

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Assessment and Collection) MD Docket No. 03-83
)
of Regulatory Fees for)
)
Fiscal Year 2003)

NOTICE OF PROPOSED RULEMAKING

Adopted: March 24, 2003 ; **Released:** March 26, 2003

Comment Date: April 25, 2003
Reply Comment Date: May 5, 2003

By the Commission:

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I. INTRODUCTION

1. In this *Notice of Proposed Rulemaking*, the Commission proposes to collect \$269,000,000 in regulatory fees for Fiscal Year (FY) 2003. These fees are mandated by Congress and are collected to recover the regulatory costs associated with the Commission's enforcement, policy and rulemaking, user information, and international activities.¹

II. DISCUSSION**A. Development of FY 2003 Fees****i. Calculation of Revenue and Fee Requirements**

2. Each fiscal year, the Commission proportionally allocates the total amount that must be collected via regulatory fees (Attachment C).² For FY 2003, this allocation was done using FY 2002 revenues as a base. From this base, a revenue amount for each fee category was calculated. Each fee category was then adjusted upward by 23 percent to reflect the increase in regulatory fees from FY 2002 to FY 2003. These FY 2003 amounts were then divided by the number of payment units in each fee category to determine the unit fee.³ In instances of small fees, such as licenses that are renewed over a multiyear term, the resulting unit fee was also divided by the term of the license. These unit fees were then rounded in accordance with 47 U.S.C. §159 (b) (2).

ii. Additional Adjustments to Payment Units

3. In calculating the FY 2003 regulatory fees proposed in Attachment D, the Commission further adjusted the FY 2002 list of payment units (Attachment B) based upon licensee data bases and industry and trade group projections. Whenever possible, the Commission verified these estimates from multiple sources to ensure accuracy of these estimates.

4. The NPRM also proposes adjusting payment units for FY 2003 by expanding the AM and FM Radio Station Regulatory Fees Grid. Since FY 1998, the Commission has used a grid that

¹ 47 U.S.C. 159(a).

² The costs assigned to each service category are based upon the regulatory activities (enforcement, policy and rulemaking, user information, and international activities) undertaken by the Commission on behalf of units in each service category. It is important to note that the required increase in regulatory fee payments of approximately 23 percent in FY 2003 is reflected in the revenue that is expected to be collected from each service category. Because this expected revenue is adjusted each year by the number of units in a service category, the actual fee itself is sometimes increased by a number other than 23 percent. For example, in industries where the number of units is declining and the expected revenue is increasing, the impact on the fee increase may be greater.

³ In most instances, the fee amount is a flat fee per licensee or regulatee. However, in some instances the fee amount represents a unit subscriber fee (such as for Cable, Commercial Mobile Radio Service (CMRS) Cellular/Mobile and CMRS Messaging), a per unit fee (such as for International Bearer Circuits), or a fee factor per revenue dollar (Interstate Telecommunications Service Provider fee).

divides broadcast station regulatory fees by class of service, population, and type of service (AM/FM).⁴ This grid was originally adopted to provide equity and fairness among radio stations with varying signal strengths and market reach. However, in recent years, modifications to radio stations, a trend toward more powerful stations, and increases in the overall general population – resulting in an ever-larger number of stations grouped together in the one million-plus category of the grid - necessitated the need to review this grid.

5. The NPRM is therefore proposing a revised grid (six by seven) that includes a population category of “greater than three million people.” In addition, the NPRM is also proposing to change the population threshold amounts to reflect a slightly wider population field. The current and proposed radio station grids follow:

CURRENT RADIO STATION REGULATORY FEE GRID (Six by Six)						
Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C1 & C2
<=20,000						
20,001 - 50,000						
50,001 - 125,000						
125,001 - 400,000						
400,001 - 1,000,000						
>1,000,000						

PROPOSED RADIO STATION REGULATORY FEE GRID (Six by Seven)						
Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C1 & C2
<=25,000						
25,001 - 75,000						
75,001 - 150,000						
150,001 - 500,000						
500,001 - 1,200,000						
1,200,001 – 3,000,000						
> 3,000,000						

⁴ Assessment and Collection of Regulatory Fees for Fiscal Year 1998 (63 FR 35847), paragraph 37, (July 1, 1998).

iii. Request for Comment on Possible Service Reclassification

6. In both 2001,⁵ and then again in 2002,⁶ the Commission denied requests to move the Local Multipoint Distribution Service (LMDS) to a microwave fee category. Thus, at present, LMDS services' regulatory fees are assessed based upon the Multipoint Distribution Service (MDS) category. However, while evaluating these requests it has become clear that product innovation, evolving service offerings, and further technological developments may be creating changes in these services such that reclassification – of some sort - might be appropriate. MDS and LMDS are licensed in different spectrum bands.⁷ MDS is located below 3 GHz while LMDS is in the higher microwave frequencies. Accordingly, we request comment on how LMDS should be categorized for regulatory fee purposes. We note that in a separate proceeding, we have sought comment on possible long-term modification of our regulatory fees for MDS in conjunction with proposed major changes to our MDS rules to facilitate use of the 2500-2690 MHz band for mobile and advanced services.⁸

7. Those who argue for such a reclassification of LMDS for regulatory fee purposes have pointed out other differences between MDS and LMDS, such as individually licensed station hub sites (MDS) versus geographically based licenses (LMDS), differing markets, and different financial/investment requirements. Proponents of moving LMDS to another category also note the differences in the spectrum propagation characteristics of MDS and LMDS – with LMDS having more propagation limitations.

8. Those opposing such a re-classification of LMDS for regulatory fee purposes note that there are many similarities between the services of LMDS and MDS, including that they both provide high speed voice and data services. They also point out that past arguments for making a change have only come forward after the Commission has issued its final annual fee assessments.

9. The Commission's denial of the past requests to move LMDS to a microwave fee category – or any other category - has not been based on rejection or acceptance of either set of arguments, but simply the fact that insufficient evidence has been provided. Thus, the NPRM asks for

⁵ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2001, Report and Order*, 16 FCC Rcd 13525, 13532 (2001).

⁶ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2001, Memorandum Opinion and Order*, MD Dkt. No. 01-76, FCC 02-320 ¶¶ 1, 6 (rel. Dec. 4, 2002).

⁷ The majority of MDS operations is located in the 190 megahertz in the 2500-2690 MHz band. FCC Staff Releases Its Interim Report on Spectrum Study of the 2500-2690 MHz Band: The Potential for Accommodating Third Generation Mobile Systems, Public Notice, DA 00-2583, 5 FCC Rcd 22310 (2000). A large deployment of LMDS has occurred in the frequencies at 17.7-20.2 GHz and 27.5-30 GHz (28 GHz band). See Biennial Review 2000 Staff Report Released, Public Notice, FCC 00-346 (Sept. 19, 2000).

⁸ See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands; Part 1 of the Commission's Rules – Further Competitive Bidding Procedures; Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service Amendment of Parts 21 and 74 to Engage in Fixed Two-Way Transmissions; Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico; WT Docket Nos. 02-68; 03-66; 03-67; MM Docket No. 97-217; *Notice of Proposed Rulemaking and Memorandum Opinion and Order*, FCC 03-56 (released Mar. XX, 2003).

public comment on how LMDS should be categorized for regulatory fee purposes, including whether an entirely new fee category should be established just for LMDS, in order to build a complete record on whether LMDS is properly classified within its current fee category of “Multipoint Distribution.”⁹ We also seek comment on whether LMDS should be classified in the same manner as other point-to-point fixed microwave services, or on the basis of other geographically licensed services.

iv. Adjustment of Fee Waiver Policies

10. Section 9 of the Communications Act (47 U.S.C. §159) requires the Commission to assess and collect regulatory fees to cover the costs of certain regulatory activities. The statute also specifies when these fees may be waived.¹⁰ Additionally, Section 8 of the Communications Act (47 U.S.C. §158) requires the Commission to collect application fees to reimburse the United States for amounts appropriated to the Commission (see 47 U.S.C. §158(e)). These fees may also be waived.¹¹ The Commission clarified the general policies applicable to waivers, including those based on financial hardship, in *Implementation of Section 9 of the Communications Act*.¹² that “We will grant waivers of the fees on a sufficient showing of financial hardship.”¹³ We further stated that: “It will be incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fees and to maintain its service to the public.”¹⁴ Additionally, we explained that “Evidence of bankruptcy or receivership is sufficient to establish financial hardship. . . . Thus, we will waive the regulatory fees for licensees whose stations are bankrupt, undergoing Chapter 11 reorganizations or in receivership.”^{15 16}

⁹ Effective March 25, 2002, the Commission transferred regulatory functions for Instructional Fixed Service, Multipoint Distribution Service, and the Multichannel Multipoint Distribution Service, from the Mass Media Bureau to the Wireless Telecommunications Bureau (See 47 C.F.R. §1.1153). The Commission intends to modify its rules on annual regulatory fees to reflect the fact that these services are now regulated by the Wireless Telecommunications Bureau.

¹⁰ Section 9(d) (47 U.S.C. §159(d)) provides that: “The Commission may waive, reduce, or defer payment of a fee in any specific instance for good cause shown, where such action would promote the public interest.” See also 47 C.F.R. §1.1166 (implementing statutory provision).

¹¹ Section 8(d) (2) (47 U.S.C. §158(d)(2)) provides that: “The Commission may waive or defer [payment of an application fee] in any specific instance for good cause shown, where such action would promote the public interest.” See also 47 C.F.R. §1.1117 (implementing statutory provision).

¹² We held generally that we would waive regulatory fees on a case-by-case basis upon a demonstration of: “‘extraordinary and compelling circumstances’ outweighing the public interest in recouping the cost of the Commission’s regulatory services from a particular regulatee.” 9 FCC Rcd at 5344 ¶ 29. See also 9 FCC Rcd 5333 (1994), recon. granted, 10 FCC Rcd 12759 (1995)

¹³ 10 FCC Rcd at 12761 ¶ 13.

¹⁴ Id. at 12762 ¶ 13.

¹⁵ Id. at 12762 ¶ 14.

¹⁶ See also Mobilemedia Corp., 14 FCC Rcd 8017, 8027 ¶ 40 (1999) (applying this policy to Section 8 application fees).

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11. Although fee waivers will generally be given in cases of financial hardship, we nevertheless note that even under our current policies, in some circumstances a significant question may exist as to whether bankruptcy represents extraordinary and compelling circumstances justifying a waiver when balanced against the public interest in reimbursing the Commission for its costs as reflected in the statutory fee provisions. A policy of automatically granting a waiver, in the case of large entities owing millions of dollars in fees, for example, might have significant impact on the Commission's overall ability to collect fees to reimburse the government for its costs as required by law. Therefore, under such circumstances a waiver may well not promote the public interest, as provided in sections 8(d)(2) and 9(d). We therefore emphasize that under the statutory waiver provisions, case-by-case review of fee waiver requests is necessary to determine the public interest, even in bankruptcy cases.

12. We also seek comment on whether we should set a cap on the amount of fees that we will generally waive in circumstances involving bankruptcy or otherwise. Fees owed above this cap would, of course, be subject to the provisions of the Bankruptcy Act (11 U.S.C. §§101 *et seq.*) and the disposition of the relevant bankruptcy court. By leaving the ultimate disposition of these large fees to bankruptcy law, rather than waiving them, we believe that we would be giving appropriate weight to our congressionally-mandated obligation to collect regulatory and other fees. Moreover, we believe that we would also be giving due regard to our practice, approved by the courts, of reconciling our regulatory responsibilities with the goals of the Bankruptcy Act.¹⁷ In the case of regulatees alleging financial hardship but not in bankruptcy, we would consider waiver, partial waiver or deferral of fees above the cap on a case-by-case basis. We tentatively propose that the cap be set at either \$500,000 or \$1 million, reviewed annually. In computing the proposed cap, all of the subsidiaries and other entities with an attributable interest in a particular regulatee would be aggregated. We invite comment on the above proposal and on alternative proposals. Commenters should address whether numerical or other caps should be applied to the waiver of Section 8 or Section 9 fees, the appropriate level at which the cap should be set, and how the level of a cap might be adjusted over time.

v. Procedural Changes

13. In an effort to streamline the regulatory fee process, the Commission is undertaking several initiatives that will make the process of collecting fees more efficient. Historically, in addition to providing official notice of regulatory fee assessments in the *Federal Register*, the Commission mails tens-of-thousands of public notices to licensees and regulatees, informing them of when regulatory fees are due and providing them the information necessary for them to calculate the amount they owe. This mailing process is very costly and inefficient. Because of the wide availability of the Internet, the Commission is proposing to discontinue mailing public notices. Instead, these notices, and all other pertinent information, will be posted on the FCC's website (<http://www.fcc.gov/fees>). Hardcopies of public notices and other relevant materials will be mailed upon request. Official notice of regulatory fee assessments will continue to be published in the *Federal Register*.

14. Further, the Commission is also undertaking a pilot program to mail postcards specifically stating the amount owed (i.e., to send a "bill" on a postcard) to a select group of media services.¹⁸ The postcards will identify the station call sign, address, facility identification number or other

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¹⁷ See *LaRose v. FCC*, 494 F.2d 1145 (D.C. Cir. 1974).

¹⁸ AM and FM Radio Stations, AM and FM Construction Permits, FM Translators/Boosters, VHF and UHF Television Stations, VHF and UHF Television Construction Permits, Satellite Television Stations, Satellite

(continued....)

identifier, and amount owed. The regulatee will then have the opportunity to correct any mistakes or, if there are no mistakes, simply submit the amount owed instead of having to calculate the unit's fee based upon information found in Public Notices. If successful, the Commission will consider expanding this method to other service categories.

15. With the exception of the changes noted in the preceding sections, the FY 2003 regulatory fee collection will follow the policies or procedures found in the *FY 2002 Order* (67 FR 46297).

vi. Future Streamlining of the Regulatory Fee Assessment and Collection Process

16. We are beginning a multi-year effort to review, streamline and modernize our fee assessment and collection processes and procedures. We welcome comments on a broad range of options in this regard. Areas of particular interest include: (1) the process for notifying users about changes in the annual regulatory fee schedule and how it can be improved; (2) the most effective way to disseminate regulatory fee bills, i.e. through surface mail, email, or some other mechanism; (3) the fee payment process, including how the agency's electronic payment system can be improved and whether we should make electronic payment mandatory for fees over a certain level; and (4) the timing of fee payments, including whether we should alter the existing fee payment "window" in any way. Commenters should bear in mind that proposed improvements must comport with the provisions of Section 9 of the Communications Act of 1934, as amended (47 U.S.C. §159). We anticipate taking action to implement improvements after the current regulatory fee cycle.

B. Procedures for Payment of Regulatory Fees

i. De minimis Fee Payment Liability

17. As in the past, the Commission is proposing that regulatees whose total regulatory fee liability, including all categories of fees for which payment is due by an entity, amounts to less than \$10 will be exempted from fee payment in FY 2003.

ii. Standard Fee Calculations and Payment Dates

18. The time for payment of standard fees will be announced in the *Report and Order* terminating this proceeding and will be published in the *Federal Register* pursuant to authority delegated to the Managing Director. As in the past, the responsibility for payment of fees by service category is as follows:

- a) Media services - the responsibility for the payment of regulatory fees rests with the holder of the permit or license on October 1, 2002. However, in instances where a license or permit is transferred or assigned after October 1, 2002, responsibility for payment rests with the holder of the license or permit at the time payment is due.

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Television Construction Permits, Low Power Television (LPTV) Stations, and LPTV Translators/Boosters.

- b) Wireline (Common Carrier) and Cable Services (fees are not based on a subscriber, unit, or circuit count) - fees must be paid for any authorization issued on or before October 1, 2002.
- c) Cable Subscriber Services and Commercial Mobile Radio Service (CMRS) cellular, mobile, and messaging services (fees based upon a subscriber, unit or circuit count) - the number of subscribers, units or circuits on December 31, 2002 will be used as the basis from which to calculate the fee payment.¹⁹ For facilities-based common carriers with active international bearer circuits, the fee is based on the circuit count as of December 31, 2002.

19. The Commission strongly recommends that entities submitting more than twenty-five (25) Form 159-C's use the electronic fee filer program when sending in their regulatory fee payment. The Commission will, for the convenience of payers, accept fee payments made in advance of the normal formal window for the payment of regulatory fees.

C. Enforcement

20. As required in 47 U.S.C. §159(c), an additional charge shall be assessed as a penalty for late payment of any regulatory fee. A late payment penalty of 25 percent of the amount of the required regulatory fee will be assessed on the first day following the deadline date for filing of these fees. Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including the provisions set forth in the Debt Collection Improvement Act of 1996 ("DCIA"). The Commission also assesses administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the related debt pursuant to the DCIA and §1.1940(d) of the Commission's Rules. These administrative processing charges will be assessed on any delinquent regulatory fee, in addition to the 25 percent late charge penalty. Partial underpayments of regulatory fees are treated in the following manner. The licensee will be given credit for the amount paid, but if it is later determined that the fee paid is incorrect or was submitted after the deadline date, the 25 percent late charge penalty will be assessed on the portion that is submitted after the filing window. Failure to pay regulatory fees can result in the initiation of a proceeding to revoke any and all authorizations held by the delinquent payer.²⁰

III. PROCEDURAL MATTERS

A. Comment Period and Procedures

21. Pursuant to 47 CFR §§1.415, 1.419, interested parties may file comments on or before April 25, 2003, and reply comments on or before May 5, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.²¹

¹⁹ Cable system operators are to compute their subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Cable system operators may base their count on "a typical day in the last full week" of December 2002, rather than on a count as of December 31, 2002.

²⁰ See 47 CFR 1.1164.

²¹ Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (May 1, 1998).

22. Comments filed through the ECFS are sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address.>" A sample form and directions will be sent in reply.

23. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be hand delivered, sent by commercial overnight courier, or mailed through the U.S. Postal Service (please note that the Commission continues to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered paper filings at 236 Massachusetts Avenue, N.E., Suite 110, Washington D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Marlene Dortch, Office of the Secretary, Federal Communications Commission.

24. Parties who choose to file by paper must also submit their comments on diskette. Two copies of the diskettes must be submitted. One copy is to be sent to Qualex International, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554. The other copy is to be sent to Office of Managing Director, Federal Communications Commission, 445 12th Street, S.W., 1-C848, Washington, D.C. 20554. These submissions must be in a Microsoft WindowsTM-compatible format on a 3.5" floppy diskette. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number MD Docket No. 03-83), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Copy - Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file.

25. The public may view the documents filed in this proceeding during regular business hours in the FCC Reference Center, Federal Communications Commission, Room CY-A257, 445 12th Street, S.W., Washington, D. C. 20554, and through the Commission's Electronic Comment Filing System (ECFS) http://www.gulfoss2.fcc.gov/prod/ecfs/comsrch_v2.cgi. Those seeking materials in alternative formats (computer diskette, large print, audio recording, and Braille) should contact Brian Millin at (202) 418-7426 voice, (202) 418-7365 TTY, or bmillin@fcc.gov.

B. Ex Parte Rules

26. This is a permit-but-disclose notice and comment rulemaking proceeding. Ex Parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's rules.²²

C. Initial Regulatory Flexibility Analysis

²² 47 CFR 1.1203 and 1.1206(b).

27. As required by the Regulatory Flexibility Act,²³ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible impact on small entities of the proposals suggested in this document. The IRFA is set forth as Attachment A. Written public comments are requested with respect to the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the rest of the NPRM, and must have a separate and distinct heading, designating the comments as responses to the IRFA. The Consumer Information Bureau, Reference Information Center, shall send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

D. Authority and Further Information

28. Authority for this proceeding is contained in §§4(i) and (j), 8, 9, and 303(r) of the Communications Act of 1934, as amended. It is ordered that this NPRM is adopted.²⁴ It is further ordered that the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

29. Further information about this proceeding may be obtained by contacting the Fees Hotline at (888) 225-5322.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

²³ See 5 U.S.C. 603.

²⁴ 47 U.S.C. 154(i)-(j), 159, & 303(r).

ATTACHMENT A**INITIAL REGULATORY FLEXIBILITY ANALYSIS**

1. As required by the Regulatory Flexibility Act (RFA),²⁵ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules in the present Notice of Proposed Rulemaking, In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2003. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the IRFA provided in paragraph 20. The Commission will send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.²⁶ In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.²⁷

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

2. This rulemaking proceeding is initiated to obtain comments concerning the Commission's proposed amendment of its Schedule of Regulatory Fees in the amount of \$269,000,000, the amount that Congress has required the Commission to recover. The Commission seeks to collect the necessary amount through its proposed Schedule of Regulatory Fees in the most efficient manner possible and without undue public burden.

II. Legal Basis:

3. This action, including publication of proposed rules, is authorized under Sections (4)(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended.²⁸

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

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.²⁹ The RFA

²⁵ 5 U.S.C. 603. The RFA, 5 U.S.C. 601 *et. seq.*, 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).

²⁶ 5 U.S.C. 603(a).

²⁷ *Id.*

²⁸ 47 U.S.C. 154(i) and (j), 159, and 303(r).

²⁹ 5 U.S.C. 603(b)(3).

defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."³⁰ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.³¹ 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 Small Business Administration (SBA).³² A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."³³ Nationwide, as of 1992, there were approximately 275,801 small organizations.³⁴ "Small governmental jurisdiction"³⁵ generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."³⁶ As of 1992, there were approximately 85,006 governmental entities in the United States.³⁷ This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96%, have populations of fewer than 50,000.³⁸ The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96%) are small entities. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by these rules.

CABLE SERVICES OR SYSTEMS

5. The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating \$11 million or less in revenue annually.³⁹ This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were

³⁰ 5 U.S.C. 601(6).

³¹ 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, 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." 5 U.S.C. 601(3).

³² Small Business Act, 15 U.S.C. 632 (1996).

³³ 5 U.S.C. 601(4).

³⁴ 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

³⁵ 47 CFR 1.1162

³⁶ 5 U.S.C. 601(5).

³⁷ U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

³⁸ *Id.*

³⁹ 13 CFR 121.201, North American Industry Classification System (NAICS) codes 51321 and 51322.

1,788 total cable and other pay television services and 1,423 had less than \$11 million in revenue.⁴⁰

6. The Commission has developed its own definition of a small cable system operator for purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide.⁴¹ Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995.⁴² Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators.

7. The Communications Act of 1934, as amended, also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."⁴³ The Commission has determined that there are 67,500,000 subscribers in the United States.⁴⁴ Therefore, we estimate that an operator serving fewer than 675,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate.⁴⁵ Based on available data, we estimate that the number of cable operators serving 675,000 subscribers or less totals 1,450.⁴⁶ We do not request nor collect information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000,⁴⁷ and therefore are unable at this time to estimate more accurately the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

⁴⁰ 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D, NAICS codes 51321 and 51322 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

⁴¹ 47 CFR 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of \$100 million or less. Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393 (1995), 60 FR 10534 (Feb. 27, 1995).

⁴² Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

⁴³ 47 U.S.C. 543(m)(2).

⁴⁴ Media Services (Cable Division) estimate.

⁴⁵ Id. 47 CFR 76.1403(b).

⁴⁶ FCC Announces New Subscriber Count for the Definition of Small Cable Operator, Public Notice, DA-01-0158 (released January 24, 2001).

⁴⁷ We do receive such information on a case-by-case basis only if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.1403(b) of the Commission's rules. See 47 CFR 76.1403(d).

8. **Other Pay Services.** Other pay television services are also classified under the North American Industry Classification System (NAICS) codes 51321 and 51322, which includes cable systems operators, closed circuit television services, direct broadcast satellite services (DBS),⁴⁸ multipoint distribution systems (MDS),⁴⁹ satellite master antenna systems (SMATV), and subscription television services.

WIRELINE COMPETITION SERVICES AND RELATED ENTITIES

9. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide appears to be data the Commission publishes annually in its *Telecommunications Provider Locator* report, which encompasses data compiled from FCC Form 499-A Telecommunications Reporting Worksheets.⁵⁰ According to data in the most recent report, there are 5,679 interstate service providers.⁵¹ These providers include, *inter alia*, incumbent local exchange carriers, competitive access providers (CAPS)/competitive local exchange carriers (CLECs), local resellers and other local exchange carriers, interexchange carriers, operator service providers, prepaid calling card providers, toll resellers, and other toll carriers.

10. We have included small incumbent local exchange carriers (LECs)⁵² in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."⁵³ The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.⁵⁴ We have therefore included small incumbent LECs in this IRFA analysis, although we emphasize that this IRFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

⁴⁸ Direct Broadcast Services (DBS) are discussed with the international services, *infra*.

⁴⁹ Multipoint Distribution Services (MDS) are discussed with the mass media services, *infra*.

⁵⁰ FCC, Common Carrier Bureau, Industry Analysis Division, *Telecommunications Provider Locator*, Table 1 (November 2001).

⁵¹ FCC, *Telecommunications Provider Locator* at Table 1.

⁵² See 47 U.S.C. 251(h) (defining "incumbent local exchange carrier").

⁵³ 5 U.S.C. 601(3).

⁵⁴ Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 CFR 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. See, *e.g.*, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket, 96-98, First Report and Order, 11 FCC Rcd 15499, 16144-45 (1996), 61 FR 45476 (Aug. 29, 1996).

11. **Total Number of Telephone Companies Affected.** The Census Bureau reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.⁵⁵ This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, and resellers. It seems certain that some of these 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated."⁵⁶ It seems reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by these revised rules.

12. **Wireline Carriers and Service Providers.** The SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992.⁵⁷ According to the SBA's definition, a small business telephone company other than a radiotelephone (wireless) company is one employing no more than 1,500 persons.⁵⁸ All but 26 of the 2,321 non-radiotelephone (wireless) companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Even if all 26 of the remaining companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone (wireless) companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Therefore, we estimate that fewer than 2,295 small telephone communications companies other than radiotelephone (wireless) companies are small entities or small incumbent LECs that may be affected by these revised rules.

13. **Local Exchange Carriers (LECS), Competitive Access Providers (CAPs), Interexchange Carriers (IXCs), Operator Service Providers (OSPs), Payphone Providers, and Resellers.** Neither the Commission nor the SBA has developed a definition for small LECs, competitive access providers (CAPs), interexchange carriers (IXCs), operator service providers (OSPs), payphone providers, or resellers. The closest applicable definition for these carrier-types under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.⁵⁹ The most reliable source of information that we know regarding the number of these carriers nationwide appears to be the data that we collect annually in connection with the FCC 499-A Telecommunications Reporting Worksheets.⁶⁰ According to our most

⁵⁵ U.S. Department of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size, at Firm Size 1-123 (1995) (1992 Census).

⁵⁶ See generally 15 U.S.C. 632(a)(1).

⁵⁷ 1992 Census, *supra*, at Firm Size 1-123.

⁵⁸ 13 CFR 121.201, NAICS codes 51331, 51333, and 51334.

⁵⁹ 13 CFR 121.201, NAICS codes 51331, 51333, and 51334.

⁶⁰ See Telecommunications Provider Locator at Table 1.

recent data, there are 1,329 incumbent and other LECs, 532 CAPs and competitive local exchange carriers (CLECs), 229 IXC, 22 OSPs, 936 payphone providers, 32 prepaid calling card providers, 38 other toll carriers, and 710 local and toll resellers.⁶¹ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under the SBA's definition. Therefore, we estimate that there are fewer than 1,329 small entity incumbent and other LECs, 532 CAPs/CLECs, 229 IXC, 22 OSPs, 936 payphone providers, and 710 local and toll resellers, 32 prepaid calling card providers, and 38 other toll carriers that may be affected by the revised rules.

INTERNATIONAL SERVICES

14. The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC).⁶² This definition provides that a small entity is expressed as one with \$11.0 million or less in annual receipts.⁶³ According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than \$10.0 million.⁶⁴ The Census report does not provide more precise data.

15. **International Broadcast Stations.** Commission records show that there are approximately 19 international high frequency broadcast station authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of international high frequency broadcast stations that would constitute a small business under the SBA definition. However, the Commission estimates that only six international high frequency broadcast stations are subject to regulatory fee payments.

16. **International Public Fixed Radio (Public and Control Stations).** There is one licensee in this service subject to payment of regulatory fees, and the licensee does not constitute a small business under the SBA definition.

17. **Fixed Satellite Transmit/Receive Earth Stations.** There are approximately 4,303 earth station authorizations, a portion of which are Fixed Satellite Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and are unable to estimate the number of the earth stations that would constitute a small business under the SBA definition.

⁶¹ Telecommunications Provider Locator at Table 1. The total for resellers includes both toll resellers and local resellers.

⁶² An exception is the Direct Broadcast Satellite (DBS) Service, infra.

⁶³ 13 CFR 121.201, NAICS codes 48531, 513322, 51334, and 51339.

⁶⁴ 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D, NAICS codes 48531, 513322, 51334, and 513391 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

18. **Fixed Satellite Small Transmit/Receive Earth Stations.** There are approximately 4,303 earth station authorizations, a portion of which are Fixed Satellite Small Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and are unable to estimate the number of fixed small satellite transmit/receive earth stations that would constitute a small business under the SBA definition.

19. **Fixed Satellite Very Small Aperture Terminal (VSAT) Systems.** These stations operate on a primary basis, and frequency coordination with terrestrial microwave systems is not required. Thus, a single "blanket" application may be filed for a specified number of small antennas and one or more hub stations. There are 485 current VSAT System authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of VSAT systems that would constitute a small business under the SBA definition.

20. **Mobile Satellite Earth Stations.** There are 21 licensees. We do not request nor collect annual revenue information, and are unable to estimate the number of mobile satellite earth stations that would constitute a small business under the SBA definition.

21. **Radio Determination Satellite Earth Stations.** There are four licensees. We do not request nor collect annual revenue information, and are unable to estimate the number of radio determination satellite earth stations that would constitute a small business under the SBA definition.

22. **Space Stations (Geostationary).** There are presently an estimated 75 Geostationary Space Station authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of geostationary space stations that would constitute a small business under the SBA definition.

23. **Space Stations (Non-Geostationary).** There are presently seven Non-Geostationary Space Station authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of non-geostationary space stations that would constitute a small business under the SBA definition.

24. **Direct Broadcast Satellites.** Because DBS provides subscription services, DBS falls within the SBA-recognized definition of "Cable and Other Pay Television Services."⁶⁵ This definition provides that a small entity is one with \$11.0 million or less in annual receipts.⁶⁶ Currently, there are nine DBS authorizations, though there are only two DBS companies in operation at this time. We do not request nor collect annual revenue information for DBS services, and are unable to determine the number of DBS operators that would constitute a small business under the SBA definition.

⁶⁵ 13 CFR 121.201, NAICS codes 51321 and 51322.

⁶⁶ Id.

MEDIA SERVICES

25. Commercial Radio and Television Services. The proposed rules and policies will apply to television broadcasting licensees and radio broadcasting licensees.⁶⁷ The SBA defines a television broadcasting station that has \$10.5 million or less in annual receipts as a small business.⁶⁸ Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.⁶⁹ Included in this industry are commercial, religious, educational, and other television stations.⁷⁰ Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.⁷¹ Separate establishments primarily engaged in producing taped television program materials are classified under another NAICS number.⁷² There were 1,509 television stations operating in the nation in 1992.⁷³ That number has remained fairly constant as indicated by the approximately 1,714 operating television broadcasting stations in the nation as of September 30, 2002.⁷⁴ For 1992,⁷⁵ the number of

⁶⁷ While we tentatively believe that the SBA's definition of "small business" greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small television and radio stations, for purposes of this *Report and Order* we utilize the SBA's definition in determining the number of small businesses to which the proposed rules would apply. We reserve the right to adopt, in the future, a more suitable definition of "small business" as applied to radio and television broadcast stations or other entities subject to the proposed rules in this *Report and Order*, and to consider further the issue of the number of small entities that are radio and television broadcasters or other small media entities. See Report and Order in MM Docket No. 93-48 (Children's Television Programming), 11 FCC Rcd 10660, 10737-38 (1996), 61 FR 43981 (Aug. 27, 1996), citing 5 U.S.C. 601(3).

⁶⁸ 13 CFR 121.201, NAICS code 51312.

⁶⁹ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92-S-1, Appendix A-9 (1995) (1992 Census, Series UC92-S-1).

⁷⁰ Id.; see Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987), at 283, which describes "Television Broadcasting Stations" (SIC code 4833, now NAICS code 51312) as:

Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

⁷¹ 1992 Census, Series UC92-S-1, at Appendix A-9.

⁷² Id., NAICS code 51211 (Motion Picture and Video Tape Production); NAICS 51229 (Theatrical Producers and Miscellaneous Theatrical Services) (producers of live radio and television programs).

⁷³ FCC News Release No. 31327 (January 13, 1993); 1992 Census, Series UC92-S-1, at Appendix A-9.

⁷⁴ FCC News Release, "Broadcast Station Totals as of September 30, 2002."

⁷⁵ A census to determine the estimated number of Communications establishments is performed every five years, in years ending with a "2" or "7." See 1992 Census, Series UC92-S-1, at III.

television stations that produced less than \$10.0 million in revenue was 1,155 establishments.⁷⁶ Only commercial stations are subject to regulatory fees.

26. Additionally, the SBA defines a radio broadcasting station that has \$5 million or less in annual receipts as a small business.⁷⁷ A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.⁷⁸ Included in this industry are commercial, religious, educational, and other radio stations.⁷⁹ Radio broadcasting stations, which primarily are engaged in radio broadcasting and which produce radio program materials, are similarly included.⁸⁰ However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another NAICS number.⁸¹ The 1992 Census indicates that 96 percent (5,861 of 6,127) of radio station establishments produced less than \$5 million in revenue in 1992.⁸² Official Commission records indicate that a total of 11,334 individual radio stations were operating in 1992.⁸³ As of September 30, 2002, Commission records indicate that a total of 13,296 radio stations were operating, of which 8,492 were FM stations.⁸⁴ Only commercial stations are subject to regulatory fees.

27. The rules may affect an estimated total of 1,714 television stations, approximately 1,320 of which are considered small businesses.⁸⁵ The revised rules will also affect an estimated total of 13,296 radio stations, approximately 12,764 of which are small businesses.⁸⁶ These estimates may overstate the number of small entities because the revenue figures on which they are based do not include or aggregate revenues from non-television or non-radio affiliated companies. There are also 2,127 low power television stations (LPTV).⁸⁷ Given the nature of this service,

⁷⁶ The amount of \$10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at \$9,999,999 and began at \$10,000,000. No category for \$10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

⁷⁷ 13 CFR 121.201, NAICS codes 513111 and 513112.

⁷⁸ 1992 Census, Series UC92-S-1, at Appendix A-9.

⁷⁹ Id.

⁸⁰ Id.

⁸¹ Id.

⁸² The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.

⁸³ FCC News Release, No. 31327 (Jan. 13, 1993).

⁸⁴ FCC News Release, "Broadcast Station Totals as of September 30, 2002."

⁸⁵ We use an estimated figure of 77 percent (from 1992) of TV stations operating at less than \$10 million and apply it to the 2003 total of 1,714 TV stations to arrive at 1,320 stations categorized as small businesses.

⁸⁶ We use the 96% figure of radio station establishments with less than \$5 million revenue from data presented in the year 2003 estimate (*FCC News Release*, September 30, 2002) and apply it to the 13,296 individual station count to arrive at 12,764 individual stations as small businesses.

we will presume that all LPTV licensees qualify as small entities under the SBA definition.

28. Auxiliary, Special Broadcast and Other Program Distribution Services. This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. The applicable definitions of small entities are those, noted previously, under the SBA rules applicable to radio broadcasting stations and television broadcasting stations.⁸⁸

29. The Commission estimates that there are approximately 3,790 translators and boosters. The Commission does not collect financial information on any broadcast facility, and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most commercial translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (\$5 million for a radio station or \$10.5 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a "small business concern" because they are not independently owned and operated.⁸⁹

30. Multipoint Distribution Service (MDS). This service has historically provided primarily point-to-multipoint and one-way video services to subscribers.⁹⁰ The Commission recently amended its rules to allow MDS licensees to provide a wide range of high-speed, two-way services to a variety of users.⁹¹ In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues for the three preceding years not in excess of \$40 million.⁹² The Commission established this small business definition in the context of this particular service and with the approval of the SBA.⁹³ The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading

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⁸⁷ FCC News Release, "Broadcast Station Totals as of September 30, 2002."

⁸⁸ 13 CFR 121.201, NAICS codes 513111 and 513112.

⁸⁹ 15 U.S.C. 632.

⁹⁰ For purposes of this item, MDS includes single channel Multipoint Distribution Service (MDS), Local Multipoint Distribution Service (LMDS), and the Multichannel Multipoint Distribution Service (MMDS). See 66 FR 36177.

⁹¹ *Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions*, 13 FCC Rcd 19112 (1998), *recon.*, 14 FCC Rcd 12764 (1999), *further recon.*, 15 FCC Rcd 14566 (2000).

⁹² 47 CFR 21.961 and 1.2110.

⁹³ Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act - Competitive Bidding, 10 FCC Rcd 9589, 9670 (1995), 60 FR 36524 (July 17, 1995).

Areas (BTAs).⁹⁴ Of the 67 auction winners, 61 met the definition of a small business. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that are considered small entities.⁹⁵ After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 MDS licensees that are defined as small businesses under either the SBA or the Commission's rules. Some of those 440 small business licensees may be affected by these revised rules.

WIRELESS AND COMMERCIAL MOBILE SERVICES

31. Cellular Licensees. Neither the Commission nor the SBA has developed a definition of small entities specific to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone (wireless) company employing no more than 1,500 persons.⁹⁶ According to the Census Bureau, only twelve radiotelephone (wireless) firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.⁹⁷ Even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,780 cellular licenses; however, a cellular licensee may own several licenses. According to the November 2001 *Telecommunications Provider Locator*, 858 wireless telephony providers reported that they were engaged in the provision of either cellular service, Personal Communications Service (PCS) services, and SMR telephony carriers, which are placed together in the data.⁹⁸ We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. We estimate that there are fewer than 858 small wireless service providers that may be affected by these revised rules.

32. 220 MHz Radio Service -- Phase I Licensees. The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,000 such non-nationwide licensees and four nationwide licensees currently authorized to use the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the

⁹⁴ Basic Trading Areas (BTAs) were designed by Rand McNally and are the geographic areas by which MDS was auctioned and authorized. *See id.* At 9608.

⁹⁵ 47 U.S.C. 309(j). (Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47U.S.C. Section 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard for "other telecommunications" (annual receipts of \$11 million or less). *See* 13 CFR 121.201.

⁹⁶ 13 CFR 121.201, NAICS code 513322.

⁹⁷ 1992 Census, Series UC92-S-1, at Table 5, NAICS code 513322.

⁹⁸ Telecommunications Provider Locator, Table 1 (November 2001).

number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone (wireless) Communications companies. This definition provides that a small entity is a radiotelephone (wireless) company employing no more than 1,500 persons.⁹⁹ According to the Census Bureau, only 12 radiotelephone (wireless) firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.¹⁰⁰ If this general ratio continues in 2002 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

33. 220 MHz Radio Service -- Phase II Licensees. The Phase II 220 MHz service is subject to spectrum auctions. In the *220 MHz Third Report and Order*, we adopted criteria for defining small and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.¹⁰¹ We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. A very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed \$3 million for the preceding three years.¹⁰² The SBA has approved these definitions.¹⁰³ To date, three Phase II 220 MHz auctions have been conducted. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three Nationwide (NWA) licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold.¹⁰⁴ Thirty-nine companies claiming small or very small businesses status won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Of the 225 licenses auctioned, 222 were sold.¹⁰⁵ Fourteen companies claiming small or very small business status won 158 licenses. The third auction included four licenses; two EA licenses and two EAG licenses.¹⁰⁶ No company claiming small or very small business status won licenses in the third auction.

⁹⁹ 13 CFR 121.201, NAICS code 513322.

¹⁰⁰ U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, NAICS codes 513321, 513322, and 51333.

¹⁰¹ *220 MHz Third Report and Order*, 12 FCC Rcd 10943, 11068-70, at paragraphs 291- 295 (1997).

¹⁰² *Id.* at paragraph 291.

¹⁰³ See Letter to D. Python, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (January 6, 1998).

¹⁰⁴ "Phase II 220 MHz Service Auction Closes", Public Notice, 14 FCC Rcd 605 (1998).

¹⁰⁵ "Phase II 220 MHz Service Spectrum Auction Closes", Public Notice, 14 FCC Rcd 11218 (1999).

¹⁰⁶ "Multiple Radio Service Auction Closes", Public Notice, 17 FCC Rcd 1446 (2002).

34. **700 MHz Guard Band Licenses.** In the *700 MHz Guard Band Order*, we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.¹⁰⁷ We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. An auction of 104 licenses (two in each of the 52 Major Economic Areas (MEAs)) commenced on September 6, 2000, and closed on September 21, 2000.¹⁰⁸ Of the 104 licenses auctioned, 96 licenses were sold to nine winning bidders. Five of the winning bidders claimed small or very small business status and won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001.¹⁰⁹ All eight of the licenses auctioned were sold to three winning bidders. One of the winning bidders claimed status as a small business and won a total of two licenses.

35. **Private and Common Carrier Paging.** We adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.¹¹⁰ We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. The SBA has approved these definitions.¹¹¹ An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000.¹¹² Of the 985 licenses auctioned, 440 were sold to 57 companies claiming status as a small or very small business. A second auction commenced on October 30, 2001 and closed on December 5, 2001.¹¹³ One hundred, thirty-two entities claiming small or very small business status won a total of 3,724 licenses. At present, there are approximately 4,500 Private-Paging site-specific licenses and 5,100 Common Carrier

¹⁰⁷ See Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, WT Docket No. 99-168, *Second Report and Order*, 15 FCC Rcd 5299 (2000).

¹⁰⁸ See generally Public Notice, "700 MHz Guard Bands Auction Closes," 15 FCC Rcd 18026 (2000).

¹⁰⁹ "700 MHz Guard Bands Auction Closes", Public Notice 16 FCC Rcd 4590 (2001).

¹¹⁰ "Revisions of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems", *Memorandum Opinion and Order on Reconsideration and Third Report and Order*, 14 FCC Rcd 10030 (1999).

¹¹¹ *Id.*

¹¹² "929-931 MHz Paging Auction Closes", Public Notice, 15 FCC Rcd 4858 (2000).

¹¹³ "Lower and Upper Band Auction Closes", Public Notice, 16 FCC Rcd 21821 (2001).

Paging site-specific licenses. According to the most recent data in the *Telecommunications Provider Locator*, 608 carriers reported that they were engaged in the provision of either paging or “other mobile” services, which are placed together in the data.¹¹⁴ We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and therefore are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 608 small paging carriers that may be affected by these revised rules. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

36. Broadband Personal Communications Service (PCS). The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined “small entity” for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.¹¹⁵ For Block F, an additional classification 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 calendar years.¹¹⁶ These regulations defining “small entity” in the context of broadband PCS auctions have been approved by the SBA.¹¹⁷ No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. An auction for C-Block licenses commenced on December 18, 1995 and ended on May 6, 1996.¹¹⁸ There were 89 winning bidders that won a total of 493 licenses and that claimed status as a small business in the Block C auction. A second C-Block Auction commenced on July 3, 1996 and ended on July 16, 1996.¹¹⁹ An auction for the D and F Blocks commenced on August 16, 1996 and ended on January 14, 1997.¹²⁰ A total of 93 winning bidders that won a total of 598 licenses claimed small or very small business status in the D, E, and F Block auction. A re-auction of 347 C, D, E, and F Block licenses commenced on March 23, 1999 and ended on April 15,

¹¹⁴ See *Telecommunications Provider Locator* at Table 1 (November 2001).

¹¹⁵ See Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, FCC 96-278, WT Docket No. 96-59 Section 60 (released June 24, 1996, 61 FR 33859 (July 1, 1996)).

¹¹⁶ *Id.*

¹¹⁷ See, e.g., Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Fifth Report and Order*, 9 FCC Rcd 5532, 5581-84 (1994).

¹¹⁸ “Entrepreneurs” C-Block Auction Closes”, Public Notice, DA 96-716 (released on May 8, 1996).

¹¹⁹ “Entrepreneurs” C-Block Reauction Closes”, Public Notice, DA 96-1153 (released on July 17, 1996).

¹²⁰ “D, E and F Block Auction Closes, DA 97-81 (released January 15, 1997).

1999.¹²¹ There were 48 winning bidders that won a total of 277 licenses and that claimed status as a small or very small business. An auction of 422 C and F Broadband PCS licenses commenced on December 12, 2000 and ended on January 26, 2001.¹²² Of the 35 winning bidders in this auction, 29 claimed status as a small or very small business and won a total of 248 licenses.

37. Narrowband PCS. To date, three narrowband PCS auctions have been conducted. Through these auctions, 358 licenses were sold to winning bidders. Twelve entities claiming small or very small business status were the winning bidders for 322 licenses. To ensure meaningful participation of small business entities in the auctions, the Commission adopted a two-tiered definition of small businesses in the *Narrowband PCS Second Report and Order*.¹²³ A small business is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A very small business is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million. These definitions have been approved by the SBA.¹²⁴

38. Rural Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.¹²⁵ A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).¹²⁶ We will use the SBA's definition applicable to radiotelephone (wireless) companies, *i.e.*, an entity employing no more than 1,500 persons.¹²⁷ There are approximately 640 licensees in the Rural Radiotelephone Service, and we estimate that almost all of the licenses that are authorized in the Rural Radio Service qualify as small entities under the SBA's definition.

39. Air-Ground Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service.¹²⁸ We will use the SBA's

¹²¹ "C, D, E, and F Block Broadband PCS License Auction Closes: Winning Bidders of 302 Licenses Announced", Public Notice, DA 99-757 (released April 20, 1999).

¹²² "C and F Block PCS Auction Closes", Public Notice, 16 FCC Rcd 2339 (2001).

¹²³ In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS, Docket No. ET 92-100, Docket No. PP 93-253, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 65 FR 35875 (June 6, 2000).

¹²⁴ See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division from A. Alvarez, Administrator, SBA (December 2, 1998).

¹²⁵ The service is defined in § 22.99 of the Commission's Rules, 47 CFR 22.99.

¹²⁶ BETRS is defined in §§ 22.757 and 22.759 of the Commission's Rules, 47 CFR 22.757 and 22.759.

¹²⁷ 13 CFR 121.201, NAICS codes 513321, 513322, and 51333.

¹²⁸ The service is defined in § 22.99 of the Commission's Rules, 47 CFR 22.99.

definition applicable to radiotelephone (wireless) companies, *i.e.*, an entity employing no more than 1,500 persons.¹²⁹ There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of the licenses authorized in the Air-Ground Radiotelephone Service qualify as small entities under the SBA's definition.

40. Specialized Mobile Radio (SMR). Pursuant to 47 CFR 90.814(b)(1), the Commission has defined "small business" in two tiers (for purposes of auctioning 800 MHz and 900 MHz SMR licenses) as a firm that has average annual gross revenues of either \$3 million or \$15 million or less in the three preceding calendar years.¹³⁰ The SBA has approved this small business size standard for the 800 MHz and 900 MHz SMR services.¹³¹ An auction for 900 MHz SMR licenses commenced on December 5, 1995 and closed on April 15, 1996.¹³² Sixty winning bidders that won a total of 263 licenses in the 900 MHz SMR band claimed status as a small business. An auction for 525 800 MHz SMR geographic area licenses for the upper 200 channels began on October 28, 1997 and was completed on December 8, 1997.¹³³ Ten winning bidders that won a total of 38 licenses in the upper 200 channels in the 800 MHz SMR band claimed status as a small business. An auction of 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000 and was completed on September 1, 2000.¹³⁴ Of the 1,050 licenses offered in that auction, 1,030 licenses were sold. Eleven winning bidders that won a total of 108 licenses in the General Category channels in the 800 MHz SMR band claimed status as a small business. A second auction for the 800 MHz General Category channels, for which 23 licenses were sold, was completed on January 17, 2002.¹³⁵ One winning bidder that won five licenses claimed status as a small business. In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold.¹³⁶ Nineteen winning bidders that won a total of 129 licenses

¹²⁹ 13 CFR 121.201, NAICS codes 513321, 513322, and 51333.

¹³⁰ 47 CFR 90.814(b)(1).

¹³¹ See Letter to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (August 10, 1999).

¹³² "FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provider 900 MHz SMR in Major Trading Areas", Public Notice, DA 96-586 (released April 15, 1996).

¹³³ "800 MHz SMR Auction Closes", Public Notice, DA 97-2583 (released December 9, 1997).

¹³⁴ "800 MHz SMR Specialized Mobile Radio (SMR) Service General Category (851-854 MHz) and Upper Band (861-865 MHz) Auction Closes", Public Notice, DA 00-2037 (released September 9, 2000).

¹³⁵ "Multi-Radio Service Auction Closes", Public Notice, DA 02-157 (released January 22, 2002).

¹³⁶ "800 MHz SMR Service Lower 80 Channels Auction Closes", Public Notice, DA 00-2752 (released October 23, 2000).

claimed status as a small business. In addition, there are numerous incumbent site-by-site SMR licenses on the 800 and 900 MHz band.

41. Private Land Mobile Radio (PLMR). PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. The Commission has not developed a definition of small entity specifically applicable to PLMR licensees due to the vast array of PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area.

42. The Commission is unable at this time to estimate the number of small businesses which could be impacted by the rules. The Commission's 1994 Annual Report on PLMRs¹³⁷ indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the revised rules in this context could potentially impact every small business in the United States.

43. Amateur Radio Service. We estimate that 9,800 applicants will apply for vanity call signs in FY 2003. These licensees are presumed to be individuals, and therefore not small entities. All other amateur licensees are exempt from payment of regulatory fees.

44. Aviation and Marine Radio Service. Small businesses in the aviation and marine radio services use a marine very high frequency (VHF) radio, any type of emergency position indicating radio beacon (EPIRB) and/or radar, a VHF aircraft radio, and/or any type of emergency locator transmitter (ELT). The Commission has not developed a definition of small entities specifically applicable to these small businesses. The applicable definition of small entity is the definition under the SBA rules for radiotelephone (wireless) communications.¹³⁸

45. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations and conclusions in this FRFA, we estimate that there may be at least 712,000 potential licensees which are individuals or are small entities, as that term is defined by the SBA. We estimate that only 10,200 will be subject to FY 2003 regulatory fees.

46. Fixed Microwave Services. Microwave services include common carrier,¹³⁹ private-operational fixed,¹⁴⁰ and broadcast auxiliary radio services.¹⁴¹ At present, there are

¹³⁷ Federal Communications Commission, 60th Annual Report, Fiscal Year 1994, at paragraph 116.

¹³⁸ 13 CFR 121.201, NAICS codes 513321, 513322, and 51333.

¹³⁹ 47 CFR 101 et seq. (formerly, part 21 of the Commission's Rules).

¹⁴⁰ Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. See 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, we will use the SBA's definition applicable to radiotelephone (wireless) companies -- *i.e.*, an entity with no more than 1,500 persons.¹⁴² We estimate that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone (wireless) companies.

47. Public Safety Radio Services. Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.¹⁴³ There are a total of approximately 127,540 licensees within these services. Governmental entities¹⁴⁴ as well as private businesses comprise the licensees for these services. As indicated *supra* in paragraph four of this IRFA, all governmental entities with populations of less than 50,000 fall within the definition of a small entity.¹⁴⁵ All licensees in this category are exempt from the payment of regulatory fees.

48. Personal Radio Services. Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The services include the citizen's band (CB) radio service, general mobile radio service (GMRS), radio control radio service, and family radio service (FRS).¹⁴⁶ Since the CB,

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¹⁴¹ Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's Rules. See 47 CFR 74 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

¹⁴² 13 CFR 121.201, NAICS codes 513321, 513322, 51333.

¹⁴³ With the exception of the special emergency service, these services are governed by Subpart B of part 90 of the Commission's Rules, 47 CFR 90.15 through 90.27. The police service includes 26,608 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes 22,677 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of 40,512 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are 7,325 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The 9,480 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The 1,460 licensees in the Emergency Medical Radio Service (EMRS) use the 39 channels allocated to this service for emergency medical service communications related to the delivery of emergency medical treatment. 47 CFR 90.15 through 90.27. The 19,478 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 CFR 90.33 through 90.55.

¹⁴⁴ 47 CFR 1.1162.

¹⁴⁵ 5 U.S.C. 601(5).

¹⁴⁶ Licensees in the Citizens Band (CB) Radio Service, General Mobile Radio Service (GMRS), Radio Control (R/C) (continued....)

GMRS, and FRS licensees are individuals, no small business definition applies for these services. We are unable at this time to estimate the number of other licensees that would qualify as small under the SBA's definition; however, only GMRS licensees are subject to regulatory fees.

49. Offshore Radiotelephone Service. This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal areas of states bordering the Gulf of Mexico.¹⁴⁷ There is presently one licensee in this service that holds 18 licenses. We are unable to estimate at this time whether the licensee would qualify as small under the SBA's definition for radiotelephone (wireless) communications.

50. 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. The SBA has approved these definitions.¹⁴⁸ The FCC auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees affected includes these eight entities.

51. 39 GHz Service. The Commission defined "small entity" for 39 GHz licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.¹⁴⁹ An additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.¹⁵⁰ These regulations defining "small entity" in the context of 39 GHz auctions have been approved by the SBA. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses.

52. Local Multipoint Distribution Service. The auction of the 1,030 Local Multipoint

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Radio Service and Family Radio Service (FRS) are governed by Subpart D, Subpart A, Subpart C, and Subpart B, respectively, of part 95 of the Commission's Rules. 47 CFR 95.401 through 95.428; 95.1 through 95.181; 95.201 through 95.225; 47 CFR 95.191 through 95.194.

¹⁴⁷ This service is governed by subpart I of part 22 of the Commission's Rules. See 47 CFR 22.1001 through 22.1037.

¹⁴⁸ See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division from A. Alvarez, Administrator, SBA (December 2, 1998).

¹⁴⁹ See In the Matter of Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Band, *Report and Order*, 12 FCC Rcd 18600 (1997).

¹⁵⁰ *Id.*

Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission defined “small entity” for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.¹⁵¹ An additional classification 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 calendar years.¹⁵² These regulations defining “small entity” in the context of LMDS auctions have been approved by the SBA.¹⁵³ There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 small business winning bidders. Based on this information, we conclude that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission’s auction rules.

53. 218-219 MHz Service. The first auction of 218-219 MHz spectrum resulted in 170 entities winning licenses for 595 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, we defined a small business as an entity that, together with its affiliates, has no more than a \$6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than \$2 million in annual profits each year for the previous two years.¹⁵⁴ In the *218-219 MHz Report and Order and Memorandum Opinion and Order*, we defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed \$15 million for the preceding three years.¹⁵⁵ A very small business is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed \$3 million for the preceding three years.¹⁵⁶ We cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under our rules

¹⁵¹ See Local Multipoint Distribution Service, *Second Report and Order*, 62 FR 23148, April 29, 1997.

¹⁵² Id.

¹⁵³ See Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (January 6, 1998).

¹⁵⁴ Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP WT Docket No. 93-253, *Fourth Report and Order*, 59 FR 24947 (May 13, 1994).

¹⁵⁵ In the Matter of Amendment of Part 95 of the Commission’s Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, WT Docket No. 98-169, *Report and Order and Memorandum Opinion and Order*, 64 FR 59656 (November 3, 1999).

¹⁵⁶ Amendment of Part 95 of the Commission’s Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, *Report and Order and Memorandum Opinion and Order*, 64 FR 59656 (1999).

in future auctions of 218-219 MHz spectrum. Given the success of small businesses in the previous auction, and the above discussion regarding the prevalence of small businesses in the subscription television services and message communications industries, we assume for purposes of this IRFA that in future auctions, all of the licenses may be awarded to small businesses by these revised rules.

III. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements:

54. With certain exceptions, the Commission's Schedule of Regulatory Fees applies to all Commission licensees and regulatees. Most licensees will be required to count the number of licenses or call signs authorized, complete and submit an FCC Form 159 ("FCC Remittance Advice"), and pay a regulatory fee based on the number of licenses or call signs.¹⁵⁷ Interstate telephone service providers must compute their annual regulatory fee based on their interstate and international end-user revenue using information they already supply to the Commission in compliance with the Form 499-A, Telecommunications Reporting Worksheet, and they must complete and submit the FCC Form 159. Compliance with the fee schedule will require some licensees to tabulate the number of units (*e.g.*, cellular telephones, pagers, cable TV subscribers) they have in service, and complete and submit an FCC Form 159. Licensees ordinarily will keep a list of the number of units they have in service as part of their normal business practices. No additional outside professional skills are required to complete the FCC Form 159, and it can be completed by the employees responsible for an entity's business records.

55. Each licensee must submit the FCC Form 159 to the Commission's lockbox bank after computing the number of units subject to the fee. Licensees may also file electronically to minimize the burden of submitting multiple copies of the FCC Form 159. Applicants who pay small fees in advance and provide fee information as part of their application must use FCC Form 159.

56. Licensees and regulatees are advised that failure to submit the required regulatory fee in a timely manner will subject the licensee or regulatee to a late payment penalty of 25 percent in addition to the required fee.¹⁵⁸ If payment is not received, new or pending applications may be

¹⁵⁷ The following categories are exempt from the Commission's Schedule of Regulatory Fees: Amateur radio licensees (except applicants for vanity call signs) and operators in other non-licensed services (*e.g.*, Personal Radio, part 15, ship and aircraft). Governments and non-profit (exempt under section 501(c) of the Internal Revenue Code) entities are exempt from payment of regulatory fees and need not submit payment. Non-commercial educational broadcast licensees are exempt from regulatory fees as are licensees of auxiliary broadcast services such as low power auxiliary stations, television auxiliary service stations, remote pickup stations and aural broadcast auxiliary stations where such licenses are used in conjunction with commonly owned non-commercial educational stations. Emergency Alert System licenses for auxiliary service facilities are also exempt as are instructional television fixed service licensees. Regulatory fees are automatically waived for the licensee of any translator station that: (1) is not licensed to, in whole or in part, and does not have common ownership with, the licensee of a commercial broadcast station; (2) does not derive income from advertising; and (3) is dependent on subscriptions or contributions from members of the community served for support. Receive only earth station permittees are exempt from payment of regulatory fees. A regulatee will be relieved of its fee payment requirement if its total fee due, including all categories of fees for which payment is due by the entity, amounts to less than \$10.

¹⁵⁸ 47 CFR 1.1164.

dismissed, and existing authorizations may be subject to rescission.¹⁵⁹ Further, in accordance with the Debt Collection Improvement Act of 1996, federal agencies may bar a person or entity from obtaining a federal loan or loan insurance guarantee if that person or entity fails to pay a delinquent debt owed to any federal agency.¹⁶⁰ Nonpayment of regulatory fees is a debt owed the United States pursuant to 31 U.S.C. 3711 *et seq.*, and the Debt Collection Improvement Act of 1996, Public Law 104-134. Appropriate enforcement measures as well as administrative and judicial remedies, may be exercised by the Commission. Debts owed to the Commission may result in a person or entity being denied a federal loan or loan guarantee pending before another federal agency until such obligations are paid.¹⁶¹

57. The Commission's rules currently provide for relief in exceptional circumstances. Persons or entities may request a waiver, reduction or deferment of payment of the regulatory fee.¹⁶² However, timely submission of the required regulatory fee must accompany requests for waivers or reductions. This will avoid any late payment penalty if the request is denied. The fee will be refunded if the request is granted. In exceptional and compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in reduction of service to a community or other financial hardship to the licensee), the Commission will defer payment in response to a request filed with the appropriate supporting documentation.

IV. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered:

58. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. As described in Section IV of this IRFA, *supra*, we have created procedures in which all fee-filing licensees and regulatees use a single form, FCC Form 159, and have described in plain language the general filing requirements. We have sought comment on other alternatives that might simplify our fee procedures or otherwise benefit small entities, while remaining consistent with our statutory responsibilities in this proceeding.

59. The Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY 2002, Public Law 106-553, requires the Commission to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress, pursuant to Section 9(a) of the Communications Act, as amended, has required the Commission to collect for Fiscal Year (FY) 2003.¹⁶³ As noted, we seek comment on the proposed methodology for implementing these

¹⁵⁹ 47 CFR 1.1164(c).

¹⁶⁰ Public Law 104-134, 110 Stat. 1321 (1996).

¹⁶¹ 31 U.S.C. 7701(c)(2)(B).

¹⁶² 47 CFR 1.1166.

¹⁶³ 47 U.S.C. 159(a).

statutory requirements and any other potential impact of these proposals on small entities.

60. With the use of actual cost accounting data for computation of regulatory fees, we found that some fees which were very small in previous years would have increased dramatically and would have a disproportionate impact on smaller entities. The methodology we are adopting in this Notice of Proposed Rulemaking minimizes this impact by limiting the amount of increase and shifting costs to other services which, for the most part, are larger entities.

61. Several categories of licensees and regulatees are exempt from payment of regulatory fees. See, e.g., footnote 157, supra.

V. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules:

62. None.

ATTACHMENT B

SOURCES OF PAYMENT UNIT ESTIMATES FOR FY 2003

In order to calculate individual service fees for FY 2003, we adjusted FY 2002 payment units for each service to more accurately reflect expected FY 2003 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections when available. We tried to obtain verification for these estimates from multiple sources and, in all cases; we compared FY 2003 estimates with actual FY 2002 payment units to ensure that our revised estimates were reasonable. Where appropriate, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated exactly. These include an unknown number of waivers and/or exemptions that may occur in FY 2003 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical or other reasons. Therefore, when we note, for example, that our estimated FY 2003 payment units are based on FY 2002 actual payment units, it does not necessarily mean that our FY 2003 projection is exactly the same number as FY 2002. It means that we have either rounded the FY 2003 number or adjusted it slightly to account for these variables.

FEE CATEGORY	SOURCES OF PAYMENT UNIT ESTIMATES
Land Mobile (All), Microwave, 218-219 MHz ¹⁶⁴ , Marine (Ship & Coast), Aviation (Aircraft & Ground), GMRS, Amateur Vanity Call Signs, Domestic Public Fixed	Based on Wireless Telecommunications Bureau (WTB) projections of new applications and renewals taking into consideration existing Commission licensee data bases. Aviation (Aircraft) and Marine (Ship) estimates have been adjusted to take into consideration the licensing of portions of these services on a voluntary basis.
CMRS Mobile Services	Based on Wireless Telecommunications Bureau estimates.
CMRS Messaging Services	Based on Wireless Telecommunications Bureau estimates.
AM/FM Radio Stations	Based on estimates from Media Services Bureau estimates and actual FY 2002 payment units.
UHF/VHF Television Stations	Based on Media Services Bureau estimates and actual FY 2002 payment units.
AM/FM/TV Construction Permits	Based on Media Services Bureau estimates and actual FY 2002 payment units.
LPTV, Translators and Boosters	Based on actual FY 2002 payment units.
Auxiliaries	Based on FY 2002 payment units.
MDS/LMDS/MMDS	Based on Wireless Telecommunications Bureau estimates.
Cable Antenna Relay Service (CARS)	Based on Media Services Bureau (previously Cable Services Bureau) estimates.
Cable Television System Subscribers	Based on Media Services Bureau (previously Cable Services Bureau), industry estimates of subscribership, and FY 2002 payment units.
Interstate Telecommunication Service Providers	Based on actual FY 2002 interstate revenues reported on Telecommunications Reporting Worksheet, adjusted for FY 2003

	revenue growth/decline for industry as estimated by the Wireline Competition Bureau.
Earth Stations	Based on actual FY 2002 payment estimates.
Space Stations (GSOs & NGSOs)	Based on International Bureau licensee data base estimates.
International Bearer Circuits	Based on International Bureau estimates.
International HF Broadcast Stations, International Public Fixed Radio Service	Based on International Bureau estimates.

ATTACHMENT C

CALCULATION OF FY 2003 REVENUE REQUIREMENTS AND PRO-RATA FEES

Fee Category	FY 2003 Payment Units	Years	FY 2002 Revenue Estimate	Pro-Rated FY 2003 Revenue Requirement**	Computed New FY 2003 Regulatory Fee	Rounded New FY 2003 Regulatory Fee	Expected FY 2003 Revenue
PLMRS (Exclusive Use)	3,300	10	204,239	251,148	8	10	330,000
PLMRS (Shared use)	53,300	10	2,166,927	2,664,616	5	5	2,665,000
Microwave	6,100	10	1,145,732	1,408,877	23	25	1,525,000
218-219 MHz (Formerly IVDS)	5	10	1,245	1,531	31	30	1,500
Marine (Ship)	4,400	10	518,070	637,058	14	15	660,000
GMRS	10,600	5	79,205	97,396	2	5	265,000
Aviation (Aircraft)	3,100	10	134,499	165,390	5	5	155,000
Marine (Coast)	1,000	10	89,666	110,260	11	10	100,000
Aviation (Ground)	1,700	5	99,629	122,511	14	15	127,500
Amateur Vanity Call Signs	9,800	10	130,016	159,877	1.63	1.63	159,877
AM Class A	78	1	159,008	195,528	2,507	2,500	195,000
AM Class B	2,168	1	1,957,308	2,406,853	1,110	1,100	2,384,800
AM Class C	1,004	1	675,633	830,809	827	825	828,300
AM Class D	2,021	1	2,214,699	2,723,360	1,348	1,350	2,728,350
FM Classes A, B1 & C3	3,168	1	4,531,717	5,572,539	1,759	1,750	5,544,000
FM Classes B, C, C1 & C2	3,022	1	5,595,554	6,880,713	2,277	2,275	6,875,050
AM Construction Permits	48	1	17,694	21,758	453	455	21,840
FM Construction Permits	202	1	301,875	371,209	1,838	1,850	373,700
Satellite TV	126	1	102,658	126,235	1,002	1,000	126,000
Satellite TV Construction Permit	5	1	2,092	2,573	515	515	2,575
VHF Markets 1-10	44	1	2,062,516	2,536,224	57,641	57,650	2,536,600
VHF Markets 11-25	60	1	2,108,844	2,593,192	43,220	43,225	2,593,500

Fee Category	FY 2003 Payment Units	Years	FY 2002 Revenue Estimate	Pro-Rated FY 2003 Revenue Requirement**	Computed New FY 2003 Regulatory Fee	Rounded New FY 2003 Regulatory Fee	Expected FY 2003 Revenue
VHF Markets 26-50	73	1	1,788,836	2,199,687	30,133	30,125	2,199,125
VHF Markets 51-100	117	1	1,720,690	2,115,889	18,085	18,075	2,114,775
VHF Remaining Markets	209	1	755,062	928,481	4,442	4,450	930,050
VHF Construction Permits	16	1	60,275	74,119	4,632	4,625	74,000
UHF Markets 1-10	96	1	1,236,992	1,521,098	15,845	15,850	1,521,600
UHF Markets 11-25	96	1	1,005,653	1,236,627	12,882	12,875	1,236,000
UHF Markets 26-50	129	1	848,240	1,043,059	8,086	8,075	1,041,675
UHF Markets 51-100	181	1	733,517	901,988	4,983	4,975	900,475
UHF Remaining Markets	190	1	220,628	271,301	1,428	1,425	270,750
UHF Construction Permits	45	1	304,192	374,057	8,312	8,300	373,500
Auxiliaries	25,000	1	239,109	294,027	12	10	250,000
International HF Broadcast	5	1	2,959	3,639	728	730	3,650
LPTV/Translators/Boosters	2,993	1	892,674	1,097,699	367	365	1,092,445
CARS	1,450	1	103,614	127,412	88	90	130,500
Cable Systems	67,500,000	1	36,405,378	44,766,781	0.66	0.66	44,766,781
Interstate Telecommunication Service Providers	63,000,000,000	1	101,693,547	125,050,006	0.00198	0.00198	125,050,006
CMRS Mobile Services (Cellular/Public Mobile)	140,000,000	1	29,841,965	36,695,916	0.26	0.26	36,695,916
CMRS Messaging Services	19,700,000	1	1,769,590	2,176,021	0.11	0.11	2,176,021
MDS/MMDS/LMDS	4,586	1	985,329	1,211,635	264	265	1,215,290
International Bearer Circuits	2,600,000	1	5,638,992	6,934,127	2.67	2.67	6,934,127

Fee Category	FY 2003 Payment Units	Years	FY 2002 Revenue Estimate	Pro-Rated FY 2003 Revenue Require- ment**	Computed New FY 2003 Regulatory Fee	Rounded New FY 2003 Regula- tory Fee	Expected FY 2003 Revenue
International Public Fixed	1	1	1,395	1,715	1,715	1,725	1,725
Earth Stations	3,149	1	540,207	664,280	211	210	661,290
Space Stations (Geostation- ary)	75	1	7,052,426	8,672,192	115,629	115,625	8,671,875
Space Stations (Non- geostationary)	7	1	616,902	758,589	108,370	108,375	758,625
***** Total Estimated Revenue to be Collected			218,757,000	269,000,000			269,268,794
***** Total Revenue Requirement				269,000,000			269,000,000
Difference				0			268,794

¹⁶⁴ 1.2297 factor applied based on the amount Congress designated for recovery through regulatory fees (Public Law 107-77 and 47 U.S.C. 159(a)(2)).

ATTACHMENT D

**FY 2003 SCHEDULE OF REGULATORY FEES
(PROPOSED)**

Fee Category	Annual Regulatory Fee (U.S. \$'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	10
Microwave (per license) (47 CFR part 101)	25
218-219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	30
Marine (Ship) (per station) (47 CFR part 80)	15
Marine (Coast) (per license) (47 CFR part 80)	10
General Mobile Radio Service (per license) (47 CFR part 95)	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	5
PLMRS (Shared Use) (per license) (47 CFR part 90)	5
Aviation (Aircraft) (per station) (47 CFR part 87)	5
Aviation (Ground) (per license) (47 CFR part 87)	15
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.63
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.26
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.11
Multipoint Distribution Services (MMDS, LMDS & MDS) (per call sign) (47 CFR part 21)	265
AM Radio Construction Permits	455
FM Radio Construction Permits	1,850
TV (47 CFR part 73) VHF Commercial	
Markets 1-10	57,650
Markets 11-25	43,225
Markets 26-50	30,125
Markets 51-100	18,075
Remaining Markets	4,450
Construction Permits	4,625
TV (47 CFR part 73) UHF Commercial	
Markets 1-10	15,850
Markets 11-25	12,875

Fee Category	Annual Regulatory Fee (U.S. \$'s)
Markets 26-50	8,075
Markets 51-100	4,975
Remaining Markets	1,425
Construction Permits	8,300
Satellite Television Stations (All Markets)	1,000
Construction Permits – Satellite Television Stations	515
Low Power TV, TV/FM Translators & Boosters (47 CFR part 74)	365
Broadcast Auxiliary (47 CFR part 74)	10
CARS (47 CFR part 78)	90
Cable Television Systems (per subscriber) (47 CFR part 76)	.66
Interstate Telecommunication Service Providers (per revenue dollar)	.00198
Earth Stations (47 CFR part 25)	210
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes Direct Broadcast Satellite Service (per operational station) (47 CFR part 100)	115,625
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	108,375
International Bearer Circuits (per active 64KB circuit)	2.67
International Public Fixed (per call sign) (47 CFR part 23)	1,725
International (HF) Broadcast (47 CFR part 73)	730

FY 2002 RADIO STATION REGULATORY FEES						
Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C1 & C2
<=20,000	500	375	275	325	375	500
20,001 - 50,000	925	725	375	525	725	925
50,001 - 125,000	1,500	975	525	775	975	1,500
125,001 - 400,000	2,250	1,575	800	950	1,575	2,250
400,001 - 1,000,000	3,125	2,525	1,425	1,700	2,525	3,125
>1,000,000	4,975	4,100	2,075	2,625	4,100	4,975

FY 2003 RADIO STATION REGULATORY FEES						
Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C1 & C2
<=25,000	600	450	325	400	475	625
25,001 – 75,000	1,200	900	475	600	950	1,100
75,001 – 150,000	1,800	1,125	650	1,000	1,300	2,025
150,001 – 500,000	2,700	1,925	975	1,200	2,025	2,650
500,001 – 1,200,000	3,900	2,925	1,625	2,000	3,200	3,900
1,200,001 – 3,000,00	6,000	4,500	2,450	3,200	5,225	6,250
>3,000,000	7,200	5,400	3,100	4,000	6,650	8,125

ATTACHMENT E**FACTORS, MEASUREMENTS AND CALCULATIONS THAT GO INTO
DETERMINING STATION SIGNAL CONTOURS AND ASSOCIATED POPULATION
COVERAGES****AM Stations**

Specific information on each day tower, including field ratio, phasing, spacing and orientation was retrieved, as well as the theoretical pattern RMS figure (mV/m @ 1 km) for the antenna system. The standard, or modified standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in §§73.150 and 73.152 of the Commission's rules.¹⁶⁵ Radiation values were calculated for each of 72 radials around the transmitter site (every 5 degrees of azimuth). Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure M3. Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the city grade (5 mV/m) contour was predicted for each of the 72 radials. The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

FM Stations

The maximum of the horizontal and vertical HAAT (m) and ERP (kW) was used. Where the antenna HAMS L was available, it was used in lieu of the overall HAAT figure to calculate specific HAAT figures for each of 72 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the propagation curves specified in §73.313 of the Commission's rules to predict the distance to the city grade (70 dBuV/m or 3.17 mV/m) contour for each of the 72 radials.¹⁶⁶ The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

¹⁶⁵ 47 CFR 73.150 and 73.152.

¹⁶⁶ 47 CFR 73.313.