

**CONCURRING STATEMENT OF
COMMISSIONER JONATHAN ADELSTEIN**

*Re: Assessment and Collection of Regulatory Fees for Fiscal Year 2003;
MD Docket No. 03-83*

I can only concur with the Commission's decision to collect regulatory fees for fiscal year 2003 because I disagree with the methodology used to determine the actual fees assessed in this item.

Section 9 of the Communications Act requires the Commission to assess and collect regulatory fees to recover the costs of regulatory activities performed by the Commission. It further requires that assessed fees be derived by determining the full-time equivalent number of employees (FTEs) performing these regulatory activities. Finally, while the Commission is able to make permitted amendments to the original Schedule of Regulatory Fees, Section 9(i) requires the Commission to do so based on an accounting system necessary to make the adjustments, which are authorized by subsection 9(b)(3).

I am concerned that the Commission's approach to regulatory fees does not truly recover the costs for regulatory activities on a service by service basis. We essentially rely on repeated proportionate increases of the preceding year's schedule, adjusted to reflect increases or decreases in payment units. While the statute does specifically contemplate a proportionate increase, subsection 9(b)(1)(3) also requires the Commission to amend the Schedule of Regulatory Fees if it determines that the schedule requires amendment to comply with the requirement to assess fees by determining the FTEs performing these regulatory activities.

While I understand the Commission has been considering a new cost-based accounting system for some time, it is unclear if that system will enable us to better comply with Section 9 of the Act. It is my hope that a new cost-based accounting system would more readily react to changes that have increased or decreased our regulatory activities on a service by service basis so that the appropriate costs are passed along to the proper services from year to year. I strongly encourage the Commission to take such steps over the upcoming year.

Commercial Mobile Radio Service (CMRS) Messaging. I am pleased that through the policy of permitted amendments we have made the decision to not increase the regulatory fee for the CMRS messaging industry. However, I disagree with the specific rationale for reducing the fee. I believe that the fee should have been maintained or reduced based on the level of regulatory activities expended by Commission FTEs not on the economic status of the industry, as this item does.

Indeed, many of our regulatees have suffered through difficult financial circumstances through the last several years. While the CMRS messaging industry may have suffered disproportionately, I would have preferred that we first assess the level of regulatory activity associated with the industry before making any adjustment based on an ostensible public interest determination. A cost-based accounting system may have permitted us to lower the CMRS messaging regulatory fee without even addressing the financial health of the messaging industry. Similarly, in the future, such a system may eliminate the disparities that result from automatic increases for all services based on a previous year's regulatory fee schedule, which we properly corrected here.

Classification of Local Multipoint Distribution Service (LMDS). Finally, I want to highlight my significant concern with that portion of the item in which the Commission concludes that LMDS warrants a separate fee category from microwave and assesses LMDS licensees a fee of \$265 per license. As previously stated, I believe that in assessing regulatory fees, we should first look at the number of FTEs performing the regulatory activities associated with that service, which was not done here.

While I agree it is appropriate to separate the LMDS service from the Multipoint Distribution Service (MDS) regulatory fee category, I am unable to agree with the conclusion that the LMDS service requires different regulatory activities than those associated with other Part 101 Fixed Microwave Services. Indeed, two other services that share very similar service characteristics with LMDS – 24 GHz and 39 GHz – are also regulated under Part 101 and subject to the microwave regulatory fees.

Unfortunately, I am forced to concur to this portion because I understand that a decision to change the regulatory fee for LMDS at this time would make it impossible to both collect regulatory fees this fiscal year and provide Congress with 90 days notice of the amendment, as required by the Act. This item, however, does announce our plan to initiate a rulemaking that will closely look at the regulatory fees assessed against the microwave services including LMDS. I support this effort and strongly encourage the Commission to use this rulemaking as the foundation for a more comprehensive review of the methodology for assessing regulatory fees as outlined above.