (c).

documentation of financial hardship.”<sup>15</sup> However, citing section 1.1166 (b) of the rules, which states that “Deferrals of fees will be granted for a period of six months following the date that the fee is initially due,” some have argued that, even where supporting documentation of financial hardship is not provided, a regulatee can delay its payment of the fees owed for up to six months simply by requesting the deferral. That argument is inconsistent with sections 1.1166 (c) and (d) of our rules, which provide that petitions for waivers or reductions will be dismissed if they are not accompanied by the full fee owed, unless the regulatee requests a deferral of payment supported by documentation of financial hardship.<sup>16</sup> A regulatee’s mere allegation of financial hardship thus does not automatically entitle it to a deferral of its obligation to pay regulatory fees; only a properly supported claim of financial hardship will entitle the regulatee to a deferral. Accordingly, if a request for deferral is not supported by documentation of financial hardship, it will be denied, and an associated petition for waiver or reduction will be dismissed. A regulatee cannot delay payment on the theory that its deferral request triggered an automatic six-month extension of its obligation to pay. We thus propose to amend section 1.1166 (b) of the Rules<sup>17</sup> to read, “Deferrals of fees, if granted, will be for a designated period of time not to exceed six months.” We seek comment on this rule clarification.

#### **F. Administrative and Operational Issues**

11. In FY 2009, the Commission implemented several changes in procedures which simplified the payment and reconciliation processes of FY 2009 regulatory fees. These changes proved to be very helpful to both licensees and to the Commission, and we propose in the following paragraphs to expand upon these improvements. In FY 2011, the Commission will promote greater use of technology (and less use of paper) to improve the regulatory fee notification and collection process. In addition to seeking comment on the specific initiatives discussed in the paragraphs below, we ask whether there are other steps we could take to promote greater use of technology in collecting regulatory fees.

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

12. In FY 2009, we instituted a mandatory filing requirement using the Commission’s electronic filing and payment system (also known as “Fee Filer”).<sup>18</sup> Licensees filing their annual regulatory fee payments were required to begin the process by entering the Commission’s Fee Filer system with a valid FRN and password.<sup>19</sup> This change was beneficial to both licensees and to the Commission. For licensees, the mandatory use of Fee Filer eliminates the need to manually complete and submit a hardcopy Form 159, and for the Commission, the data in electronic format made it much easier to process payments more efficiently and effectively. We propose to continue to make the use of Fee Filer for filing annual regulatory fees mandatory. We seek comment on this proposal. We also request comment on ways we might improve the mandatory use of Fee Filer. The mandatory use of Fee Filer does not mean that licensees are expected to pay only through Fee Filer – it is only mandatory for licensees to begin the process of filing their annual regulatory fees using Fee Filer.

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<sup>15</sup> 47 C.F.R. §1.1166 (d).

<sup>16</sup> 47 C.F.R. §1.1166 (c) and (d) (requests for waivers and reductions of fees “that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.”

<sup>17</sup> 47 C.F.R. §1.1166 (b).

<sup>18</sup> FY 2009 Report and Order at ¶¶ 20 and 21.

<sup>19</sup> Therefore, it is very important for licensees to have a current and valid FRN address on file in the Commission’s Registration System (CORES).

## 2. Notification and Collection of Regulatory Fees

### a. Pre-bills

13. In prior years, the Commission mailed pre-bills via surface mail to licensees in select regulatory fee categories: Interstate telecommunications service providers (“ITSPs”), Geostationary (“GSO”) and Non-Geostationary (“NGSO”) satellite space station licensees,<sup>20</sup> holders of Cable Television Relay Service (“CARS”) licenses, and Earth Station licensees.<sup>21</sup> The remaining regulatees did not receive pre-bills. In our *FY 2009 Report and Order*, the Commission decided to have the attributes of these pre-bills viewed in Fee Filer, rather than mailing pre-bills out to licensees via surface mail.<sup>22</sup> In FY 2011, the Commission will continue to reduce its use of hardcopy documents by not mailing out annual regulatory fee pre-bills, and instead place the pre-bill information on the Commission’s website for licensees to access through the Commission’s electronic filing and payment system (“Fee Filer”). Regulatees can also look to the Commission’s website for information on upcoming events and deadlines relating to regulatory fees. We ask whether further changes to our system of electronic notification would serve to more efficiently and effectively inform regulatees of information and procedures pertaining to regulatory fees.

## II. PROCEDURAL MATTERS

14. Included below are procedural items as well as our current payment and collection methods which we have revised over the past several years to expedite the processing of regulatory fee payments. We do not propose changes to these procedures. Rather, we include them here as a useful way of reminding regulatory fee payers and the public about these aspects of the annual regulatory fee collection process.

### A. Public Notices and Fact Sheets

15. 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 relevant regulatory fee payment procedures. We will continue to post this information on <http://www.fcc.gov/fees/regfees.html>, but as in previous years, we will not send out public notices and fact sheets to regulatees *en masse*.

### B. Assessment Notifications

#### 1. Media Services Licensees

16. Beginning in FY 2003, we sent fee assessment notifications via surface mail to media services entities on a per-facility basis.<sup>23</sup> These notifications provided the assessed fee amount for the

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<sup>20</sup> Geostationary orbit space station (“GSO”) licensees received regulatory fee pre-bills 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 regulatory fee pre-bills for systems that were licensed by the Commission and operational on or before October 1 of the respective fiscal year.

<sup>21</sup> 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.

<sup>22</sup> *See FY 2009 Report and Order* at ¶¶ 24, 26.

<sup>23</sup> As stated previously in a footnote, a pre-bill is considered an account receivable in the Commission’s accounting system. Pre-bills include an amount owed and have a payment due date of the last day of the regulatory fee payment window. If a pre-bill is not paid by the due date, it becomes delinquent and is subject to our debt collection procedures. On the other hand, an assessment is a proposed statement of the amount of regulatory fees owed by an (continued....)

facility in question, as well as the data attributes that determined the fee amount. We have since refined this initiative to be more electronic and paperless.<sup>24</sup> In our FY 2010 *Notice of Proposed Rulemaking*, we proposed to discontinue mailing the media notifications beginning in FY 2011, relying instead on information on the Commission's website and the use of the Commission-authorized website at [www.fccfees.com](http://www.fccfees.com).<sup>25</sup> We kept the comment and reply comment period open until September 30, 2010 to be receptive to the needs of media licensees. We received no comments or reply comments on this particular issue. Therefore, beginning in FY 2011, we will discontinue mailing hardcopy notification assessment letters to media licensees.

17. Every ten years, when the United States Census data is released, this data is incorporated into the population counts of AM & FM radio stations on a county basis. These population counts, along with the station's class and type of service, are the basis for determining regulatory fees. Although the 2010 Census data has been completed, the data is still subject to revisions. In addition, because FY 2011 regulatory fees are determined on the basis of the station's attributes as of October 1, 2010, it would be inappropriate to apply incomplete 2010 Census data in determining FY 2011 regulatory fees for radio stations. Therefore, we will apply 2010 Census data in determining the population counts of radio stations as of October 1, 2011, as part of our calculations of FY 2012 regulatory fees.

## 2. CMRS Cellular and Mobile Services Assessments

18. As we have done in prior years, our procedures for conveying CMRS subscriber counts to providers are as follows. We will mail an initial 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>26</sup> The letter will include a listing of the carrier's Operating Company Numbers ("OCNs") upon which the assessment is based.<sup>27</sup> The letters will not include OCNs with their respective assigned number counts, but rather, an aggregate total of assigned numbers for each carrier.

19. A carrier wishing to revise their subscriber count can access Fee Filer within a designated time frame to revise their count. Providers should follow the prompts in Fee Filer to record their subscriber revisions, along with any supporting documentation.<sup>28</sup> The Commission will then review the revised count and supporting documentation and either approve or disapprove the submission in Fee Filer. If the submission is disapproved, the Commission will attempt to contact the provider so that the provider will have an opportunity to discuss its revised subscriber count and/or provide additional supporting documentation. If we receive no response or correction to the initial assessment letter, or we do not reverse the disapproval of the provider's revised count submission, we will expect the fee payment to be

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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.

<sup>24</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. The notifications also provide licensees with a telephone number to call in the event that they need customer assistance.

<sup>25</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 2010*, Report and Order, 25 FCC Rcd 9278 at para. 42 (2010) ("*FY 2010 Report and Order*")

<sup>26</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>27</sup> *Id.*

<sup>28</sup> In the supporting documentation, the provider will need to state a reason for the change, such as a purchase or sale of a subsidiary, the date of the transaction, and any other pertinent information that will help to justify a reason for the change.

based on the number of subscribers listed on the initial assessment letter. Once the timeframe for revision has passed, the subscriber counts will be finalized. These subscriber counts will then be the basis upon which CMRS regulatory fees will be expected. Providers will be able to view their final subscriber counts online in Fee Filer. A final CMRS assessment letter will not be mailed out.

20. Because some carriers do not file the NRUF report, they may not receive an initial letter of assessment. In these instances, the carriers should compute their fee payment using the standard methodology<sup>29</sup> that is currently in place for CMRS Wireless services (e.g., compute their subscriber counts as of December 31, 2010), and submit their fee payment accordingly. Whether a carrier receives an assessment letter or not, the Commission reserves the right to audit the number of subscribers for which regulatory fees are paid. In the event that the Commission determines that the number of subscribers paid is inaccurate, the Commission will bill the carrier for the difference between what was paid and what should have been paid.

### 3. Submarine Cable Allocation

21. The Commission collects a revenue amount each year based on a Congressional mandate. Because the dollar amount differs each year, a revenue apportionment is required each year to determine the projected regulatory fee revenue to be collected from submarine cable providers and from terrestrial/satellite facilities.<sup>30</sup> Since FY 2009, the Commission has used the 87.4/12.6 percent allocation proposed in the Consensus Proposal as the percentage upon which to determine the regulatory fee revenue amounts for submarine cable providers and terrestrial/satellite facilities, respectively.<sup>31</sup> Each year, the Commission reserves the right to revise this 87.4/12.6 allocation. Although we will continue to review this allocation as part of our annual regulatory fee proceeding, we do not at this time find any basis to alter the 87.4/12.6 percent revenue allocation for 2011 regulatory fees.

### 4. Re-Assessment of Regulatory Fee Issues in a *Further Notice of Proposed Rulemaking*

22. Since 1994 when the first regulatory fees were collected, the communications industry has undergone a rapid transformation. The current basis of how regulatory fees are assessed, however, has changed only slightly since its inception in 1994.<sup>32</sup> In FY 2008, the Commission released a *Further Notice of Proposed Rulemaking* which identified some of the issues raised by commenters with regard to the need for fundamental reform of our regulatory fee assessment methodology<sup>33</sup> From this rulemaking, the Commission has already acted on three of the issues: 1) a change in the bearer circuit methodology for calculating regulatory fees, 2) the elimination of two regulatory fee categories, the *International Public Fixed Radio* and *International High Frequency Broadcast Stations*, and 3) the conversion of UHF and VHF Television stations from analog to digital television. In our FY 2010 Regulatory Fees Report & Order, we stated that in a future proceeding, we will “further examine the nature and extent of all changes that need to be made to our regulatory fee schedule and calculations. In a separate and forthcoming action, we will call for comment on issues including, but not limited to, how changes in the

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<sup>29</sup> See, e.g., Federal Communications Commission, *Regulatory Fees Fact Sheet: What You Owe - Commercial Wireless Services for FY 2010* at 1 (rel. September 2010).

<sup>30</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Second Report and Order, 24 FCC Rcd 4208 at n. 35 (2009) (“*Submarine Cable Order*”).

<sup>31</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 2009*, Report and Order, 24 FCC Rcd 10301 at para. 8 (2009) (“*FY 2009 Report and Order*”).

<sup>32</sup> 47 U.S.C. § 159(a) and § 159(b).

<sup>33</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, MD Docket No. 08-65, RM-11312, Report and Order and Further Notice of Proposed Rulemaking, 73 FR 50201 (August 26, 2008) at paras. 38-41.

telecommunications marketplace may warrant rebalancing of regulatory fees among existing service providers...”<sup>34</sup> As our commitment to this “forthcoming action”, the Commission will by the end of 2011, initiate a further rulemaking that will update the record on regulatory fee rebalancing, as well as expand this inquiry to include new issues and services not covered by the 2008 *Further Notice of Proposed Rulemaking*, such as whether and how to re-assess the regulatory fee burden of all fee categories, whether to incorporate 499-A wireless revenue in the calculation of ITSP regulatory fees, and whether to eliminate the regulatory fee portion (but not the application fee portion) of General Mobile Radio Service (GMRS).

**C. Streamlined Regulatory Fee Payment Process**

**1. Cable Television Subscribers**

23. We will 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 report cable subscriber counts on a per community unit identifier (“CUID”) basis.

**2. CMRS Cellular and Mobile Providers**

24. In FY 2006, we streamlined the CMRS payment process by eliminating the requirement for CMRS providers to identify their individual call signs when making their regulatory fee payment, instead allowing CMRS providers to pay their regulatory fees only at the aggregate subscriber level without having to identify their various call signs.<sup>35</sup> We will continue this practice in FY 2011. In FY 2007, we consolidated the CMRS cellular and CMRS mobile fee categories into one fee category with a single 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 2011, we will continue this practice of combining the CMRS cellular and CMRS mobile fee categories into one regulatory fee category.

**3. Interstate Telecommunications Service Providers (“ITSP”)**

25. 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 performed in a consistent manner and eliminated processing issues that occurred in prior years. In FY 2011, we will continue rounding lines 14 and 16 when calculating the FY 2011 ITSP fee obligation. In addition, we will continue the practice of not mailing out Form 159-W via surface mail.

**D. Payment of Regulatory Fees**

**1. Lock Box Bank**

26. All lock box payments to the Commission for FY 2011 will be processed by U.S. Bank, St. Louis, Missouri, and payable to the FCC. During the regulatory fee season, for those licensees paying by check, money order, or by credit card using Form 159-E remittance advice, the fee payment and Form 159-E remittance advice should be mailed to the following address: Federal Communications Commission, Regulatory Fees, P.O. Box 979084, St. Louis, MO 63197-9000. Additional payment options and instructions are posted at <http://www.fcc.gov/fees/regfees.html>.

<sup>34</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 2010*, MD Docket No. 10-87, Report and Order, 25 FCC Rcd 9278 ¶ 31 (2010).

<sup>35</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).

## 2. Receiving Bank for Wire Payments

27. The receiving bank for all wire payments is the Federal Reserve Bank, New York, New York (TREAS NYC). When making a wire transfer, regulatees must fax a copy of their Fee Filer generated Form 159-E 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 not to delay crediting their account. Regulatees should discuss arrangements (including bank closing schedules) with their bankers several days before they plan to make the wire transfer to allow sufficient time for the transfer to be initiated and completed before the deadline. Complete instructions for making wire payments are posted at <http://www.fcc.gov/fees/wiretran.html>.

## 3. De Minimis Regulatory Fees

28. Regulatees whose total FY 2011 regulatory fee liability, including all categories of fees for which payment is due, is less than \$10 are exempted from payment of FY 2011 regulatory fees.

## 4. Standard Fee Calculations and Payment Dates

29. The Commission will accept fee payments made in advance of the window for the payment of regulatory fees. The responsibility for payment of fees by service category is as follows:

- *Media Services*: Regulatory fees must be paid for initial construction permits that were granted on or before October 1, 2010 for AM/FM radio stations, VHF/UHF full service television stations, and satellite television stations. Regulatory fees must be paid for all broadcast facility licenses granted on or before October 1, 2010. In instances where a permit or license is transferred or assigned after October 1, 2010, 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, 2010. In instances where a permit or license is transferred or assigned after October 1, 2010, responsibility for payment rests with the holder of the permit or license as of the fee due date. We note that audio bridging service providers are included in this category.<sup>36</sup>
- *Wireless Services*: CMRS cellular, mobile, and messaging services (fees based on number of subscribers or telephone number count): Regulatory fees must be paid for authorizations that were granted on or before October 1, 2010. The number of subscribers, units, or telephone numbers on December 31, 2010 will be used as the basis from which to calculate the fee payment. In instances where a permit or license is transferred or assigned after October 1, 2010, responsibility for payment rests with the holder of the permit or license as of the fee due date.
- The first eleven regulatory fee categories in our Schedule of Regulatory Fees (*see Appendix B*) pay “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 license, and only pay regulatory fees again when the license is renewed or a new license is obtained. We include these fee categories in our Schedule of Regulatory Fees to publicize our estimates of the number of “small

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<sup>36</sup> Audio bridging services are toll teleconferencing services, and audio bridging service providers are required to contribute directly to the universal service fund based on revenues from these services. On June 30, 2008, the Commission released the *InterCall Order*, in which the Commission stated that InterCall, Inc. and all similarly situated audio bridging service providers are required to contribute directly to the universal service fund. *See Request for Review by InterCall, Inc. of Decision of Universal Service Administrator*, CC Docket No. 96-45, Order, 23 FCC Rcd 10731 (2008) (“*InterCall Order*”).

multi-year wireless” licenses that will be renewed or newly obtained in FY 2011.

- *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, 2010.<sup>37</sup> Regulatory fees also must be paid for CARS licenses that were granted on or before October 1, 2010. In instances where a permit or license is transferred or assigned after October 1, 2010, responsibility for payment rests with the holder of the permit or 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, 2010. In instances where a permit or license is transferred or assigned after October 1, 2010, responsibility for payment rests with the holder of the permit or license as of the fee due date.
- *International Services: Submarine Cable Systems:* Regulatory fees for submarine cable systems are to be paid on a per cable landing license basis based on circuit capacity as of December 31, 2010. In instances where a license is transferred or assigned after October 1, 2010, responsibility for payment rests with the holder of the license as of the fee due date. For regulatory fee purposes, the allocation in FY 2011 will remain at 87.6 percent for submarine cable and 12.4 percent for satellite/terrestrial facilities.
- *International Services: Terrestrial and Satellite Services:* Finally, regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers that have active (used or leased) international bearer circuits as of December 31, 2010 in any terrestrial or satellite 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. “Active circuits” for these purposes include backup and redundant circuits as of December 31, 2010. Whether circuits are used specifically for voice or data is not relevant for these purposes in determining that they are active circuits. In instances where a permit or license is transferred or assigned after October 1, 2010, responsibility for payment rests with the holder of the permit or license as of the fee due date. For regulatory fee purposes, the allocation in FY 2011 will remain at 87.6 percent for submarine cable and 12.4 percent for satellite/terrestrial facilities.

#### **E. Enforcement**

30. To be considered timely, regulatory fee payments must be received and stamped at the lockbox bank by the last day of the regulatory fee filing window. Section 9(c) of the Act requires us to impose a late payment penalty of 25 percent of the unpaid amount to be assessed on the first day following the deadline date for filing of these fees.<sup>38</sup> Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including those set forth in section 1.1910 of the

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<sup>37</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 2010, rather than on a count as of December 31, 2010.

<sup>38</sup> 47 U.S.C. § 159(c).

Commission's Rules<sup>39</sup> and in the Debt Collection Improvement Act of 1996 ("DCIA").<sup>40</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>41</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.

31. 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>42</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).

#### **F. Initial Regulatory Flexibility Analysis**

32. An initial regulatory flexibility analysis ("IRFA") is contained in Appendix E. 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.

#### **G. Initial Paperwork Reduction Act of 1995 Analysis**

33. This *Notice of Proposed Rulemaking* does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506 (c) (4).

#### **H. Congressional Review Act Analysis**

34. The Commission will send a copy of this Notice of Proposed Rulemaking to Congress and the Government Accountability Office pursuant to the Congressional Review Act.<sup>43</sup>

#### **I. Ex Parte Rules**

35. This is a "permit-but-disclose" proceeding subject to the requirements under section 1.1206(b) of the Commission's Rules.<sup>44</sup> *Ex parte* presentations are permissible if disclosed in accordance with Commission Rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the

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<sup>39</sup> *See* 47 C.F.R. § 1.1910.

<sup>40</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>41</sup> 47 C.F.R. § 1.1940(d).

<sup>42</sup> *See* 47 C.F.R. §§ 1.1161(c), 1.1164(f)(5), and 1.1910.

<sup>43</sup> *See* 5 U.S.C. § 801(a)(1)(A). The Congressional Review Act is contained in Title II, § 251, of the CWAAA; *see* Pub. L. No. 104-121, Title II, § 251, 110 Stat. 868.

<sup>44</sup> *See* 47 C.F.R. § 1.1206(b); *see also* 47 C.F.R. §§ 1.1202, 1.1203.

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>45</sup> Additional rules pertaining to oral and written presentations are set forth in Section 1.1206(b).

#### J. Filing Requirements

36. *Comments and Replies.* Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

37. *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/> or the Federal eRulemaking Portal: <http://www.regulations.gov>.

38. *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.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours 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 must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

39. *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.

40. *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 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>.

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<sup>45</sup> See 47 C.F.R. § 1.1206(b)(2).

**III. ORDERING CLAUSES**

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

42. 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 in Appendix E, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch  
Secretary

## APPENDIX A

## Calculation of FY 2011 Revenue Requirements and Pro-Rata Fees

Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted along with the application at the time the application is filed.

Fee Category	FY 2011 Payment Units	Years	FY 2010 Revenue Estimate	Pro-Rated FY 2011 Revenue Requirement	Computed New FY 2011 Regulatory Fee	Round ed New FY 2011 Regula -tory Fee	Expected FY 2011 Revenue
PLMRS (Exclusive Use)	1,200	10	480,000	495,845	41	40	480,000
PLMRS (Shared use)	9,300	10	2,300,000	2,375,921	26	25	2,325,000
Microwave	10,200	10	2,375,000	2,324,270	23	25	2,550,000
218-219 MHz (Formerly IVDS)	3	10	1,950	2,015	67	65	1,950
Marine (Ship)	6,700	10	800,000	774,757	12	10	670,000
GMRS	9,300	5	242,500	284,078	6	5	232,500
Aviation (Aircraft)	4,600	10	230,000	361,553	8	10	460,000
Marine (Coast)	265	10	119,250	127,835	48	50	132,500
Aviation (Ground)	1,100	10	150,000	154,952	14	15	165,000
Amateur Vanity Call Signs	14,600	10	196,840	207,635	1.42	1.42	207,320
AM Class A <sup>4a</sup>	66	1	253,300	256,832	3,891	3,900	257,400
AM Class B <sup>4b</sup>	1,439	1	3,053,700	3,075,578	2,137	2,125	3,057,875
AM Class C <sup>4c</sup>	918	1	1,078,650	1,090,083	1,187	1,175	1,078,650
AM Class D <sup>4d</sup>	1,637	1	3,589,125	3,631,802	2,219	2,225	3,642,325
FM Classes A, B1 & C <sup>34c</sup>	3,114	1	7,372,000	7,652,108	2,457	2,450	7,629,300
FM Classes B, C, C0, C1 & C2 <sup>4f</sup>	3,111	1	9,308,775	9,400,580	3,022	3,025	9,410,775
AM Construction Permits	90	1	43,680	44,212	491	490	44,100
FM Construction Permits <sup>1</sup>	151	1	105,300	101,925	675	675	101,925
Satellite TV	133	1	163,800	167,270	1,258	1,250	166,250
Satellite TV Construction Permit	3	1	2,025	2,015	672	675	2,025
VHF Markets 1-10	20	1	1,631,000	1,692,381	84,619	84,625	1,692,500
VHF Markets 11-25	26	1	1,708,425	1,772,526	68,174	68,175	1,772,550
VHF Markets 26-50	36	1	1,404,150	1,457,127	40,476	40,475	1,457,100
VHF Markets 51-100	52	1	1,140,000	1,182,936	22,749	22,750	1,183,000

Fee Category	FY 2011 Payment Units	Years	FY 2010 Revenue Estimate	Pro-Rated FY 2011 Revenue Require- ment	Computed New FY 2011 Regulatory Fee	Round ed New FY 2011 Regula- tory Fee	Expected FY 2011 Revenue
VHF Remaining Markets	127	1	747,250	774,447	6,098	6,100	774,700
VHF Construction Permits <sup>1</sup>	2	1	18,375	12,200	6,100	6,100	12,200
UHF Markets 1-10	113	1	3,776,175	3,915,430	34,650	34,650	3,915,450
UHF Markets 11-25	107	1	3,398,475	3,524,319	32,938	32,950	3,525,650
UHF Markets 26-50	144	1	2,910,600	3,016,311	20,947	20,950	3,016,800
UHF Markets 51- 100	238	1	2,829,750	2,932,289	12,321	12,325	2,933,350
UHF Remaining Markets	264	1	835,700	866,787	3,283	3,275	864,600
UHF Construction Permits <sup>1</sup>	10	1	36,600	32,750	3,275	3,275	32,750
Broadcast Auxiliaries	26,850	1	275,000	284,078	11	10	268,500
LPTV/Translators/ Boosters/Class A TV	3,607	1	1,411,000	1,425,553	395	395	1,424,765
CARS Stations	470	1	173,250	174,578	371	370	173,900
Cable TV Systems	63,400,000	1	57,405,000	58,633,597	0.92482	0.93	58,962,000
Interstate Telecommunication Service Providers	\$41,000,000,000	1	151,117,000	148,100,156	0.0036122	0.00361	148,010,000
CMRS Mobile Services (Cellular/Public Mobile)	289,000,000	1	50,940,000	51,522,378	0.1783	0.18	52,020,000
CMRS Messag. Services	4,700,000	1	480,000	376,000	0.0800	0.080	376,000
BRS <sup>2</sup>	1,690	1	514,600	523,900	310	310	523,900
LMDS	520	1	158,100	161,200	310	310	161,200
Per 64 kbps Int'l Bearer Circuits Terrestrial (Common) & Satellite (Common & Non-Common)	2,600,000	1	1,130,233	1,148,478	.442	.44	1,144,000
Submarine Cable Providers (see chart in Appendix C) <sup>3</sup>	39.375	1	7,983,860	8,076,107	205,107	205,100	8,075,813
Earth Stations	3,575	1	864,000	878,575	246	245	875,875

Fee Category	FY 2011 Payment Units	Years	FY 2010 Revenue Estimate	Pro-Rated FY 2011 Revenue Require- ment	Computed New FY 2011 Regulatory Fee	Round ed New FY 2011 Regula- -tory Fee	Expected FY 2011 Revenue
Space Stations (Geostationary)	87	1	11,129,475	11,429,445	131,373	131,375	11,429,625
Space Stations (Non-Geostationary)	6	1	828,300	850,528	141,755	141,750	850,500
***** Total Estimated Revenue to be Collected			336,712,213	337,295,341			338,091,623
***** Total Revenue Requirement			335,794,000	335,794,000			335,794,000
Difference			918,213	1,501,341			2,297,623

<sup>1</sup> The FM Construction Permit revenues and the VHF and UHF Construction Permit revenues were adjusted to set the regulatory fee to an amount no higher than the lowest licensed fee for that class of service. The reductions in the FM Construction Permit revenues are offset by increases in the revenue totals for FM radio stations. Similarly, reductions in the VHF and UHF Construction Permit revenues are offset by increases in the revenue totals for VHF and UHF television stations, respectively.

<sup>2</sup> MDS/MMDS category was renamed Broadband Radio Service (BRS). *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*, Report & Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165, 14169, ¶ 6 (2004).

<sup>3</sup> The chart at the end of Appendix B lists the submarine cable bearer circuit regulatory fees (common and non-common carrier basis) that resulted from the adoption of the following proceedings: *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Second Report and Order (MD Docket No. 08-65, RM-11312), released March 24, 2009; and *Assessment and Collection of Regulatory Fees for Fiscal Year 2009 and Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Notice of Proposed Rulemaking and Order (MD Docket No. 09-65, MD Docket No. 08-65), released on May 14, 2009.

<sup>4</sup> The fee amounts listed in the column entitled "Rounded New FY 2011 Regulatory Fee" constitute a weighted average media regulatory fee by class of service. The actual FY 2011 regulatory fees for AM/FM radio station are listed on a grid located in Appendix B.

## APPENDIX B

## FY 2011 Schedule of Regulatory Fees

Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted along with the application at the time the application is filed.

Fee Category	Annual Regulatory Fee (U.S. \$'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	40
Microwave (per license) (47 CFR part 101)	25
218-219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	65
Marine (Ship) (per station) (47 CFR part 80)	10
Marine (Coast) (per license) (47 CFR part 80)	50
General Mobile Radio Service (per license) (47 CFR part 95)	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	25
PLMRS (Shared Use) (per license) (47 CFR part 90)	25
Aviation (Aircraft) (per station) (47 CFR part 87)	10
Aviation (Ground) (per license) (47 CFR part 87)	15
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.42
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.18
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08
Broadband Radio Service (formerly MMDS/ MDS) (per license) (47 CFR part 21)	310
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	310
AM Radio Construction Permits	490
FM Radio Construction Permits	675
TV (47 CFR part 73) VHF Commercial	
Markets 1-10	84,625
Markets 11-25	68,175
Markets 26-50	40,475
Markets 51-100	22,750
Remaining Markets	6,100
Construction Permits	6,100

Fee Category	Annual Regulatory Fee (U.S. \$'s)
TV (47 CFR part 73) UHF Commercial	
Markets 1-10	34,650
Markets 11-25	32,950
Markets 26-50	20,950
Markets 51-100	12,325
Remaining Markets	3,275
Construction Permits	3,275
Satellite Television Stations (All Markets)	1,250
Construction Permits – Satellite Television Stations	675
Low Power TV, Class A TV, TV/FM Translators & Boosters (47 CFR part 74)	395
Broadcast Auxiliaries (47 CFR part 74)	10
CARS (47 CFR part 78)	370
Cable Television Systems (per subscriber) (47 CFR part 76)	.93
Interstate Telecommunication Service Providers (per revenue dollar)	.00361
Earth Stations (47 CFR part 25)	245
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100)	131,375
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	141,750
International Bearer Circuits - Terrestrial/Satellites (per 64KB circuit)	.44
International Bearer Circuits - Submarine Cable	See Table Below

## FY 2011 SCHEDULE OF REGULATORY FEES (continued)

FY 2011 RADIO STATION REGULATORY FEES						
Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C0, C1 & C2
<=25,000	\$700	\$575	\$525	\$600	\$675	\$850
25,001 – 75,000	\$1,400	\$1,150	\$800	\$900	\$1,350	\$1,500
75,001 – 150,000	\$2,100	\$1,450	\$1,050	\$1,500	\$1,850	\$2,750
150,001 – 500,000	\$3,150	\$2,450	\$1,575	\$1,800	\$2,875	\$3,600
500,001 – 1,200,000	\$4,550	\$3,750	\$2,625	\$3,000	\$4,550	\$5,300
1,200,001 – 3,000,00	\$7,000	\$5,750	\$3,950	\$4,800	\$7,425	\$8,500
>3,000,000	\$8,400	\$6,900	\$5,000	\$6,000	\$9,450	\$11,050

**FY 2011 SCHEDULE OF REGULATORY FEES**  
**International Bearer Circuits - Submarine Cable**

Submarine Cable Systems (capacity as of December 31, 2010)	Fee amount	Address
< 2.5 Gbps	\$12,825	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000
2.5 Gbps or greater, but less than 5 Gbps	\$25,650	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000
5 Gbps or greater, but less than 10 Gbps	\$51,275	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000
10 Gbps or greater, but less than 20 Gbps	\$102,575	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000
20 Gbps or greater	\$205,125	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000

## APPENDIX C

## Sources of Payment Unit Estimates for FY 2011

In order to calculate individual service fees for FY 2011, we adjusted FY 2010 payment units for each service to more accurately reflect expected FY 2011 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections when available. The databases we consulted include our Universal Licensing System (“ULS”), International Bureau Filing System (“IBFS”), Consolidated Database System (“CDBS”) and Cable Operations and Licensing System (“COALS”), 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*.

We sought verification for these estimates from multiple sources and, in all cases; we compared FY 2011 estimates with actual FY 2010 payment units to ensure that our revised estimates were reasonable. Where appropriate, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated with sufficient accuracy. These include an unknown number of waivers and/or exemptions that may occur in FY 2011 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical, or other reasons. When we note, for example, that our estimated FY 2011 payment units are based on FY 2010 actual payment units, it does not necessarily mean that our FY 2011 projection is exactly the same number as in FY 2010. We have either rounded the FY 2011 number or adjusted it slightly to account for these variables.

FEE CATEGORY	SOURCES OF PAYMENT UNIT ESTIMATES
Land Mobile (All), Microwave, 218-219 MHz, Marine (Ship & Coast), Aviation (Aircraft & Ground), GMRS, Amateur Vanity Call Signs, Domestic Public Fixed	Based on Wireless Telecommunications Bureau (“WTB”) projections of new applications and renewals taking into consideration existing Commission licensee data bases. Aviation (Aircraft) and Marine (Ship) estimates have been adjusted to take into consideration the licensing of portions of these services on a voluntary basis.
CMRS Cellular/Mobile Services	Based on WTB projection reports, and FY 10 payment data.
CMRS Messaging Services	Based on WTB reports, and FY 10 payment data.
AM/FM Radio Stations	Based on CDBS data, adjusted for exemptions, and actual FY 2010 payment units.
UHF/VHF Television Stations	Based on CDBS data, adjusted for exemptions, and actual FY 2010 payment units.
AM/FM/TV Construction Permits	Based on CDBS data, adjusted for exemptions, and actual FY 2010 payment units.
LPTV, Translators and Boosters, Class A Television	Based on CDBS data, adjusted for exemptions, and actual FY 2010 payment units.
Broadcast Auxiliaries	Based on actual FY 2010 payment units.
BRS (formerly MDS/MMDS)	Based on WTB reports and actual FY 2010 payment units.
LMDS	Based on WTB reports and actual FY 2010 payment units.

Cable Television Relay Service ("CARS") Stations	Based on data from Media Bureau's COALS database and actual FY 2010 payment units.
Cable Television System Subscribers	Based on publicly available data sources for estimated subscriber counts and actual FY 2010 payment units.
Interstate Telecommunication Service Providers	Based on FCC Form 499-Q data for the four quarters of calendar year 2010, the Wireline Competition Bureau projected the amount of calendar year 2009 revenue that will be reported on 2011 FCC Form 499-A worksheets in April, 2011.
Earth Stations	Based on International Bureau ("IB") licensing data and actual FY 2010 payment units.
Space Stations (GSOs & NGSOs)	Based on IB data reports and actual FY 2010 payment units.
International Bearer Circuits	Based on IB reports and submissions by licensees.
Submarine Cable Licenses	Based on IB license information.

## APPENDIX D

**Factors, Measurements, and Calculations that go into Determining Station Signal Contours and Associated Population Coverages****AM Stations**

For stations with nondirectional daytime antennas, the theoretical radiation was used at all azimuths. For stations with directional daytime antennas, specific information on each day tower, including field ratio, phasing, spacing and orientation was retrieved, as well as the theoretical pattern root-mean-square of the radiation in all directions in the horizontal plane ("RMS") figure milliVolt per meter (mV/m) @ 1 km) for the antenna system. The standard, or modified standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in §§73.150 and 73.152 of the Commission's Rules.<sup>1</sup> Radiation values were calculated for each of 360 radials around the transmitter site. Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure R3.<sup>2</sup> Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the principal community (5 mV/m) contour was predicted for each of the 360 radials. The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 block centroids were contained in the polygon. (A block centroid is the center point of a small area containing population as computed by the U.S. Census Bureau.) The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

**FM Stations**

The greater of the horizontal or vertical effective radiated power ("ERP") (kW) and respective height above average terrain ("HAAT") (m) combination was used. Where the antenna height above mean sea level ("HAMSL") was available, it was used in lieu of the average HAAT figure to calculate specific HAAT figures for each of 360 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the Field Strength (50-50) propagation curves specified in 47 C.F.R. §73.313 of the Commission's Rules to predict the distance to the principal community (70 dBu (decibel above 1 microVolt per meter) or 3.17 mV/m) contour for each of the 360 radials.<sup>3</sup> The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

<sup>1</sup> 47 C.F.R. §§ 73.150 and 73.152.

<sup>2</sup> See Map of Estimated Effective Ground Conductivity in the United States, 47 C.F.R. § 73.190 Figure R3.

<sup>3</sup> 47 C.F.R. § 73.313

## APPENDIX E

## Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (“RFA”),<sup>1</sup> the Commission prepared this Initial Regulatory Flexibility Analysis (“IRFA”) of the possible significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking*. 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 of Proposed Rulemaking*. The Commission will send a copy of the Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.<sup>2</sup> In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.<sup>3</sup>

**I. Need for, and Objectives of, the Notice:**

2. This rulemaking proceeding was initiated for the Commission to obtain comments regarding its proposed amendment to its Schedule of Regulatory Fees in the amount of \$335,794,000, which is the amount that Congress has required the Commission to recover. The Commission seeks to collect the necessary amount through its revised Schedule of Regulatory Fees in the most efficient manner possible and without undue public burden.

**II. Legal Basis:**

3. 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>4</sup>

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

4. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.<sup>5</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>6</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>7</sup> A “small business concern” is one which: (1) is independently owned and operated; (2) is not

<sup>1</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>2</sup> 5 U.S.C. § 603(a).

<sup>3</sup> *Id.*

<sup>4</sup> 47 U.S.C. §§ 154(i) and (j), 159, and 303(r).

<sup>5</sup> 5 U.S.C. § 603(b)(3).

<sup>6</sup> 5 U.S.C. § 601(6).

<sup>7</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.”

dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>8</sup>

5. **Small Businesses.** Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.<sup>9</sup>

6. **Small Organizations.** Nationwide, as of 2002, there are approximately 1.6 million small organizations.<sup>10</sup> A “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>11</sup>

7. **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>12</sup> Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.<sup>13</sup> We estimate that, of this total, 84,377 entities were “small governmental jurisdictions.”<sup>14</sup> Thus, we estimate that most governmental jurisdictions are small.

8. We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a “small business” under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”<sup>15</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>16</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.

9. **Incumbent Local Exchange Carriers (“ILECs”).** Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>17</sup> According to Commission data,<sup>18</sup> 1,311 carriers have reported that they are engaged in the provision of incumbent local

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<sup>8</sup> 15 U.S.C. § 632.

<sup>9</sup> See SBA, Office of Advocacy, “Frequently Asked Questions,” <http://web.sba.gov/faqs> (accessed Jan. 2009).

<sup>10</sup> Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

<sup>11</sup> 5 U.S.C. § 601(4).

<sup>12</sup> 5 U.S.C. § 601(5).

<sup>13</sup> U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, Section 8, p. 272, Table 415.

<sup>14</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>15</sup> 15 U.S.C. § 632.

<sup>16</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>17</sup> 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517110.

<sup>18</sup> FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, “*Trends in Telephone Service*” (continued....)