

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

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In the Matter of	)	
	)	MD Docket No. 12-201
Procedures for Assessment and Collection of	)	
Regulatory Fees	)	
	)	
Assessment and Collection of Regulatory Fees for	)	MD Docket No. 08-65
Fiscal Year 2008	)	

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**NOTICE OF PROPOSED RULEMAKING**

**Adopted: July 13, 2012**

**Released: July 17, 2012**

By the Commission: Commissioners McDowell and Pai issuing separate statements.

**Comment Date: [30 days after publication in the Federal Register]**

**Reply Comment Date: [60 days after publication in the Federal Register]**

By the Commission:

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## I. INTRODUCTION

1. Today we seek comment on proposals to reform the Commission's policies and procedures for assessing and collecting regulatory fees. Extensive changes have occurred in the communications marketplace, and in the Commission's regulatory efforts, since the Schedule of Regulatory Fees was enacted by Congress in 1994. In the period directly following enactment of the Telecommunications Act of 1996, industry development and Commission regulation centered primarily on wireline local and long distance communications. Subsequently, however, the mobile wireless industry has grown exponentially, shifting Commission resources to, among other things, the wireless industry, while the costs of implementing the 1996 Telecommunications Act decreased. Meanwhile, digital and Internet protocol (IP)-based technologies have enabled wired and wireless companies, satellite companies, broadcasters, and cable television companies to engage in increased intermodal competition.

2. These changes have produced corresponding shifts in the Commission's regulatory activity. These shifts in the cost of the Commission's activities are not always reflected in our current regulatory fees. Although the Commission has made a number of discrete changes to the regulatory fee program since 1994, we have not revised the data on which our fees are based since 1998, nor have we undertaken a comprehensive analysis of all the substantive and procedural aspects of our regulatory fee program in light of the current state of the communications industry. This proceeding will serve as the means by which we will undertake that comprehensive analysis.<sup>1</sup>

3. This Notice of Proposed Rulemaking seeks comment on the issues related to how the Commission should allocate its regulatory costs among different segments of the communications industry. In particular, we seek comment on:

- *What the Overarching Goals of the Regulatory Fee Program Should Be.* We propose three goals to guide our regulatory fee policymaking—fairness, administrability, and sustainability—and we seek comment on these goals and invite commenters to propose others.
- *Regulatory Costs Should Be Allocated.* Section 9 of the Communications Act requires that regulatory fees be derived by determining the number of full-time equivalent employees (FTEs) performing certain activities. We propose to change the way we allocate “direct” and “indirect” FTEs to calculate regulatory fees. The proposals on which we seek comment are based on aggregated bureau-level FTE data, and would allocate all FTEs in the Wireless Telecommunications, Media, Wireline Competition, and International Bureaus as “direct” and all FTEs in the support bureaus and offices as “indirect.”
- *How Current Cost Allocation Percentages Should Be Revised.* We then look at the cost allocation percentages that we use now and propose to update these percentages using current FTE data derived from the reallocation of FTEs described above. We set out the adjustments projected to result from these updates, examine the impact of these adjustments on the categories of fee payors, ask whether and how we should mitigate the

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<sup>1</sup> A number of comments on revising the regulatory fee program were received in MD Docket No. 08-65. See *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, MD Docket No. 08-65, Report and Order and Further Notice of Proposed Rulemaking, 73 FR 50285 (August 26, 2008) (“FY 2008 Further Notice of Proposed Rulemaking”). We will incorporate those comments into the record of this proceeding.

impact of any substantial fee increases that would result, and ask whether any other changes are necessary to ensure an equitable result.

## II. BACKGROUND

### A. Statutory Framework

4. Section 9(a)(1) of the Communications Act directs the Commission to collect regulatory fees “to recover the costs of . . . enforcement activities, policy and rulemaking activities, user information services, and international activities.”<sup>2</sup> Section 9(a)(2) stipulates that regulatory fees for the enumerated activities “shall be collected only if, and only in the total amounts, required in Appropriations Acts,” and must “be established in amounts that will result in collection, during each fiscal year, of an amount that can reasonably be expected to equal the amount appropriated for such fiscal year for the performance of the activities described in subsection (a).”<sup>3</sup> Since FY 2009, Congress has directed the Commission to assess and collect regulatory fees under section 9(b)(1)(B) in an amount equal to the entire amount appropriated.<sup>4</sup>

5. Section 9(b) states in general terms how regulatory fees are to be derived. Section 9(b)(1)(A) states that fees are to be calculated by determining the full-time equivalent number of employees (FTEs) performing the activities enumerated in section 9(a)(1) “within the three licensing bureaus as they existed at that time and that formed the core of our regulatory fee assessment program, *i.e.* the Private Radio Bureau, Mass Media Bureau, and Common Carrier Bureau.”<sup>5</sup> FTEs in the other offices of the Commission are also calculated, and the fees that result are adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission’s activities, including such factors as service area coverage, shared use versus exclusive use, and other factors that the Commission determines are necessary in the public interest.”<sup>6</sup> The Commission issues a notice of proposed rulemaking (NPRM) in the third quarter of each fiscal year, stating how it derives the fees for that fiscal year and proposing the amounts that the payors in each fee category will be required to

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<sup>2</sup> 47 U.S.C. § 159(a)(1).

<sup>3</sup> *Id.* § 159(a)(2), (b)(1)(B).

<sup>4</sup> *See, e.g.*, Consolidated Appropriations Act, 2012, Pub. L. No. 112-74 (Dec. 23, 2011) (appropriating \$339,844,000 and providing “[t]hat \$339,844,000 of offsetting collections shall be assessed and collected pursuant to section 9 of title I of the Communications Act of 1934, [and] shall be retained and used for necessary expenses in this appropriation”). In prior years (FY 2004 through FY 2008), Congress directed the Commission to offset all but \$1 million of its appropriation. *See* Consolidated Appropriations Act, 2004, Pub. L. No. 108-99, 118 Stat. 3 (2004), Consolidated Appropriations Act, 2005, Pub.L. No. 108-447, 118 Stat. 2809, 2908 (2004); Science, State, Justice, Commerce and Related Agencies Appropriation Act, 2006, Pub. L. No. 109-108, 199 Stat. 2290, 2329-30 (2005); Continuing Appropriations Resolution, 2007, Pub.L. No. 110-5, 121 Stat. 8 (2007); and Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, 121 Stat. 1844, 1998 (2007). In the Omnibus Appropriations Act, 2009, Pub. L. No. 111-8, 123 Stat. 524, 657 (2009) Congress required, for the first time that the Commission collect fees in the full amount of its appropriation.

<sup>5</sup> Subsequent to the enactment of section 9 the Commission reorganized and renamed the Private Radio Bureau, Mass Media Bureau, and Common Carrier Bureaus as the Wireless Telecommunications Bureau, Media Bureau, and Wireline Competition Bureau respectively. Regulation of international telecommunications was transferred from these Bureaus and consolidated into a new International Bureau. For simplicity and ease of reference, in this Notice we will refer to these four bureaus as the “core” bureaus or the “core licensing” bureaus.

<sup>6</sup> 47 U.S.C. § 159(b)(1)(A).

pay in order to offset the amount of the Commission's appropriation for that fiscal year.<sup>7</sup> The Commission issues a report and order during the fourth quarter of each fiscal year.<sup>8</sup> The report and order sets the amounts to be paid by all fee payors, discusses any issues raised in response to the NPRM and sets out the procedures for payment of fees.

## **B. Historic Regulatory Approach**

6. Section 9(b)(1)(A) states that regulatory fees are to recover the costs of the FTEs performing the regulatory activities set forth in section 9(a)(1). Consistent with this statutory requirement, the Commission's cost assessment methodology uses FTEs as the starting point in determining the fees regulatees in each fee category will pay each fiscal year.

7. Although the statute specifies that FTEs are the basis for calculating regulatory fees, it does not specify the precise type of FTE data that must be used; *e.g.*, whether the Commission must use employees' time cards to tally the time each employee reports as having been spent on regulating specific licensees or regulatees, or whether the Commission may aggregate the work of FTEs in some other way. In FYs 1997-1998, the Commission based its FTE calculations on employee time cards. This method involved employees' tracking time by regulatory fee category, and regulatory fees were then allocated based on a core bureau's relative share of employee time, both direct (employees within a core bureau working on matters related to regulatory fee categories within that bureau) and indirect (employees from all bureaus and offices providing support functions related to multiple, perhaps even all, regulatory fee categories). The Commission abandoned this approach in FY 1999 because not only did time card entries prove subjective and unreliable, but they also resulted in unpredictable and substantial shifts in regulatory fees from year to year.

8. The allocations of direct and indirect FTEs we currently use are taken from FTE data compiled in FY 1998. The Commission allocates FTEs according to the nature of the employees' work. If the work performed by an employee can be assigned to a regulatory fee category in one of the four core licensing bureaus—Wireless Telecommunications, Media, Wireline Competition, and International,—that employee's time is counted as a direct FTE. If the work cannot be assigned to one of the bureau's designated fee categories, the employee's time is counted as an indirect FTE. Indirect FTEs are allocated proportionally across the four core bureaus. Therefore, under our current system, the total FTEs for each fee category includes the direct FTEs associated with that category, plus proportional allocations of indirect FTEs from inside and outside the bureau. The total number of FTEs for each of the bureau's fee categories was then divided by the combined FTE numbers for all four core bureaus to produce an allocation percentage for each fee category, *e.g.*, the percentage of total regulatory fee revenues that must be recovered from each fee category in order to collect the total amount specified by Congress.<sup>9</sup>

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<sup>7</sup> See, *e.g.*, *Assessment and Collection of Regulatory Fees for Fiscal Year 2011*, Notice of Proposed Rulemaking, 26 FCC Rcd 7068 (2011) (“FY 2011 Notice of Proposed Rulemaking”).

<sup>8</sup> See, *e.g.*, *Assessment and Collection of Regulatory Fees for Fiscal Year 2011*, Report and Order, 26 FCC Rcd 10812 (2011) (“FY 2011 Report and Order”).

<sup>9</sup> The Schedule of Regulatory Fees enacted as section 9(g) in 1994 contained the fees to be paid by different categories of regulatees in the (then) three named bureaus. Section 9(g) specified that the Commission was to use this fee schedule until the Commission adjusted it pursuant to section 9(b). The Commission has made substantial adjustments to this fee schedule since 1994, adding fee categories and altering others. The 46 categories of fee payors listed in the original fee schedule had grown to 86 in 2011.

9. Although the Commission has used the same allocation percentages every fiscal year since FY 1998, each year the Commission reviews the projected number of fee payors in each service category. These payors are referred to generically as “units,” because the fees for payors in different service categories reflect characteristics appropriate to each service, such as the number of licenses or number of subscribers the fee payor has. We look for changes in the industry, changes in industry segments, and various other issues as explained in each year’s regular regulatory fee NPRM. Finally, the fee rate for each fee category is determined by dividing the revenue amount to be collected from each fee category by its projected number of units.

10. Table 1 illustrates the process using this methodology. Each fiscal year Congress reviews the Commission’s budget submission and determines the appropriation for that year. The amount Congress appropriates becomes the target for the aggregate amount of regulatory fees to be collected. Table 1 uses a hypothetical appropriation of \$100,000,000 as the target amount of regulatory fees to be collected. Column 1 represents the various fee categories in which a regulatee will pay a fee. Column 2 shows the allocation percentages that are applied. And Column 3 represents the multiplication of the target amount by each allocation percentage.

11. The Commission first multiplies the \$100,000,000 target amount by the current FTE allocation percentages in Column 2 to determine the amount of revenue to be collected from each fee category in Column 3. To determine the regulatory fee rate, the amounts in Column 3 are divided by their respective unit counts (the number of payors) to determine the fee amount that each regulatee will pay in that fee category prior to rounding pursuant to section 9(b)(2)(B). Thus, each year the regulatory fee rate is a function of (1) changes in the appropriation amount from one year to the next, and (2) changes in the unit count from the prior year for each respective fee category.

**TABLE 1**  
**Hypothetical \$100 Million Target Goal Allocations**

COLUMN ONE	COLUMN TWO	COLUMN THREE
Fee Category	Starting Point FTE Allocation Percentage (%)	Expected Revenue Amount by Fee Category
PLMRS (Exclusive Use)	.14%	\$140,000
PLMRS (Shared use)	.67%	\$670,000
Microwave	.66%	\$660,000
218-219 MHz (Formerly IVDS)	.001%	\$1,000
Marine (Ship)	.22%	\$220,000
GMRS	.08%	\$80,000
Aviation (Aircraft)	.10%	\$100,000
Marine (Coast)	.04%	\$40,000
Aviation (Ground)	.04%	\$40,000
Amateur Vanity Call Signs	.06%	\$60,000
AM Class A	.07%	\$70,000
AM Class B	.87%	\$870,000

COLUMN ONE	COLUMN TWO	COLUMN THREE
Fee Category	Starting Point FTE Allocation Percentage (%)	Expected Revenue Amount by Fee Category
AM Class C	.31%	\$310,000
AM Class D	1.03%	\$1,030,000
FM Classes A, B1 & C3	2.13%	\$2,130,000
FM Classes B, C, C0, C1 & C2	2.62%	\$2,620,000
AM Construction Permits	.01%	\$10,000
FM Construction Permits	.1%	\$100,000
Satellite TV	.05%	\$50,000
Satellite TV Construction Permit	.001%	\$1,000
VHF Markets 1-10	.95%	\$950,000
VHF Markets 11-25	.97%	\$970,000
VHF Markets 26-50	.82%	\$820,000
VHF Markets 51-100	.79%	\$790,000
VHF Remaining Markets	.35%	\$350,000
VHF Construction Permits	.01%	\$10,000
UHF Markets 1-10	.6%	\$600,000
UHF Markets 11-25	.49%	\$490,000
UHF Markets 26-50	.41%	\$410,000
UHF Markets 51-100	.35%	\$350,000
UHF Remaining Markets	.11%	\$110,000
UHF Construction Permits	.07%	\$70,000
Broadcast Auxiliaries	.08%	\$80,000
LPTV/Translators/Boosters/Class A TV	.40%	\$400,000
CARS Stations	.05%	\$50,000
Cable TV Systems	16.55%	\$16,550,000
Interstate Telecommunication Service Providers	46.66%	\$46,660,000
CMRS Mobile Services (Cellular/Public Mobile)	14.33%	\$14,330,000
CMRS Messaging Services	.32%	\$320,000
BRS	.16%	\$160,000
LMDS	.03%	\$30,000
Per 64 kbps Int'l Bearer Circuits, Terrestrial (Common) & Satellite (Common & Non-Common)	.32%	\$320,000
Submarine Cable Providers	2.28%	\$2,280,000
Earth Stations	.25%	\$250,000
Space Stations (Geostationary)	3.23%	\$3,230,000
Space Stations (Non-Geostationary)	.24%	\$240,000
***** Total Estimated Revenue to be Collected	100.00%	\$100,022,000

### C. The Problems of the Current Approach

12. As noted previously, the changes that have occurred since 1998 in the communications industry have caused significant shifts in the amount of time the Commission devotes to specific industry segments and activities. Therefore, FY 1998 FTE data may no longer accurately reflect the allocation of Commission employees' time across different parts of the industry. However, simply substituting current FTE data for the 1998 FTE data would cause fees for some classes of fee payors to increase significantly, so we seek to examine how best to address in a fair and equitable manner any significant shifts. In addition, new technologies have caused an exponential increase in intermodal competition across formerly distinct industry platforms. This has made it even more common today than in 1998 that a Commission employee's work may be attributed to more than one fee category. For example, the cost of an employee's work in designing incentive auctions might be attributable to several fee categories within the media sector, but it would also potentially benefit providers of mobile broadband services who would ultimately use the reclaimed spectrum. The practical difficulties we would encounter today in parsing out an employee's time among all of the industry groups affected by his or her work would produce unpredictable annual changes in regulatory fees. Proposals to address these and related problems are presented below.

## III. ISSUES RAISED FOR COMMENT

### A. Setting Goals To Guide Our Approach to Regulatory Fees

13. First, we seek comment on setting goals for regulatory fee collection that will guide the reforms that result from this Notice and adjustments that the Commission will need to make from time to time afterwards. We are of course guided first and foremost by Congress's direction in section 9. At the same time, Congress has left us flexibility in setting the fees to take into account a variety of factors, including "factors that the Commission determines are necessary in the public interest."<sup>10</sup> We propose three overarching goals for the regulatory fees program, and we invite parties to propose other goals for consideration.

14. *Fairness.* Allocation of regulatory fee burdens among regulatees should be fair. All regulatees interact with and benefit from the work of the Commission, but not in equal measure. For example, a very large company with hundreds of licenses and authorizations is likely to engage much more frequently with the Commission than a local company or cooperative. Similarly, regulatees' ability to pay varies with their size and revenues—imposing the same fee on a Fortune 500 company and a local family business would have very different effects on those entities. And over time, as similar services are provided over different technologies, regulatees may be paying different fees while providing similar services, not because there is a meaningful difference in their relationship with the Commission but simply because their services fall into different fee categories (or fall outside our established categories altogether). We propose establishing fairness as a goal of our regulatory fee program, so that the burdens of regulatory fees are borne in an equitable manner that does not distort the marketplace. We seek comment on this goal.

15. *Administrability.* Section 9 directs that fees be set by reference to the number of FTEs performing enforcement activities, policy and rulemaking activities, user information services, and international activities within the Wireless Telecommunications, Media, Wireline Competition, and International Bureaus. A fee system that strictly aligned FTEs with these activities and Bureaus on an ongoing basis would require a complex time and accounting system like the one the Commission tried in

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<sup>10</sup> 47 U.S.C. § 159(b)(1)(A).

1997 and 1998 and abandoned in 1999 due in part to the unpredictability and rapid shifts in fee rates that it created for fee payors. Keeping the fee schedule up to date could result in large shifts in fees from year to year, as the Commission's priorities and areas of focus change. For example, if in one year the Public Safety and Homeland Security Bureau handles rulemakings related to broadcasting, but in the following year focuses on wireless services, the resulting shift in FTE allocations could have a substantial impact on the size of regulatory fees, which could then shift significantly again the very next year. We believe that the regulatory fee system should be administrable, both for the Commission and for payors. We seek comment on this goal.

16. *Sustainability.* The methodology for regulatory fees should be flexible enough to adapt to changes in technology and marketing that affect how our regulatees do business. In 2007, the Commission extended regulatory fee obligations to providers of interconnected voice over Internet protocol services (VoIP), noting "the many and increasing resources the Commission now dedicates to VoIP" and that "[i]nterconnected VoIP service is increasingly used to replace traditional telephone service and . . . the interconnected VoIP service industry continues to grow and to attract customers who previously relied on traditional voice service."<sup>11</sup> The concern the Commission addressed in 2007 will continue to arise as service platforms and models change and converge. As video, voice, and data services are provided in new ways, our regulatory fee system must also evolve to ensure that the fee burden remains equitably distributed among regulatees. We seek comment on this goal.

17. Our goals must work within the statute, not against it. Section 9 requires that the Commission collect fees by determining "the full-time equivalent number of employees" performing specified activities in the Bureaus and Offices. We intend that the proposed goals guide our interpretation of section 9, and we seek comment on the best ways to take the goals into account as we assign FTEs to the statutory categories and establish specific fee amounts.

## **B. Changing the Current Cost Allocation Methodology**

18. As explained more fully below, the cost allocation data we currently use were derived in FY 1998 by totaling employees' time cards entries to arrive at the aggregate number of FTEs engaged in each feeable activity. The first question that arises is whether the Commission should aggregate employee time card entries to derive its FTE allocations, or whether aggregating data on a less granular basis would be accurate and workable. For the reasons discussed below, we seek comment on whether we should simplify the way direct and indirect FTEs are aggregated and update the FTE data that we use. We invite interested parties to share their views with respect to the issues set forth below.

### **1. Reallocation of FTEs Among Bureaus**

19. Although not required by Section 9, our current cost assignment methodology is based on the presumption that work of employees in the four core bureaus should be treated differently depending on whether an employee is "directly" involved in a feeable activity or "indirectly" involved, as in a support capacity. The costs of FTEs directly working on projects corresponding to a regulatory fee category are directly assigned to that category. By contrast, the costs of all FTEs in the core bureaus indirectly involved, or providing support functions, are treated as indirect costs and are currently distributed proportionally across the four core bureau. The proportional allocation of indirect FTEs corresponds to each core bureau's actual percentage of direct FTEs. The indirect work performed by FTEs within a core bureau, therefore, may not be attributable to a specific fee category in their core

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<sup>11</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, Report and Order, 22 FCC Rcd 15712, 15717-18 ¶¶ 12-13 (2007).

bureau. Nevertheless, it is clear that the work of *all* the FTEs in a core bureau, whether direct or indirect, contributes to the cost of regulating licensees of that bureau. Therefore, we may reasonably expect that the work of the FTEs in the core bureaus would remain focused on the industry segment regulated by each of those bureaus.<sup>12</sup> We seek comment on whether we should change the way FTEs are allocated within a bureau, and we propose that all the FTEs in each of the core bureaus should be considered direct FTE costs for that bureau.

20. Most of the work of the bureaus and offices outside the four core licensing bureaus is currently considered as indirect FTE costs because the work does not focus on any one industry segment; rather, these bureaus and offices support the work of all of the core bureaus. As with the indirect FTEs within the core bureaus, the work of FTEs in non-core bureaus that cannot be directly assigned to a regulatory fee category is treated as indirect costs and distributed proportionally across the core bureaus according to these bureaus' respective percentages of the Commission's total direct FTE costs. As in the case of our allocation of direct FTEs, we believe that it would serve the public interest to find a more consistent and workable way to allocate indirect FTEs. Any attempt to redistribute these indirect costs on a task-by-task basis would be neither consistent nor workable, requiring us to assign more costs to certain divisions of support bureaus or offices for certain licensees at a given point in time, and then reassign these costs as the work of that division changes from month to month, week to week, or even day to day.<sup>13</sup> This would be far more complicated and subjective than our current approach, requiring constant recalculations as FTEs within a bureau are given different job assignments.<sup>14</sup> Unlike the case of the FTEs in the core bureaus, the work of the FTEs in the support bureaus and offices is not primarily focused on any one bureau or regulatory fee category, but instead serves the needs of all four core bureaus.

21. Just as section 9 contains no requirement that we classify FTEs as "direct" and "indirect," it does not prescribe how the Commission should account for the FTE costs of its support bureaus and offices. Consistent with our finding in paragraph 19 above that the work of the employees in the core bureaus and offices is primarily focused on the industry segment regulated by each bureau and that the work — and the costs — of all the employees of those bureaus would correctly be considered direct FTE costs of their respective bureaus, we seek comment on whether, because the work of employees in the non-core bureaus supports the work of all the core bureaus, the FTE costs of these non-core bureaus and offices should all be treated as indirect costs and allocated among each of the core bureaus in the same percentage as that bureau's direct FTE percentage is to the total direct FTE costs of all the core bureaus.

## **2. Updating and Adjusting the Allocation Percentages Among Bureaus**

22. We have previously sought comment on whether and how to update our current FTE allocation percentages to reflect changes in the industry and in the Commission's workload that have

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<sup>12</sup> The International Bureau may be an exception to this expectation as discussed in Paragraphs 26 - 28, , below.

<sup>13</sup> For example, under this approach the work of attorneys and support staff in Litigation and Administrative Law Divisions of the Office of General Counsel would fluctuate, and the corresponding costs would have to be continually reassigned, depending on how much of their work is being devoted to media, wireless, wireline and other matters.

<sup>14</sup> For example, the Satellite Industry Association (SIA) states that certain divisions in the Enforcement Bureau may not be relevant to regulating satellite licensees. SIA reply comments at 8, *FY 2008 Further Notice of Proposed Rulemaking, supra* n. 1. While that may be true at a given point in time, at another time all members of that division may be engaged in an investigation involving satellite providers, or certain members engaged in investigations or other activity affecting satellite providers, either directly or indirectly.

occurred since they were adopted.<sup>15</sup> We will resolve this issue in this proceeding, and we will incorporate into the record of this proceeding relevant comments filed in prior proceedings.<sup>16</sup>

23. Commenters previously addressing this issue advocated that we revise the FTE allocation percentages by using updated FTE data.<sup>17</sup> They argued that it is inequitable to burden the licensees in the core bureaus with a larger share of regulatory fees than their respective percentage share of FTE staffing at the Commission. We seek comment on whether the FY 1998 FTE allocation percentages should be replaced with allocation percentages using up-to-date FY 2012 FTE data.

24. Reallocation of direct and indirect FTEs using aggregated FTE data involves counting the number of FTEs in each of the agency's four core licensing bureaus to determine what percentage each comprises of the total number of FTEs in all the core bureaus.<sup>18</sup> The tentative results of this recalculation, using current FTE staffing levels, produces the following numbers and percentages of direct FTEs in the four core licensing bureaus: International Bureau, 122 FTEs (22.0% of total FTEs in the four core bureaus); Media Bureau, 183 (32.9%); Wireline Competition Bureau, 154 (27.7%); and Wireless Telecommunications Bureau, 97 (17.4%).<sup>19</sup> These 556 FTEs constitute 36 percent of the Commission's total FTEs and we would treat them as direct FTE costs for purposes of allocating regulatory fees. There are currently 1,000 FTEs in the support bureaus and offices. As proposed in paragraph 20 above, these would all be treated as indirect FTEs and allocated proportionately across the four core bureaus. This produces the following adjusted FTE totals for each of the core bureaus: International Bureau, 221 FTEs; Media Bureau, 329 FTEs; Wireline Competition Bureau, 276 FTEs; and Wireless Telecommunications Bureau, 174 FTEs.

25. A comparison of the allocation percentages currently in use with the allocation percentages that result from the use of updated FTE figures produces mixed results. The percentage of regulatory fees currently collected from regulatees in the Wireless Telecommunications Bureau would remain unchanged at 17.4 percent. The allocation percentage would increase only slightly for fee payors in Media Bureau service categories, from 31.9 percent to 32.9 percent. However, use of the updated FTE figures would reduce the percentage of regulatory fees allocated to regulatees in the Wireline Competition Bureau from 44.0 percent to 27.7 percent and increase the percentage of fees allocated to payors in the International Bureau from 6.7 percent to 22.0 percent.

26. We seek comment on whether the projected increase in fees for International Bureau regulatees would be consistent with our goals of fairness and sustainability. In this regard we note that much of the work within the Strategic Analysis and Negotiations Division of the International Bureau covers services outside of the Bureau's direct regulatory activities. For example, this Division has

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<sup>15</sup> *FY 2008 Further Notice of Proposed Rulemaking*, supra n. 1, at ¶¶ 27-30. We also released a Public Notice on September 3, 2008 providing information on FTEs, direct costs, and indirect costs. See "Office of Managing Director Releases Data to Assist Commenters on Issues Presented in Further Notice of Proposed Rulemaking," Adopted August 1, 2008, MD Docket No. 08-65, Public Notice, DA 08-2033 (September 3, 2008).

<sup>16</sup> To assure that all previous comments are considered, parties that have previously commented on any of these issues are requested to attach or cite their prior comments in their filings in this proceeding.

<sup>17</sup> See, e.g., USTA Comments at 2; AT&T Comments at 3; FIT Reply Comments at 5; EWA Reply Comments at 1-2; Sprint Reply Comments at 2; NTCA Reply Comments at 2; MetroPCS Reply Comments at 2; CTIA Reply Comments at 3; AT&T Reply Comments, *FY 2008 Further Notice of Proposed Rulemaking*, supra n. 1.

<sup>18</sup> FTEs are based on actual end of fiscal year 2011 figures, the most recent data that is currently available.

<sup>19</sup> These totals represent only the number of direct FTEs funded by regulatory fees. They do not include direct FTEs funded by other revenues, e.g., by auction or USF proceeds, nor do they include indirect FTEs.

primary responsibility for leading the Commission's international representation in bilateral meetings, multilateral meetings, and cross-border spectrum negotiations with Canada and Mexico on spectrum sharing arrangements, and notifications to the International Telecommunications Union (ITU), as well as participation in ITU Study Groups. Though focused on the international community, this international work covers the entire gamut of the Commission's regulatory responsibilities.

27. If such work benefits all classes of providers, should the associated FTEs be excluded from the International Bureau's direct costs and, instead, be allocated as indirect costs like a support bureau? Is this situation unique to the International Bureau? The International Bureau has estimated that as much as one half of the FTEs in the Bureau work on matters covering services other than international services. Reallocation of 50% of the FTEs in the International Bureau proportionately to the other core bureaus would result in the following allocation: International Bureau, 61 FTEs, representing 10.97% of total FTEs in the four core bureaus; Media Bureau, 208.72 (37.54%); Wireline Competition Bureau, 175.64 (31.59%); and Wireless Telecommunications Bureau, 110.64 (19.9%).

28. We ask commenters to address all the issues regarding how to ameliorate the effect of using updated FTE data on regulatees paying fees in the International Bureau's service categories. Would this reallocation be equitable?

29. Are there analogous groups within the other core bureaus whose work covers services outside of the core bureau's direct regulatory activities? If so, how should those FTEs be allocated, or should adjustments be made to our proposed allocation of FTEs for those core bureaus to account for such broadly cross-cutting work in a core bureau? We also seek comment on whether further adjustments of the allocation of FTEs should be made. Should adjustments be made whenever, as discussed above, the work of one bureau supports the work of one or more other bureaus? Would this be a workable and sufficient way to allocate regulatory fees fairly between industry sectors consistent with section 9, or is there a more equitable way, consistent with statute, to allocate regulatory fees between and/or within industry sectors? For example, should regulatory fee categories in section 9 be combined or eliminated, given the change in the telecommunications landscape since 1998? Should additional regulatory fee categories such as broadband be added to the regulatory fee schedule set forth in section 9? We seek comment on whether the Commission has authority, under section 9, to include broadband as a fee category. If additional fee categories are created, how should their costs be assessed? To the extent that licensees offer services that are regulated by more than one core bureau, how would the addition of new fee categories affect the allocation of FTEs by core bureau?

30. We note that section 9(b)(1)(A) allows the Commission to adjust regulatory fees "to take into account factors that are reasonably related to the benefits provided the payor of the fee by the Commission's activities, including such factors as service area coverage, shared use versus exclusive use, and other factors that the Commission determines to be in the public interest." How should "benefits provided to the payor" be determined? Should such benefit be measured by the level of regulation of such payor, or by some measure of the amount of regulatory activity attributable to a specific payor in a given year? Or should "benefits provided the payor" be found to include all benefits received as a result of the Commission's work, even benefit from efforts to reduce regulation of a particular industry sector? How does one measure such benefit? Is relative market share, or total revenues, a good measure of the benefit the payor receives from the work of the Commission to promote competition and remove barriers to market entry? If so, should all payors be assessed based on revenues? Is it technically feasible to assess all regulatory fee categories based on revenues? How could the Commission ensure such assessment is based on accurate, reliable revenue information from all industry sectors? What additional reporting requirements would be necessary to obtain the information necessary to assess all payors on a revenues basis?

31. Are there other factors the Commission should consider in rebalancing regulatory fees in order to achieve the goals discussed above? For example, does Section 9 allow the Commission to mitigate the effects of fee increases to a particular industry segment by providing interim adjustments, by phasing in the new fees over a period of time, or by providing relief in some other way? How would the Commission administer any recommended mitigation?

32. Finally, how often should the Commission revisit the allocation resulting from this rulemaking? Should this reexamination be undertaken at regular intervals, or in response to comments by fee payors in the annual regulatory fee collection NPRM? If such reexamination is done at regular intervals, for example, annually, how can we ensure continued predictability and collectability of fees? Would it be appropriate to simply update the Commission's FTE allocation each year, without regard to the impact of significant increases of regulatory fees on certain regulatory fee categories? Would such fluctuations be especially problematic for small service providers who are likely least able to absorb unpredictable changes in fees from year to year?

### **3. Reallocation of FTEs Within Bureaus**

33. As noted previously, our current FTE allocations and the resulting allocation percentages were first used in FY 1999 and are based on FY 1998 FTE data. We request comment on updating and reallocating FTEs among the fee categories within each of the core bureaus. For example, within the International Bureau, there are five fee categories: Bearer Circuits, Submarine Cable Providers, Earth Stations, Space Stations (Geostationary), and Space Stations (Non-Geostationary). Regulatory fees are currently allocated among these five fee categories as follows: Bearer Circuits (5.1%), Submarine Cable Providers (36.1%), Earth Stations (3.9%), Space Stations (Geostationary) (51.1%), and Space Stations (Non-Geostationary) (3.8%).

34. Although one option would be to continue using these relative allocation percentages among the fee categories in each of the core bureaus, we seek comment on whether it would better serve the public interest for management in each of the core bureaus to revise their internal FTE allocation percentages based on management's assessment of the current distribution of work within the bureau. We also seek comment on whether they should do such analysis and update of the FTE allocation among fee categories within the bureau every three years unless a substantial shift in the nature or extent of a bureau's duties warrants reexamination in the interim. Commenters advocating alternatives or modifications to this proposed approach should describe in specific detail how the suggested alternative or modification would work and why it would be preferable to allocation based on assessment of the current distribution of work within the bureau described herein.

## **IV. CONCLUSION**

35. Fundamental to this Notice is the Commission's desire to assure that the methodology we use to derive regulatory fees is consistent with statutory requirements, fair, efficiently administered, and sustainable. This Notice proposes a number of innovative alternatives designed to achieve those goals. Interested parties are invited to comment on the suitability of these goals, the effectiveness of the alternatives proposed in this Notice in meeting these or other appropriate goals, and the Commission's jurisdiction to adopt any of the alternatives discussed in the Notice or proposed in response to it.

## **V. PROCEDURAL MATTERS**

### **A. Initial Regulatory Flexibility Analysis**

36. An initial regulatory flexibility analysis ("IRFA") is contained in Attachment A. 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.

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

37. This document solicits possible proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the possible proposed information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

## **C. Other Procedural Matters**

### **1. Filing Instructions**

38. 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 the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- **Paper Filers:** Parties who choose to file by paper must file an original and one copy 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. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- 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 and boxes 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.

39. **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).

## 2. *Ex Parte* Information

40. The proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>20</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

## VI. 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 Attachment B, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>20</sup> 47 C.F.R. §§ 1.1200 *et seq.*

## ATTACHMENT A

## List of Commenters

Commenter	Abbreviated name
American Association of Paging Carriers	AAPC
AT&T, Inc.	AT&T
DirecTV, Inc. and DISH Network LLC	DirecTV and DISH
Enterprise Wireless Alliance	EWA
Independent Telephone and Telecommunications Alliance	ITTA
National Cable and Telecommunications Association	NCTA
Personal Radio Steering Group, Inc.	PRSG
PCIA – The Wireless Infrastructure Association	PCIA
United States Telecom Association	USTA
Verizon Communications, Inc.	Verizon

## List of Commenters – Reply Comments

Commenter	Abbreviated name
American Cable Association	ACA
AT&T, Inc.	AT&T
CTIA – The Wireless Association®	CTIA
DirecTV, Inc. and DISH Network LLC	DirecTV and DISH
Enterprise Wireless Alliance	EWA
Forest Industries Telecommunications	FIT
MetroPCS Communications, Inc.	MetroPCS
National Telecommunications Cooperative Association	NTCA
Satellite Industry Association	SIA
Sprint Nextel Corporation	Sprint
Verizon Communications, Inc.	Verizon
Wireless Cable Coalition	WCC

**ATTACHMENT B****Initial Regulatory Flexibility Analysis**

1. As required by the Regulatory Flexibility Act (RFA),<sup>21</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 (Notice). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed on or before the dates indicated on the first page of this Notice 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 (SBA)<sup>22</sup> In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.<sup>23</sup>

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

2. In the Notice we seek public comment on approaches to update and reform the process by which the Commission calculates and assesses regulatory fees under section 9 of the Communications Act. We propose to be guided in this examination by the goals of fairness, administrability, and sustainability, and we seek comment on these goals. We seek comment on four key areas regarding the regulatory fee process: (1) revising the way in which direct and indirect FTEs (full-time [employee]equivalents) are allocated; (2) using the current number of FTEs as the basis for calculating regulatory fee allocation percentages; (3) ameliorating the impact of fee increases that would otherwise result from using current FTE percentages, especially on entities providing international communication services; and (4) asking whether and how the current number of regulatory fee categories can be changed, for example, by adding broadband and/or by reducing the number of fee categories.

3. Section 9 of the Act states that the basis for calculating regulatory costs is the number of FTEs performing enforcement, policy and rulemaking, and international activities, as well as providing user information services. The Commission has historically regarded the costs generated by individuals working specifically on those activities as "direct" costs, whereas the cost of employees providing support efforts have been considered "indirect" costs. The Notice first seeks comment on whether to revise this approach. In order to provide a more consistent and workable way to allocate FTEs, we propose that all the direct and indirect FTEs in each of the four core licensing bureaus -- The Wireless Telecommunications, Wireline Competition, Media, and International Bureaus -- be allocated to the Bureau in which they work. Indirect FTEs outside the core bureaus would be allocated among the four core licensing bureaus in the percentage of each core bureau's direct FTEs to the total FTEs in the Commission.

4. Second, we seek comment on updating the current FTE allocation percentages to reflect the changes in the telecommunications industry and in the Commission's workload since the current percentages were developed in FY 1998. Using current FTE data to calculate regulatory fees instead of FY 1998 FTE data would produce substantial increases in the fees paid by International

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<sup>21</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>22</sup> 5 U.S.C. § 603(a).

<sup>23</sup> *Id.*

Bureau regulates and correspondingly substantial reduction in the fees currently paid by Interstate Telecommunications Service Providers (ITSPs, or wireline service providers), whereas fees paid by Wireless Bureau regulatees would remain the same and Media Bureau regulatees would increase only slightly.

5. Third, we seek comment on whether and how we should ameliorate the impact increased fees would have on International Bureau regulatees. We ask whether the fact that FTEs in the International Bureau devote half their time to working on matters that directly benefit licensees in the remaining three core licensing bureaus would make it equitable to reallocate and redistribute half of the fee increases to those other bureaus. We also ask if there are other bureaus in which such a reallocation would be equitable.

6. Finally, we seek comment on whether the current number of fee categories in the Schedule of Regulatory fees should be expanded to include new services such as broadband, or reduced to reflect the state of the telecommunications market and to simplify the administration of the fee program. Because the statute directs the Commission to consider the benefits the payors receive from Commission regulation in setting regulatory fees, we seek comment on how better to measure the benefits on which licensees currently pay fees. For example, we seek comment on whether total revenues, or relative market share, would be good measures of the benefit payors receive from the work of the Commission to promote competition and remove barriers to market entry. Finally, we specifically seek comment on the Commission's statutory authority to implement any of these changes.

## II. Background

## III. Legal Basis:

7. 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>24</sup>

## IV. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply:

8. 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>25</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>26</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>27</sup> A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>28</sup>

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<sup>24</sup> 47 U.S.C. §§ 154(i) and (j), 159, and 303(r).

<sup>25</sup> 5 U.S.C. § 603(b)(3).

<sup>26</sup> 5 U.S.C. § 601(6).

<sup>27</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."

<sup>28</sup> 15 U.S.C. § 632.

9. **Small Businesses.** Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.<sup>29</sup>

10. **Small Businesses, Small Organizations, and Small Governmental Jurisdictions.** Our action may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity size standards.<sup>30</sup> First, nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA.<sup>31</sup> In addition, a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>32</sup> Nationwide, as of 2007, there were approximately 1,621,315 small organizations.<sup>33</sup> Finally, 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>34</sup> Census Bureau data for 2011 indicate that there were 89,476 local governmental jurisdictions in the United States.<sup>35</sup> We estimate that, of this total, as many as 88,506 entities may qualify as “small governmental jurisdictions.”<sup>36</sup> Thus, we estimate that most governmental jurisdictions are small.

11. **Incumbent Local Exchange Carriers (Incumbent LECs).** 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>37</sup> Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 or more. According to

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<sup>29</sup> See SBA, Office of Advocacy, “Frequently Asked Questions,” <http://web.sba.gov/faqs> (accessed Jan. 2009).

<sup>30</sup> See 5 U.S.C. §§ 601(3)–(6).

<sup>31</sup> See SBA, Office of Advocacy, “Frequently Asked Questions,” [web.sba.gov/faqs](http://web.sba.gov/faqs) (last visited May 6, 2011; figures are from 2009).

<sup>32</sup> 5 U.S.C. § 601(4).

<sup>33</sup> INDEPENDENT SECTOR, THE NEW NONPROFIT ALMANAC & DESK REFERENCE (2010).

<sup>34</sup> 5 U.S.C. § 601(5).

<sup>35</sup> U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 2011, Table 427 (2007)

<sup>36</sup> The 2007 U.S. Census data for small governmental organizations indicate that there were 89,476 “Local Governments” in 2007. (U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES 2011, Table 428.) The criterion by which the size of such local governments is determined to be small is a population of 50,000. However, since the Census Bureau does not specifically apply that criterion, it cannot be determined with precision how many of such local governmental organizations is small. Nonetheless, the inference seems reasonable that substantial number of these governmental organizations has a population of less than 50,000. To look at Table 428 in conjunction with a related set of data in Table 429 in the Census’s Statistical Abstract of the U.S., that inference is further supported by the fact that in both Tables, many entities that may well be small are included in the 89,476 local governmental organizations, e.g. county, municipal, township and town, school district and special district entities. Measured by a criterion of a population of 50,000 many specific sub-entities in this category seem more likely than larger county-level governmental organizations to have small populations. Accordingly, of the 89,746 small governmental organizations identified in the 2007 Census, the Commission estimates that a substantial majority is small. 36 13 C.F.R. § 121.201, NAICS code 517110.

Commission data, 1,307 carriers reported that they were incumbent local exchange service providers.<sup>38</sup> Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.<sup>39</sup> Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the *NPRM*. Thus under this category and the associated small business size standard, the majority of these incumbent local exchange service providers can be considered small providers.<sup>40</sup>

**12. Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.** Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>41</sup> Census Bureau data for 2007 show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers can be considered small entities.<sup>42</sup> According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.<sup>43</sup> Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees.<sup>44</sup> In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.<sup>45</sup> In addition, 72 carriers have reported that they are Other Local Service Providers.<sup>46</sup> Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees.<sup>47</sup> Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the *NPRM*.

**13. Local Resellers.** The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>48</sup> Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more

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<sup>38</sup> See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) ("*Trends in Telephone Service*").

<sup>39</sup> See *id.*

<sup>40</sup> See [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-fds\\_name=EC0700A1&-geo\\_id=&-skip=600&-ds\\_name=EC0751SSSZ5&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-skip=600&-ds_name=EC0751SSSZ5&-_lang=en).

<sup>41</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>42</sup> See [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-fds\\_name=EC0700A1&-geo\\_id=&-skip=600&-ds\\_name=EC0751SSSZ5&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-skip=600&-ds_name=EC0751SSSZ5&-_lang=en).

<sup>43</sup> See *Trends in Telephone Service*, at tbl. 5.3.

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

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> 13 C.F.R. § 121.201, NAICS code 517911.

than 1,000.<sup>49</sup> Thus under this category and the associated small business size standard, the majority of these local resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.<sup>50</sup> Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees.<sup>51</sup> Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the Notice.

14. **Toll Resellers.** The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>52</sup> Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees and one operated with more than 1,000.<sup>53</sup> Thus under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data,<sup>54</sup> 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our proposed rules.

15. **Payphone Service Providers (PSPs).** Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>55</sup> Census Bureau data for 2007 shows that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these PSPs can be considered small entities.<sup>56</sup> According to Commission data,<sup>57</sup> 657 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 653 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our action.

16. **Interexchange Carriers.** Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>58</sup> Census Bureau data for 2007

<sup>49</sup> [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-\\_skip=800&-ds\\_name=EC0751SSSZ5&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=800&-ds_name=EC0751SSSZ5&-_lang=en).

<sup>50</sup> See *Trends in Telephone Service*, at tbl. 5.3.

<sup>51</sup> *Id.*

<sup>52</sup> 13 C.F.R. § 121.201, NAICS code 517911.

<sup>53</sup> [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-\\_skip=800&-ds\\_name=EC0751SSSZ5&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=800&-ds_name=EC0751SSSZ5&-_lang=en).

<sup>54</sup> *Trends in Telephone Service*, at tbl. 5.3.

<sup>55</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>56</sup> See [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-fds\\_name=EC0700A1&-geo\\_id=&-\\_skip=600&-ds\\_name=EC0751SSSZ5&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en).

<sup>57</sup> *Trends in Telephone Service*, at tbl. 5.3.

<sup>58</sup> 13 C.F.R. § 121.201, NAICS code 517110.

shows that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Interexchange carriers can be considered small entities.<sup>59</sup> According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.<sup>60</sup> Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.<sup>61</sup> Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the NPRM.

17. **Operator Service Providers (OSPs).** Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>62</sup> Census Bureau data for 2007 show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Interexchange carriers can be considered small entities.<sup>63</sup> According to Commission data, 33 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 31 have 1,500 or fewer employees and 2 have more than 1,500 employees.<sup>64</sup> Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed rules.

18. **Prepaid Calling Card Providers.** Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>65</sup> Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000.<sup>66</sup> Thus under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards.<sup>67</sup> Of these, all 193 have 1,500 or fewer employees and none have more than 1,500 employees.<sup>68</sup> Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to the Notice.

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<sup>59</sup> See [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-fds\\_name=EC0700A1&-geo\\_id=&-\\_skip=600&-ds\\_name=EC0751SSSZ5&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en).

<sup>60</sup> See *Trends in Telephone Service*, at tbl. 5.3.

<sup>61</sup> *Id.*

<sup>62</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>63</sup> See [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-fds\\_name=EC0700A1&-geo\\_id=&-\\_skip=600&-ds\\_name=EC0751SSSZ5&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en).

<sup>64</sup> *Trends in Telephone Service*, at tbl. 5.3.

<sup>65</sup> 13 C.F.R. § 121.201, NAICS code 517911.

<sup>66</sup> [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-\\_skip=800&-ds\\_name=EC0751SSSZ5&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=800&-ds_name=EC0751SSSZ5&-_lang=en).

<sup>67</sup> See *Trends in Telephone Service*, at tbl. 5.3.

<sup>68</sup> *Id.*

19. **800 and 800-Like Service Subscribers.**<sup>69</sup> Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (“toll free”) subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>70</sup> Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000.<sup>71</sup> Thus under this category and the associated small business size standard, the majority of resellers in this classification can be considered small entities. To focus specifically on the number of subscribers than on those firms which make subscription service available, the most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use.<sup>72</sup> According to our data for September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,888,687; the number of 877 numbers assigned was 4, 721,866; and the number of 866 numbers assigned was 7, 867,736. The Commission does not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, the Commission estimates that there are 7,860,000 or fewer small entity 800 subscribers; 5,888,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers.

20. **Satellite Telecommunications Providers.** Two economic census categories address the satellite industry. The first category has a small business size standard of \$15 million or less in average annual receipts, under SBA rules.<sup>73</sup> The second has a size standard of \$25 million or less in annual receipts.<sup>74</sup>

21. The category of Satellite Telecommunications “comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”<sup>75</sup> Census Bureau data for 2007 show that 512 Satellite Telecommunications firms that operated for that entire year.<sup>76</sup> Of this total, 464 firms had annual receipts of under \$10 million, and 18 firms had receipts of \$10 million to \$24,999,999.<sup>77</sup> Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

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<sup>69</sup> We include all toll-free number subscribers in this category, including those for 888 numbers.

<sup>70</sup> 13 C.F.R. § 121.201, NAICS code 517911.

<sup>71</sup> [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-\\_skip=800&-ds\\_name=EC0751SSSZ5&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=800&-ds_name=EC0751SSSZ5&-_lang=en).

<sup>72</sup> *Trends in Telephone Service*, at tbls. 18.4, 18.5, 18.6, 18.7.

<sup>73</sup> 13 C.F.R. § 121.201, NAICS code 517410.

<sup>74</sup> 13 C.F.R. § 121.201, NAICS code 517919.

<sup>75</sup> U.S. Census Bureau, 2007 NAICS Definitions, 517410 Satellite Telecommunications.

<sup>76</sup> See [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-\\_skip=900&-ds\\_name=EC0751SSSZ4&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=900&-ds_name=EC0751SSSZ4&-_lang=en).

<sup>77</sup> See [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-\\_skip=900&-ds\\_name=EC0751SSSZ4&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=900&-ds_name=EC0751SSSZ4&-_lang=en).

22. The second category, i.e. “All Other Telecommunications” comprises “establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.”<sup>78</sup> For this category, Census Bureau data for 2007 shows that there were a total of 2,383 firms that operated for the entire year.<sup>79</sup> Of this total, 2,347 firms had annual receipts of under \$25 million and 12 firms had annual receipts of \$25 million to \$49, 999,999.<sup>80</sup> Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

23. **Wireless Telecommunications Carriers (except satellite).** This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services.<sup>81</sup> The appropriate size standard under SBA rules is for the category Wireless Telecommunications Carriers. The size standard for that category is that a business is small if it has 1,500 or fewer employees.<sup>82</sup> Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.<sup>83</sup> For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year.<sup>84</sup> Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1000 employees or more.<sup>85</sup> Thus under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers(except satellite) are small entities that may be affected by our proposed action.<sup>86</sup>

24. **Licenses Assigned by Auctions.** Initially, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues

<sup>78</sup> <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517919&search=2007%20NAICS%20Search>.

<sup>79</sup> [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-\\_skip=900&-ds\\_name=EC0751SSSZ4&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=900&-ds_name=EC0751SSSZ4&-_lang=en).

<sup>80</sup> [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-\\_skip=900&-ds\\_name=EC0751SSSZ4&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=900&-ds_name=EC0751SSSZ4&-_lang=en).

<sup>81</sup> <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517210&search=2007%20NAICS%20Search>

<sup>82</sup> 13 C.F.R. § 121.201, NAICS code 517210.

<sup>83</sup> 13 C.F.R. § 121.201, NAICS code 517210. The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

<sup>84</sup> U.S. Census Bureau, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517210” (issued Nov. 2010).

<sup>85</sup> *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “100 employees or more.”

<sup>86</sup> See [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-fds\\_name=EC0700A1&-geo\\_id=&-\\_skip=600&-ds\\_name=EC0751SSSZ5&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en)

are implicated.

25. **Paging Services.** Neither the SBA nor the FCC has developed a definition applicable exclusively to paging services. However, a variety of paging services is now categorized under Wireless Telecommunications Carriers (except satellite).<sup>87</sup> This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services. Illustrative examples in the paging context include paging services, except satellite; two-way paging communications carriers, except satellite; and radio paging services communications carriers. The SBA has deemed a paging service in this category to be small if it has 1,500 or fewer employees.<sup>88</sup> For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year.<sup>89</sup> Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1000 employees or more.<sup>90</sup> Thus under this category and the associated small business size standard, the Commission estimates that the majority of paging services in the category of wireless telecommunications carriers(except satellite) are small entities that may be affected by our proposed action.<sup>91</sup>

26. In addition, in the Paging Second Report and Order, the Commission adopted a size standard for “small businesses” for purposes of determining their eligibility for special provisions such as bidding credits.<sup>92</sup> A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.<sup>93</sup> The SBA has approved this definition.<sup>94</sup> An initial auction of Metropolitan Economic Area (“MEA”) licenses was conducted in the year 2000. Of the 2,499 licenses auctioned, 985 were sold.<sup>95</sup> Fifty-seven companies claiming small business status won 440 licenses.<sup>96</sup> A subsequent auction of MEA and Economic Area (“EA”) licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold.<sup>97</sup> One

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<sup>87</sup> U.S. Census Bureau, 2007 NAICS Definitions, “517210 Wireless Telecommunications Categories (Except Satellite)”; <http://www.census.gov/naics/2007/def/ND517210.HTM#N517210>

<sup>88</sup> U.S. Census Bureau, 2007 NAICS Definitions, “517210 Wireless Telecommunications Categories (Except Satellite)”

<sup>89</sup> U.S. Census Bureau, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517210” (issued Nov. 2010).

<sup>90</sup> *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “100 employees or more.”

<sup>91</sup> See [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-fds\\_name=EC0700A1&-geo\\_id=&-skip=600&-ds\\_name=EC0751SSSZ5&-lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-skip=600&-ds_name=EC0751SSSZ5&-lang=en)

<sup>92</sup> *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems*, Second Report and Order, 12 FCC Rcd 2732, 2811-2812, paras. 178-181 (“*Paging Second Report and Order*”); see also *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems*, Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 10030, 10085-10088, ¶¶ 98-107 (1999).

<sup>93</sup> *Paging Second Report and Order*, 12 FCC Rcd at 2811, ¶ 179.

<sup>94</sup> See Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau (“WTB”), FCC (Dec. 2, 1998) (“*Alvarez Letter 1998*”).

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

<sup>96</sup> See *id.*

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

hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.<sup>98</sup> A fourth auction of 9,603 lower and upper band paging licenses was held in the year 2010. 29 bidders claiming small or very small business status won 3,016 licenses.

27. **2.3 GHz Wireless Communications Services.** This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined “small business” for the wireless communications services (“WCS”) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of \$15 million for each of the three preceding years.<sup>99</sup> The SBA approved these definitions.<sup>100</sup> The Commission conducted an auction of geographic area licenses in the WCS service in 1997. In the auction, seven bidders that qualified as very small business entities won 31 licenses, and one bidder that qualified as a small business entity won a license.

28. **1670-1675 MHz Services.** This service can be used for fixed and mobile uses, except aeronautical mobile.<sup>101</sup> An auction for one license in the 1670-1675 MHz band was conducted in 2003. The Commission defined a “small business” as an entity with attributable average annual gross revenues of not more than \$40 million for the preceding three years, which would thus be eligible for a 15 percent discount on its winning bid for the 1670-1675 MHz band license. Further, the Commission defined a “very small business” as an entity with attributable average annual gross revenues of not more than \$15 million for the preceding three years, which would thus be eligible to receive a 25 percent discount on its winning bid for the 1670-1675 MHz band license. The winning bidder was not a small entity.

29. **Wireless Telephony.** Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite).<sup>102</sup> Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.<sup>103</sup> Census data for 2007 shows that there were 1,383 firms that operated that year.<sup>104</sup> Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. According to Trends in Telephone Service data, 434 carriers reported that they were engaged in wireless telephony.<sup>105</sup>

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<sup>98</sup> See “Lower and Upper Paging Bands Auction Closes,” Public Notice, 18 FCC Rcd 11154 (WTB 2003). The current number of small or very small business entities that hold wireless licenses may differ significantly from the number of such entities that won in spectrum auctions due to assignments and transfers of licenses in the secondary market over time. In addition, some of the same small business entities may have won licenses in more than one auction.

<sup>99</sup> *Amendment of the Commission’s Rules to Establish Part 27, the Wireless Communications Service (WCS)*, Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

<sup>100</sup> See *Alvarez Letter 1998*.

<sup>101</sup> 47 C.F.R. § 2.106; see generally 47 C.F.R. §§ 27.1–70.

<sup>102</sup> 13 C.F.R. § 121.201, NAICS code 517210.

<sup>103</sup> *Id.*

<sup>104</sup> U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-fds\\_name=EC0700A1&-skip=700&-ds\\_name=EC0751SSSZ5&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-skip=700&-ds_name=EC0751SSSZ5&-_lang=en).

<sup>105</sup> *Trends in Telephone Service*, at tbl. 5.3.

Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees.<sup>106</sup> Therefore, approximately half of these entities can be considered small. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services.<sup>107</sup> Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.<sup>108</sup> Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

30. **Broadband Personal Communications Service.** *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission initially defined a “small business” for C- and F-Block licenses as an entity that has average gross revenues of \$40 million or less in the three previous years.<sup>109</sup> For F-Block licenses, an additional small business size standard for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three years.<sup>110</sup> These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.<sup>111</sup> No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that claimed small business status in the first two C-Block auctions. A total of 93 bidders that claimed small and very small business status won approximately 40 percent of the 1,479 licenses in the first auction for the D, E, and F Blocks.<sup>112</sup> On April 15, 1999, the Commission completed the re-auction of 347 C-, D-, E-, and F-Block licenses in Auction No. 22.<sup>113</sup> Of the 57 winning bidders in that auction, 48 claimed small business status and won 277 licenses.

31. On January 26, 2001, the Commission completed the auction of 422 C and F Block Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in that auction, 29 claimed small business status.<sup>114</sup> Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. On February 15, 2005, the Commission completed an auction of 242 C-, D-, E-, and F-Block licenses in Auction No.

<sup>106</sup> *Id.*

<sup>107</sup> See *Trends in Telephone Service*, at tbl. 5.3.

<sup>108</sup> See *id.*

<sup>109</sup> See *Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap; Amendment of the Commission's Cellular/PCS Cross-Ownership Rule*, WT Docket No. 96-59, GN Docket No. 90-314, Report and Order, 11 FCC Rcd 7824, 7850–52 ¶¶ 57–60 (1996) (“*PCS Report and Order*”); see also 47 C.F.R. § 24.720(b).

<sup>110</sup> See *PCS Report and Order*, 11 FCC Rcd at 7852 ¶ 60.

<sup>111</sup> See *Alvarez Letter 1998*.

<sup>112</sup> See *Broadband PCS, D, E and F Block Auction Closes*, Public Notice, Doc. No. 89838 (rel. Jan. 14, 1997).

<sup>113</sup> See *C, D, E, and F Block Broadband PCS Auction Closes*, Public Notice, 14 FCC Rcd 6688 (WTB 1999). Before Auction No. 22, the Commission established a very small standard for the C Block to match the standard used for F Block. *Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees*, WT Docket No. 97-82, Fourth Report and Order, 13 FCC Rcd 15743, 15768 ¶ 46 (1998).

<sup>114</sup> See *C and F Block Broadband PCS Auction Closes; Winning Bidders Announced*, Public Notice, 16 FCC Rcd 2339 (2001).