

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 95-3; FCC 95-227]

Assessment and Collection of Regulatory Fees for Fiscal Year 1995

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The commission has revised its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress has required it to collect for fiscal year 1995. Section 9 of the Communications Act of 1934, as amended, provides for the annual assessment and collection of regulatory fees. For fiscal year 1995 sections 9(b) (2) and (3) provide for annual "Mandatory Adjustments" and "Permitted Amendments" to the Schedule of Regulatory Fees. These revisions will further the National Performance Review goals of reinventing Government by requiring beneficiaries of Commission services to pay for such services.

EFFECTIVE DATE: September 18, 1995.

FOR FURTHER INFORMATION CONTACT: Peter W. Herrick, Office of Managing Director at (202) 418-0443, or Terry D. Johnson, Office of Managing Director at (202) 418-0445.

SUPPLEMENTARY INFORMATION:

In the Matter of: Assessment and Collection of Regulatory Fees for Fiscal Year 1995.

Price Cap Treatment of Regulatory Fees Imposed by Section 9 of the Act.

Report and Order

Adopted: June 14, 1995.

Released: June 19, 1995.

By the Commission.

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I. Introduction

1. The Congress, pursuant to Section 9 of the Communications Act of 1934, as amended, has required that the Commission collect \$116,400,000 in FY 1995 to recover certain of its regulatory costs. On January 12, 1995, the Commission released a Notice of Proposed Rule Making, *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal year 1995*, MD Docket No. 95-3, FCC 95-14 (Notice), 60 FR 3807 (1995). In the Notice, the Commission asked for comments on proposals to revise its Schedule of Regulatory Fees.¹ The Commission now has under consideration a proposed *Report and Order* to revise its Schedule of Regulatory Fees. See 47 CFR 1.1152 through 1.1156.

2. In revising our regulatory fees, we adjusted our Regulatory Fee Schedule to

recover \$116,400,000 in regulatory costs, consistent with the amount that Congress has appropriated for our enforcement, policy and rule making, international, and user information activities for FY 1995.² 47 U.S.C. § 159(a). In addition, we have amended the Schedule to collect regulatory fees from regulatees of services not included in the FY 1994 Schedule and we have modified our method of assessing fees for certain services. 47 U.S.C. §§ 159(b)(1)(A), (b)(3). The revised Regulatory Fee Schedule is set forth in Appendix B.

3. For several categories of service, the regulatory fees for FY 1995 are significantly higher than corresponding fees for FY 1994. See 47 U.S.C. § 159(g); see also *Implementation of Section 9 of the Communications Act (FY 1994 Order)*, 9 FCC Rcd 5333 (1994) *Petitions for Reconsideration Pending*, 59 FR 30984 (1994). Our revised assessments result, for the most part, from increases in the amount that Congress has appropriated for Commission activities whose costs must be recovered through regulatory fees. As noted, the amount appropriated and to be recovered through regulatory fees is \$116,400,000. That amount is 93 percent greater than the \$60,400,000 that Congress required us to recover through regulatory fees in FY 1994. The impact of this increase is, however, lessened for some categories of services by anticipated revenues from categories of regulatees that we added to the Regulatory Fee Schedule and by increases in the number of payment units, e.g., subscribers.³ Similarly, for some services increases in the fees exceed 93% because of the reallocation of FTEs, decreases in the number of payment units, and modification of the methodology for computing fees to better reflect the benefits derived from the Commission's regulation.

4. In determining the individual fee amounts for FY 1995, Section 9 of the Act requires that we first determine the number of full-time equivalent

² See Public Law 103-317, 108 Stat. 1724 at 1737-38 (August 26, 1994).

³ Payment units represent the number of individual payments available in a particular service to generate the required revenue in that service. Payment units also represent, in a different context, the number by which a payor must multiply the fee amount for a particular service in order to calculate its total fee due for the service. For example, "subscribers" is the payment unit applicable to Cable Television fees. The number of subscribers is divided into the overall Cable Television revenue requirement to determine the fee amount for that service, and it is also used by payors to determine the system's total fee liability (i.e., by multiplying the payment units by the fee amount to determine the system's total fee requirement).

¹ The pleadings and reply pleadings are listed in Appendix J.

employees (FTEs)⁴ associated with our regulatory activities, and then determine the amount to be recovered from each fee category by estimating the number of FTEs assigned to each category.

"Mandatory adjustments" are then made to the Section 9 Regulatory Fee Schedule. An initial attempt to develop individual fees by allocating FTEs down to the individual fee level rather than at the grouped category level proved ineffective. Since we do not have a cost accounting system to gather appropriate data on how Commission employees allocate their time, estimated FTE data yielded anomalous results which would have required substantial "permitted amendments" to resolve obvious inequities.

5. Additionally, it became apparent in the fee development effort that the Commission's options were limited in terms of what it could do to make the fees more equitable and at the same time assure that the Commission collects the \$116.4 million that Congress has required. This meant that we could not recommend adoption of proposals that would have resulted in the regulatees being unsure about the amount of their fee payment and the staff having no way to verify that proper payments were made. In addition, we had difficulty developing fees in several areas because the Commission does not always have accurate or complete information concerning the number of regulatees and/or measurement units essential to fee collection verification requirements. Thus, it became necessary in a number of instances to utilize industry estimates of payment volumes instead of relying on information available within the Commission.

6. Finally, much of our policy and rule making efforts are expended in the development of new and emerging technologies and services (e.g., PCS, DBS, and LEOs). We found that, as a practical matter, we had to allocate the costs associated with these activities to existing licensees in other services because there was no operational systems or customer base on which to assess a fee for these new services. To

alleviate the regulatory burden on existing licensees, we urge the Congress to allow the Commission to recoup, from amounts received from competitive bidding under Section 309 of the Communications Act, at least such amount as would otherwise be allocable as regulatory fees for such services.

II. Background

7. Section 9(a) of the Act requires us to assess and collect annual regulatory fees to recover the costs, as determined annually by Congress, of our enforcement, policy and rule making, international, and user information activities.⁵ 47 U.S.C. 159(a). Congress established our Regulatory Fee Schedule for FY 1995. 47 U.S.C. § 9(g). In our *FY 1994 Report and Order*, 59 FR 30984 (1994), we set forth the Regulatory Fee Schedule for FY 1994 and prescribed rules to govern payment of the fees, as required by Congress.⁶ 47 U.S.C. § 159(f)(1); 47 CFR 1.1151-1.1166.

8. For fiscal years after FY 1994, Section 9 requires that we adjust the fees so that we can reasonably expect to collect the amount specified by Congress. 47 U.S.C. § 159(b)(1)(B). Sections 9(b)(2) and (3) provide for annual "Mandatory Adjustments" and "Permitted Amendments" to the Schedule of Regulatory Fees.

9. In making Section 9(b)(2)'s mandatory adjustments, we first consider the amount that we are to collect as set forth in our Appropriations Act. 47 U.S.C. §§ 159(b)(2), (b)(1)(B). Second, we identify the number of FTEs allocated to our enforcement, policy and rule making, user information, and international activities. 47 U.S.C. § 159(b)(1)(A). 159(b)(1)(A). Third, we determine the amount to be recovered from each fee category, e.g., Common Carrier, by estimating the number of FTEs assigned to each fee category. 47 U.S.C. § 159(b)(2). Finally, we make proportionate adjustments to the individual fees set forth in Section 9(g)'s Regulatory Fee Schedule in order to determine the revised fee for the particular services within each service

category for FY 1995. *Id.* In determining individual service fees, we take into consideration the estimated number of payment units, e.g., licensees, for each service. 47 U.S.C. § (b)(2)(A).

10. Once we have determined each service's "mandatory fee," as described above, Section 9(b)(3), relating to "Permitted Amendments" to the Schedule, provides that, if necessary, we shall amend the Schedule of Regulatory Fees, as provided in Section 9(b)(1)(A) to, *inter alia*, reflect the benefits of our regulation to the payers of the fees for each service by considering factors that we determine are necessary in the public interest. 47 U.S.C. §§ 159(b)(3), (b)(1)(A). In making these amendments, we "shall add, delete, or reclassify services in the Schedule to reflect additions, deletions or changes in the nature of its services * * *" 47 U.S.C. § 159(b)(3). Finally, while the fees are not judicially reviewable, we are required to notify Congress of any permitted amendments to the Regulatory Fee Schedule 90 days before those amendments become effective. 47 U.S.C. § 159(b)(2), (3), (4)(B).

III. Discussion

A. FY 1995 Regulatory Fees

1. General Discussion

11. In adjusting our regulatory fees pursuant to Section 9(b)(2)'s provisions for "Mandatory Adjustments", we first identified our directly assigned FY 1995 regulatory fee FTEs in the Wireless, International, Mass Media, Common Carrier and Cable Services Bureaus. We next allocated these regulatory fee FTEs to the appropriate Section 9 regulatory fee category (*i.e.* Private Radio, Mass Media, Cable Services, and Common Carrier). We then identified additional FTEs from bureaus and offices supporting the regulatory fee activities of the operating bureaus.⁷

Appendix C contains a more detailed description of our allocation of FTEs by activity. The resulting allocation of FTEs, rounded to the nearest tenth of a percent, is as follows:

⁴ Full Time Equivalent (FTE) employment is the total number of regular straight-time hours (*i.e.*, not including overtime or holiday hours) worked or to be worked by current and future employees divided by the number of compensable hours applicable to each fiscal year. See Office of Management and Budget Circular A-11, Section 13.1, Definitions relating to employment.

⁵ Our various activities, including those whose costs are subject to recovery through regulatory fees, are described in Appendix I.

⁶ In the *FY 1994 Order*, we adopted rules to implement the collection of regulatory fees, including payment procedures, specific exemptions from the payment of regulatory fees, procedures for requesting waivers, reductions and deferments of fee payments, and penalties for late payment or non-payment of the fees. We shall in the near future address petitions for reconsideration of the *FY 1994 Order* and consider whether to make amendments to our implementing rules.

⁷ The Compliance and Information Bureau (CIB) (formerly the Field Operations Bureau), the Office

of Engineering and Technology (OET), and the Office of Managing Director (OMD) perform activities supporting the operating Bureaus. FTEs assigned to CIB, OET and some elements of OMD supporting the regulatory activities of the operating Bureaus were allocated to the Private Radio, Mass Media, Common Carrier, and Cable Services fee categories on a pro rata basis.

Regulatory fee category	Regulatory fee FTEs	Regulatory fee percentage	Percentage of total FCC FTEs
Private Radio	103	7.3	4.5
Mass Media	253	18.0	11.1
Common Carrier	689	49.0	30.3
Cable Services	361	25.7	15.9
Total	1,406	100.0	61.9

12. Next, we allocated our \$116,400,000 revenue requirement to the Private Radio, Mass Media, Common Carrier, and Cable Services activities, based on the regulatory fee percentages shown above. For example, to derive the amount to be recovered from cable services, we calculated that the 25.7 percent of total FTEs representing the 361 FTEs assigned to the cable services activity resulted in \$29,914,800 to be recovered through the collection of cable services fees. The resulting allocation of costs, rounded to tenths of a million, by regulatory fee category, is as follows:

Regulatory fee category	Cost allocation (million)
Private Radio	\$8.5
Mass Media	21.0
Common Carrier	57.0
Cable Services	29.9

13. After determining these cost allocations, we updated the number of FY 1995 payment units for the individual services within each fee category. For example, we estimate that there are approximately 60,000,000 payment units for cable television systems, i.e., cable subscribers. The number of payment units is based upon information provided by Commission program experts and supplemented by information contained in actual licensee data bases maintained by the Commission, information provided by industry groups or contained in trade publications, actual data from FY 1994 regulatory fee collections, and from data provided in the comments in this proceeding.⁸ See Appendices D through G.

⁸ We have made a number of changes to our payment unit estimates. The revised estimates are provided in each Section pertinent to individual fees beginning at paragraph 27 and are also contained in Appendices D through G. In applying the pro-rata formula for determining individual fee amounts within each fee category, revised payment units have the effect of raising or lowering the allocated costs (revenue requirements) for individual services, as well as, the calculated fees for all fees in a category depending on whether the payment unit volumes increased or decreased from those shown in the NPRM.

14. Next, in order to make the proportionate changes in the statutory schedule of fees required by Section 9(b)(2), we compared our FY 1995 revenue requirement in each regulatory fee category, e.g., Cable Services, with the total amount that would be collected from all of the services within each category under the FY 1994 fee schedule. For example, we estimated that approximately \$22.7 million, or \$7.2 million less than its \$29.9 million FY 1995 revenue requirement, would be collected from cable system payers based upon our FY 1994 fees. Therefore, we pro-rated the \$7.2 million shortfall to the individual services within the cable services fee category (i.e., CARS licensees and cable system subscribers).⁹ We then divided the revenue requirement in each service by the payment units to determine the revised amount of the individual fee. These revised fees constitute the "mandatory adjustments" required by Section 9(2).

15. Following our determination of "Mandatory Adjustments", we reviewed each service and its associated fee assessment to determine if the nature of a service or the public interest warranted a fee adjustment pursuant to Section 9(b)(3)'s requirements for "Permitted Amendments." Pursuant to our authority to make permitted amendments to the fees, we revised our method for calculating fees for local exchange carriers (LECs), interexchange carriers (IXCs), and other common carriers and certain international services. Additionally, we are establishing a reduced fee for satellite television stations to distinguish those stations from full service television stations and we are adding a fee requirement for licensees of FM and TV translator and booster stations. Also, we established a fee for one-way paging services separate from the fee for other common carrier mobile services, reduced the fee for space stations, and eliminated the fee for receive only earth

⁹ Due to revisions to payment units, cost allocations (revenue requirements) may change for a particular service. In addition, cost allocations may change due to changes made pursuant to permitted amendments (see Paragraph 12).

stations. After making these permitted amendments, we revised the remaining fees within the affected service category to take into account the impact of the fee modification upon other services within the category.¹⁰

16. Comsat General and Comsat Video argue that their proposed fee increases are disproportionately high when compared to the increases proposed in other categories of service and within their own category of service, and that the increase constitutes a violation of Section 9(b)(2)'s requirement that we make proportionate adjustments to the statutory fees when recalculating the fees to collect a greater or lesser amount than previously required by Congress. These parties assert that our proposed fee increases with respect to Common Carrier activities and, in particular, geosynchronous space stations are neither proportionate nor in the public interest, and that they constitute illegal taxes because they do not reasonably reflect the true cost of regulatory service provided to these entities. See *National Cable Television Ass'n. v. United States*, 415 U.S. 336, 340 (1974) (NCTA I). COMSAT General and Comsat Video state that a fee is distinguishable from a tax in that a fee is "a payment for a special privilege or service rendered, and not a revenue measure." *National Cable Television Ass'n. v. F.C.C.*, 554 F.2d 1094, 1106 (D.C. 1976). According to these parties, the fee must be calculated to return the cost of the service or benefit at a rate that reasonably reflects the costs of the services performed and the value conferred on the payor. *Electronic Industries Ass'n. v. F.C.C.*, 554 F.2d 1109, 1117 (D.C. 1976).

17. In addition, the parties argue that our proposed allocation of FTEs to the major categories of service fails to comply with the requirements of

¹⁰ We have not proposed regulatory fees in FY 1995 for the Personal Communications Service (PCS), Commercial Mobile Radio Service (CMRS) other than those listed here (cellular and public mobile), Low Earth Orbital (LEO) Satellite Service and the Direct Broadcasting Satellite (DBS) Service because no facilities were authorized on our proposed dates for calculating fees or a negligible number of FTEs applicable to the regulatory fee program are assigned to these services.

Section 9. These parties contend that our proposed allocation of FTEs to the various major service categories violates Section 9(b)(1)(a) because, in their view, the *Notice* contains insufficient supporting information to permit analysis of the basis for our FTE allocations. Comsat General argues that a detailed accounting of the overhead and employees' time, based on a task code charge system, is necessary to justify the reasonableness of our assignment of FTEs to the common carrier and other categories and to the individual services within these categories.

18. Also, several parties contend that the *Notice* fails to demonstrate that individual fees are "reasonably related to the benefits provided to the payor of the fee," in violation of Section 9(b)(1)(A), and are contrary to the intent of Congress as reflected in the legislative history of Section 9. They also contend that the regulation of their particular service does not justify the fee proposed for the service. GE America Communications, Inc. (GE Americom) states that the amount of cost recovery that we allocated to geosynchronous satellites should be reduced because our regulatory activities with respect to in-orbit domestic satellites are *de minimis* since their licensees are not the subject of enforcement proceedings, our domestic satellite policies are well-established with little need for rule makings, and our deregulatory policies have further reduced the cost of space segment regulation.

19. We reject Comsat General and Comsat Video's arguments that our proposed fees constitute unauthorized taxes. In reviewing a similar fee program enacted by Congress, the Supreme Court held that *NCTA I* stood only for the proposition that Congress must indicate clearly its intention to delegate "discretionary authority to recover administrative costs not inuring directly to the benefit of regulated parties by imposing additional financial burdens, whether characterized as 'fees' or 'taxes' on those parties." *Skinner v. Mid-American Pipe Line Co.*, 490 U.S. 212, 224; 109 S.Ct. 1762, 1733 (1989).¹¹ *Skinner* thus bars any interpretation of *NCTA I* and its progeny in the courts of appeals that would limit Congress to allowing agencies to set regulatory fees only in amounts that reflect services

received by the regulated entities. *Skinner* also stated that a congressional delegation of authority to raise funds was proper where Congress provides sufficient guidance to the collecting agency concerning the identity of the entities subject to the fee, the purposes for which the funds may be used, the manner in which the fees are to be established, and the aggregate amount of the fees to be collected. 490 U.S. 219–220, 109 S. Ct. 1731.

20. Subsequent to the Court's decision in *Skinner*, Congress adopted Section 9 directing us to recover the full amount of specified regulatory costs from regulatees. Consistent with the guidance in *Skinner*, Congress identified the categories of service providers subject to the fees, and declared that fees are to be assessed in a rule making proceeding, based upon the number of FTEs within our bureaus and offices performing enforcement, policy and rule making, international, and user information activities. Section 9 further requires us to take into account factors reasonably related to the benefits provided to the payor of the fee by these activities, and we are to recover the costs of these activities only if required in annual Appropriations Acts and only in the aggregate amount annually designated by Congress. As described below, our actions to revise the regulatory fees are consistent with the requirements of Section 9. Thus, our revisions to the Regulatory Fee Schedule in establishing regulatory fees for FY 1995 satisfy the Court's concerns and guidelines regarding unauthorized taxation of persons subject to a fee requirement.

21. The FTE allocations used to calculate the amounts to be recovered from each fee category were developed in full compliance with the requirements of Section 9 of the Act. In developing the FY 1995 regulatory fee schedule, we relied upon estimates of year-end FTEs from our Bureaus and Offices, because actual FTEs utilized are not known until the completion of the fiscal year. Thus, to produce the best possible estimates of FY 1995 year-end FTEs, we conducted a survey in December 1994, immediately prior to releasing the *Notice* in this proceeding to estimate FTEs for this rule making.¹² The Commission performed a review of its staffing, taking into consideration expected new and replacement hiring and attrition through the end of the

fiscal year, in order to determine the most accurate estimate of projected FY 1995 year-end FTEs by organization. Next, the Bureaus and Offices allocated their assigned year-end FTEs to each of their major functional activities (e.g., Authorization of Service, Enforcement, Public Information). The staff actually assigned to perform these allocations within the Bureau and Offices were those individuals most familiar with the regulatory programs and associated staffing under their auspices.¹³

22. In contending that their proposed fees are unduly high, commenters generally have failed to recognize that Section 9 requires that we add to our direct FTEs, *i.e.*, those represented by staff directly assigned to our operating Bureaus, any support FTEs representing staff assigned to overhead functions such as our field and laboratory staff and certain staff assigned to the Office of Managing Director. 47 U.S.C. § 159(b)(1)(A). These support FTEs comprise nearly 40% of all FTEs associated with regulatory fees. Therefore, personnel costs to be recovered through regulatory fees are approximately 40% higher than the costs associated with staff directly assigned to an operating Bureau and performing functions covered by the regulatory fee program. Further, personnel costs represent only 75% of our costs to be recovered through regulatory fees. Thus, the addition of non-personnel costs (equipment, rents, contractual services, supplies, etc.) to personnel costs results in an actual cost of regulation significantly exceeding direct staff costs. The addition of benefits and other obligations to the average Commission salary cost results in an addition cost of approximately \$33,000 per employee. Although some of the parties view these costs of regulation to be excessive, they often reflect costs associated with our regulatory programs that they may not have fully considered.

23. Support FTEs, and ultimately costs, are allocated to each regulatory fee category (e.g., cable television) based upon the number of direct FTEs assigned to each fee category. We

¹¹ *Skinner* stated that in *NCTA I*, the Court had expressed doubt whether Congress had intended in the particular statute in question to delegate the authority to recover the costs of benefits to the public by assessing fees on regulated parties. For that reason, it struck down the agency's efforts to recover such costs. 490 U.S. at 223–224; 109 S.Ct. at 1733.

¹² When the survey was conducted, in December 1994, only approximately 20% of the total FTEs expected to be utilized for the entire FY 1995 time frame were actually "accrued". As such, approximately 80% or 1,125 of the 1,406 FTEs for FY 1995 were estimated based on this small 20% "sample".

¹³ Congress recognized, in adopting the Schedule of Fees, that the Commission has no cost accounting system in place to assist in the estimation of final fiscal year FTEs and related costs. Public Law 103–66, 107 Stat. 313 at 401 (1993). Although the Commission is developing a cost accounting system and it should be in place for FY 1996, such a system would not provide a definitive count, but only an estimate of year-end FTEs even when fully implemented. In summary, we believe that the estimates of FTEs and costs utilized in this proceeding are reasonable and represent the most accurate information available. We have provided in Appendix C an explanation of how FTEs were calculated for each fee category.

believe our allocations of FTEs reasonably assign personnel and related costs attributable to each fee category. As noted, actual FTE assignments can only be determined once a fiscal year is completed. However, we are satisfied that our estimates, based upon careful review of current and anticipated FTE assignments conducted well into the fiscal year and shortly before the adoption of the *Notice* in this proceeding, yield an accurate estimate of FY 1995 FTE assignments.

24. We also note the concerns of several commenters that certain individual fees seem unreasonable relative to the benefits provided. In general, these commenters fail to recognize the formulaic approach to setting the mandatory fee levels dictated by Congress. Section 9 provides that, in setting individual fee amounts, we prorate increases or decreases to the individual services within each fee category. 47 U.S.C. § 159(b)(2). This statutory requirement remains the relationship between annually calculated fees and the fees initially established by the Congress. It does not provide the flexibility to adjust fees relative to benefits to the payor or in consideration of other factors. These factors, however, are considered in the next stage of the fee development process as permitted amendments, if warranted.

25. As discussed earlier, the Commission is not able to allocate detailed costs to individual fee line items (e.g., VHF Television Stations in the 51–100 markets). Rather, those costs are allocated to broad categories of services by Section 9. Even when the Commission implements a cost accounting system in FY 1996, it may not be cost effective to obtain detailed cost data relative to our regulation of individual services. Since we do not relate specific regulatory costs to particular services within a fee category, we are constrained by Section 9 and by our information collection systems to the formulaic approach to the mandatory adjustment of regulatory fees. However, any inequities resulting from this approach are likely to be small and confined to like services due to the pro-rata formula applied by fee category. As noted, in developing the individual fees, as discussed below, we have carefully examined any apparent inequities computed pursuant to the mandatory formula required by Section 9 and have adjusted certain fees pursuant to our authority to make “permitted” amendments to the fees. In making the permitted amendments, the Commission is not required to calibrate the amount of the regulatory fee

collected precisely to the cost of the benefits each regulatee derives from the Commission’s regulation. See *United States v. Sperry Corp.*, 493 U.S. 52, 60 (1989) (upholding a one and a half percent user fee of amount recovered by claimant before Iran-U.S. Claims Tribunal); *Massachusetts v. United States* 435 U.S. 444, 463 (1978) (upholding flat registration fee on civil aircraft). Moreover, the Commission can collect fees from regulatees for their use of frequencies and for the potential benefits of its regulatory activities, even if they do not utilize these activities. See *United States v. Sperry Corp.*, 493 U.S. *supra* at 63.

26. Also, many commenters have mistakenly correlated gross increases in fee amounts from FY 1994 to FY 1995 to increases in regulation. Although there may, in fact, be changes in regulatory burden for certain services, the primary reason for increased fees overall is the 93% increase in recoverable fees mandated by Congress. Additionally, Section 9 prohibited any adjustment of individual fees established in the Regulatory Fee Schedule for FY 1994. 9 U.S.C. § 159(b)(2). Thus, the FY 1994 fee was established by Congress and was not adjusted to reflect changes in the allocation of FTEs not considered by Congress. Our development of FY 1995 fees in accordance with Section 9’s requirements represents the first allocation of FTEs to appropriate fee categories. This has resulted in a realignment of costs between major fee categories and a redistribution of relative fee revenue requirements among the four major fee categories. As the commenters have noted, certain fees decrease from FY 1994 levels while other fees increase. This primarily reflects the reallocation of FTEs for FY 1995 compared to the Congressionally mandated Regulatory Fee Schedule in effect in FY 1994.

27. We have retained, for fee determination purposes, the regulatory fee category classifications (i.e., Private Radio, Common Carrier, Cable Services and Mass Media) set forth in Section 159 in order to minimize any adverse impact on the fees resulting from changes in classification. Further, for ease in locating particular fees, we have formatted the FY 1995 Schedule of Fees to reflect our new organizational structure even though we have developed those fees based upon the fee activities contained in the FY 1994 Regulatory Fee Schedule. See Appendix B. With the exception of annual fees in the amount of \$5.00 or less, individual fee amounts have been rounded to the nearest \$5 in the case of fees under

\$1,000, or to the nearest \$25 in the case of fees of \$1,000 or more in accordance with Section 9(b)(2). Appendices C through G describe the method by which FTEs were assigned to the fee categories and the development of the individual fees within each major category.

28. We have revised the revenue requirements for individual fees in several of the fee categories. Revenue requirements change whenever volume estimates change due to the pro-rata formula associated with the mandatory provisions of Section 9. Likewise, any permitted amendments which reduce fees have the effect of reallocating to other services within a fee category the revenues which would have been collected if the permitted amendment had not been accepted. In effect, each volume change and/or permitted amendment impacts the revenue requirement in each service within the category. Zero-basing each revenue calculation makes any attempt to explain the calculated difference between revenue requirements shown in the *Notice* and in this *Report and Order* meaningless. We, therefore, have not attempted to do this and instead, have explained each permitted amendment we’ve made and also described the source of any changes to volume estimates.

2. Private Radio Services.

29. In developing the FY 1995 regulatory fees for Private Radio Services (set forth in the Wireless Radio Services category in the FY 1995 Regulatory Fee Schedule), we made mandatory adjustments to the Regulatory Fee Schedule required by 47 U.S.C. § 159, considering the number of FTEs and the estimated volume of payments. We have also taken into account the quality of the frequencies licensed. Accordingly, we have decided to continue to assess the two levels of regulatory fees applied to these services by Congress’ fee schedule, i.e., exclusive use services and shared use services, in recognition that those licensees who generally receive a higher quality communications channel, due to exclusive or lightly shared frequencies, should pay a higher fee than licensees who operate on heavily shared frequencies. 47 U.S.C. § 159(2).

30. We are implementing no changes to the rules for calculating fee payments and submitting regulatory fee payments for Private Radio Services. Due to the relatively small regulatory fees generally assessed for the services, we will continue to require applicants for new, reinstatement, and renewal licenses in these services to pay the entire

regulatory fee for the full term of their requested license at the time they file their license applications.¹⁴ See Appendix D for a description of the development of the fees for the various services within the Private Radio category.

a. *Exclusive use services.* 31. *Land Mobile Services.* The fees for Land Mobile Services are set forth in the FY 1995 Regulatory Fee Schedule within the Wireless Radio Service category and include services authorized under Part 90 of the Commission's Rules to provide high quality voice or digital communications between vehicles or to fixed stations to further the business activities of the licensee. These services, using the 220–222 MHz band and frequencies at 470 MHz and above, may be offered on a private carrier basis in the Specialized Mobile Radio Service (SMRS).

32. The FY 1995 revenue requirement for Land Mobile Services is \$396,390. Our estimated payment units for Land Mobile are 13,213 units. Dividing the revenue requirement by the number of payment units and its license term of five years results in an annual fee of \$6 per license rather than the \$7 annual fee proposed in the *Notice*.¹⁵ Thus, Land Mobile licensees are subject to a \$6 annual regulatory fee per license, payable for an entire five or ten year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is \$30 for a license with a five year term or \$60 for a license with a 10 year term. See Guidelines, Appendix H at ¶ 4.

33. *Microwave Services.* The fees for Microwave Services are set forth in the FY 1995 Regulatory Fee Schedule within the Wireless Radio Service category. Microwave Services include private microwave systems and private carrier systems authorized under Part 94 of the Commission's Rules to provide telecommunications services between fixed points on a high quality channel of communications. Microwave systems are often used to relay data and to control railroad, pipeline, and utility equipment.

34. The FY 1995 revenue requirement for Microwave Services is \$193,200. Payment units for Microwave Services are estimated to be 6,440 licensees. Dividing the revenue requirement for

Microwave Services by its payment units and license term of five years results in an annual fee of \$6 per license. Thus, Microwave licensees are subject to a \$6 annual regulatory fee per license, rather than the \$7 annual fee proposed in the *Notice*, payable for an entire five year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee due is \$30 for the five year license term. See Guidelines, Appendix H at ¶ 6.

35. *Interactive Video Data Service (IVDS).* The fees for IVDS are set forth in the FY 1995 Regulatory Fee Schedule within the Wireless Radio service category. IVDS is a two-way point-to-multi-point radio service allocated high quality channels of communications and authorized under Part 95 of the Commission's Rules. IVDS provides information, products and services, and also the capability to obtain responses from subscribers in a specific service area. IVDS is offered on a private carrier basis.

36. The FY 1995 revenue requirement for IVDS is \$43,500. Payment units for IVDS are estimated to be 1,450 licenses. Dividing the revenue requirement of IVDS by its payment units and license term of five years results in an annual fee of \$6 per license rather than the \$7 fee we proposed in the *Notice*. Thus, IVDS licensees are subject to a \$6 annual regulatory fee per license, payable for an entire five year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee due is \$30 for the five year term of the license. See Guidelines, Appendix H at ¶ 7.

b. *Shared use services.* 37. *Marine (Ship) Service.* Fees for marine (Ship) Service are set forth in the FY 1995 Regulatory Fee Schedule for the Wireless Radio Service category. Marine (Ship) Service is a shipboard radio service authorized under Part 80 of the Commission's Rules to provide telecommunications between watercraft or between watercraft and shore-based stations. Radio installations are required by domestic and international law for large passenger or cargo vessels. Radio equipment may be voluntarily installed on smaller vessels, such as recreational boats.

38. The FY 1995 revenue requirement for the Marine (Ship) Service fee category is \$5,070,420. Payment units are estimated to be 169,014 stations. Dividing the revenue requirement of the Marine (Ship) Service by its payment units and license term of ten years results in an annual fee of \$3 per station. Thus, as proposed in the *Notice*, Marine (Ship) Station licensees are

subject to a \$3 annual regulatory fee per station, payable for an entire ten year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee due is \$30 for the ten year license term. See Guidelines, Appendix H at ¶ 8.

39. *Marine (Coast) Service.* Fees for Marine (Coast) Service are set forth in the FY 1995 Regulatory Fee Schedule for the Wireless Radio service category. Marine (Coast) Service stations are land-based stations in the maritime services, authorized under Part 80 of the Commission's Rules, to provide communications services to ships and other watercraft in coastal and inland waterways.

40. The FY 1995 revenue requirement for this service is \$41,955 and the estimated payment units are 2,797 licenses. Dividing the revenue requirement of the Marine (Coast) Service by its payment units and license term of five years results in an annual fee of \$3 per license. Thus, as proposed in the *Notice*, Marine (Coast) licensees are subject to a \$3 annual regulatory fee per call sign, payable for the entire five year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee due is \$15 per call sign for the five year license term. See Guidelines, Appendix H at ¶ 9.

41. *Private Land Mobile (Other) Services.* Fees for Private Land Mobile (Other) Services are set forth in the FY 1995 Regulatory Fee Schedule for the Wireless Radio Service category. Private Land Mobile Radio Services are authorized under Parts 90 and 95 of the Commission's Rules. Stations in this category provide one or two way communications between vehicles, persons or to fixed stations on a shared basis and include radiolocation services, private carrier paging services, industrial radio services and land transportation radio services.

42. The FY 1995 revenue requirement for Private Land Mobile (Other) Services is \$1,396,275. Payment units are estimated to be 93,085 licenses. Dividing the revenue requirement of these services by their payment units and license term of five years results in an annual fee of \$3 per license. Thus, as proposed in the *Notice*, licensees of these services are subject to a \$3 annual regulatory fee per call sign, payable for an entire five year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee is \$15 for the five year license term. See Guidelines, Appendix H at ¶ 10.

43. *Aviation (Aircraft) Service.* The fee for Aviation (Aircraft) Service is set

¹⁴ In the event that the subject application is not granted, the entire regulatory fee submitted will be returned upon request of the payor of the fee. See 47 CFR 1.1159(a)(2)(iii).

¹⁵ Although this fee category includes licenses with ten year terms, the estimated volume of ten year license applications is less than one tenth of one percent and, therefore, is statistically insignificant.

forth in the FY 1995 Regulatory Fee Schedule for the Wireless Radio service category. Aviation (Aircraft) stations are authorized to provide communications between aircraft and from aircraft to ground stations. The service includes frequencies used to communicate with air traffic control facilities pursuant to Part 87 of the Commission's Rules.

44. The FY 1995 revenue requirement for the Aviation (Aircraft) Service is \$1,130,430. The payment units are estimated to be 37,681 licenses. Dividing the revenue requirement of the Aviation (Aircraft) Service by its payment units and license term of ten years results in an annual fee of \$3 per station, as proposed in the *Notice*. Thus, licensees of aircraft stations are subject to a \$3 annual regulatory fee per station, payable for the entire ten year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee due is \$30 per station for the ten year license term. See Guidelines, Appendix H at ¶ 11.

45. *Aviation (Ground) Service*. Fees for Aviation (Ground) Service are set forth in the FY 1995 Regulatory Fee Schedule for the Wireless Radio service category. Aviation (Ground) Service stations provide ground-based communications to aircraft for weather or landing information, or for logistical support pursuant to Part 87 of the Commission's Rules.

46. The FY 1995 revenue requirement for the Aviation (Ground) Service is \$39,900. Payment units for the Aviation (Ground) Service are estimated to be 2,660 licenses. Dividing the Service's revenue requirement by its payment units and license term of five years results in an annual fee of \$3 per license. Thus, as proposed in the *Notice*, licensees of Aviation Ground stations are subject to a \$3 annual regulatory fee per call sign, payable for the entire five year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee due is \$15 per call sign for the five year license term. See Guidelines, Appendix H at ¶ 12.

47. *General Mobile Radio Service (GMRS)*. Fees for the GMRS are set forth in the FY 1995 Regulatory Fee Schedule within the Wireless Radio service category. GMRS licensees provide personal and limited business communications between vehicles or to fixed stations for short-range, two-way communications pursuant to Part 95 of the Commission's Rules.

48. The FY 1995 revenue requirement for GMRS is \$41,775. Payment units for GMRS are estimated to be 2,785 licenses. Dividing GMRS' revenue requirement by its payment units and

license term of five years results in an annual fee of \$3 per license. Thus, as proposed in the *Notice*, GMRS licensees are subject to a \$3 annual regulatory fee per license, payable for an entire five year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee due is \$15 per license for the five year license term. See Guidelines, Appendix H at ¶ 13.

c. *Amateur vanity call signs*. 49. Fees for Amateur Vanity Call signs are set forth in the FY 1995 Regulatory Fee Schedule within the Wireless Radio service category. The fee covers voluntary requests for specific call signs in the Amateur Radio Service. We have concluded our rule making proceeding related to the authorization of vanity call signs. See *Report and Order in PR Docket No. 93-305*, 10 FCC Rcd 1039 (1995), 59 FR 558 (1994). Therefore, amateur radio operators are required to submit a regulatory fee payment with their vanity call sign application in FY 1995.

50. The revenue requirement for vanity call signs is \$840,000. We have revised our estimated payment units to 28,000 vanity call sign applications, as a result of further analysis by the Wireless Telecommunications Bureau. Dividing the service's revenue requirement by its estimated payment units and license term of ten years results in a fee of \$3 per year per license as proposed in the *Notice*. Thus, holders of amateur vanity call signs are subject to a \$3 annual regulatory fee per call sign, payable for an entire ten year license term at the time of application for a vanity call sign. The total regulatory fee is \$30 per license for the ten year license term.¹⁶ See Guidelines, Appendix H at ¶ 14.

3. Mass Media

51. The regulatory fees for the Mass Media fee category apply to broadcast licensees and permittees in the television, AM and FM services and in several auxiliary services. We have incorporated changes in payment volume estimates for satellite television stations, auxiliary radio licenses, and translator stations. The payment volumes were adjusted after further review of the Commission's licensing data. See Appendix E for a description of the development of the fees for services within the Mass Media

category; see also Guidelines, Appendix H at ¶¶ 15-26.

a. *Commercial AM and FM radio*. 52. These categories include licensed commercial AM (Classes A, B, C, and D) and FM (Classes A, B, B1, C, C1, C2, and C3) radio stations operating under Part 73 of the Commission's Rules. In developing our proposed FY 1995 fees for AM and FM stations, we determined that the public interest requires that we retain the operational class distinctions among AM and FM stations that Congress established in its Regulatory Fee Schedule. 47 U.S.C. § 159. Also, as a permitted amendment, we proposed a further distinction to recognize that the population density of a station's geographic coverage is a public interest factor warranting recognition in the fee schedule. We proposed to distinguish stations located in Arbitron radio markets vis-a-vis those not located in these markets and to allocate the fee burden utilizing a fee ratio between the Arbitron and non-Arbitron markets similar to the ratio of the fee requirement established for larger television station markets and "remaining markets" set forth in the Regulatory Fee Schedule. We proposed no change to the rules for calculating and submitting regulatory fees by AM and FM radio station licensees.

53. Several commenters contend that Arbitron rankings are not useful for establishing the AM and FM fee structure. These parties state that markets are only ranked if a sufficient number of stations located within the market subscribe to the Arbitron service. Also, a station may be placed in a market if it competes with market stations even though the station may not be physically located in a major metropolitan area within the market. The National Association of Broadcasters (NAB) also argues that a station may be placed in an Arbitron market based on promotional programming during the rating period and recommends that a licensee be allowed to show that its placement in an Arbitron market is not representative of its service. Washington Broadcasting Company argues that stations 20 kilometers from the principal city in a market or serving less than 20 percent of the population of a market should not be considered as an Arbitron Market station. A number of licensees argue that fees should be based on a graduated scale by market size, differentiating between markets 1-10; 11-25; 25-50; 51-100; and remaining markets in a manner similar to that in the Regulatory Fee Schedule for television stations. Broadcast Market Associates and James Wagner recommend the fees be based on

¹⁶ Section 9(h) exempts "amateur radio operator licenses under part 97 of the Commission's Rules (47 C.F.R. Part 97)" from the requirement to pay an annual regulatory fee. However, Section 9(g)'s Regulatory Fee Schedule explicitly includes "Amateur Vanity Call Signs" as a category subject to the payment of a regulatory fee.

the population a station serves. Montana Broadcasters Association argues that fees should be based on gross revenues. In contrast, Radio 840, Inc. argues that all stations in the same class be assessed the same fee without distinction as to market size.

54. We agree with commenters that our proposal to base fees on whether a licensee is ranked in an Arbitron market is flawed. The Arbitron rankings data is incomplete for fee determination purposes, and reliance upon it does not provide a sufficiently accurate and equitable methodology for determining fees. We attempted, within the limitations of available data, to compute fees on a graduated scale by market size. The results produced unexpected inequities that not only raised the fees significantly for markets 1-10 and 11-25, but also raised the fees at the low end for remaining markets. Moreover, the Commission's data bases do not contain population and gross revenue data from which we could compute fees. Therefore, we have decided not to implement the proposed fees methodology for AM and FM stations. Instead, for FY 1995 we will retain the fee methodology enacted by Congress for FY 1994.¹⁷ In this regard, we note that although the Regulatory Fee Schedule does not differentiate between markets, the AM and FM fees differentiate between classes of stations and are low enough to avoid placing an onerous burden on most licensees. Thus, the regulatory fees for AM and FM stations for FY 1995 are as follows and represent the mandatory adjustments to the Regulatory Fee Schedule consistent with Section 9 (b) (2):¹⁸

AM Radio

Class A.....	\$1,120
Class B.....	620
Class C.....	250
Class D.....	310

FM Radio

Classes C, C1, C2, B.....	\$1,120
Classes A, B1, C3.....	745

We have made no change to the rules for calculating and submitting regulatory fees by AM and FM radio station licensees. See Guidelines, Appendix H at ¶ 16.

b. Construction permits—commercial AM radio. 55. This category includes

holders of permits to construct new AM stations under Part 73 of the Commission's Rules. The FY 1995 revenue requirement for the Commercial AM Construction Permit fee category is \$9,875. Payment units for the service are estimated to be 79 AM Construction Permits. Dividing the revenue requirement for AM Construction Permits by the estimated payment units results in a regulatory fee of \$125 per Construction Permit. Thus, for FY 1995, we are assessing holders of Construction Permits for Commercial AM Stations \$125 for each permit held. Upon issuance of an operating license, this fee would no longer be assessed. Instead, for the next regulatory fee period, licensees are required to pay the applicable fee for the designated class of the station. We have made no change in the rules for calculating and submitting the regulatory fee by AM construction permittees. See Guidelines, Appendix H at ¶ 17.

c. Construction permits—Commercial FM radio. 56. This category includes holders of permits to construct new commercial FM stations covered under Part 73 of the Commission's Rules. The FY 1995 revenue requirement for Commercial FM Radio Construction Permits is \$435,860. Our estimate of the payment units is 703 Construction Permits. Dividing the revenue requirement for FM Construction Permits by the estimated payment units results in a regulatory fee of \$620 per permit. Thus, for FY 1995, we are assessing permittees \$620 for each permit held. Upon issuance of an operating license, this fee would no longer be assessed. Instead, for the next regulatory fee period, licensees must pay a regulatory fee based upon the designated class of the station. We are making no change in the rules for calculating and submitting regulatory fees by FM construction permittees. See Guidelines, Appendix H at ¶ 18.

d. Commercial television stations. 57. This category includes licensed Commercial VHF and UHF Television Stations covered under Part 73 of the Commission's Rules, except Television Satellite, Translator, and Low Power Stations, addressed separately below. We are assessing Commercial Television Stations annual fees based on a station's market rankings as published by Warren Publishing in the 1994 Edition of the Television and Cable Factbook (No. 62). The FY 1995 revenue requirements for the different categories of VHF and UHF Commercial Television Stations are shown in Appendix E. Payments units for Commercial Television Stations are also shown in Appendix E. Dividing the revenue requirements for each

Commercial Television Station category by the payment units for each category results in the following fees for Television Stations in each ADI market grouping:

VHF Markets 1-10	\$22,420
VHF Markets 11-25	\$19,925
VHF Markets 26-50	\$14,950
VHF Markets 51-100	\$9,975
VHF Remaining Markets.....	\$6,225
UHF Markets 1-10	\$17,925
UHF Markets 11-25	\$15,950
UHF Markets 26-50	\$11,950
UHF Markets 51-100	\$7,975
UHF Remaining Markets	\$4,975

See Guidelines, Appendix at ¶ 19.

58. Several commenters argue that the Arbitron market structure is obsolete and should be replaced with the Nielsen Station Index. Further, commenters argue that the Arbitron market structure is disadvantageous to small non-ADI markets and the stations located on the fringe of larger markets. Various solutions proposed include basing fees on Grade B Contour coverage or percentage of audience share.

59. We decline to consider any change in the methodology established by the Congress and affirmed in the FY 1994 schedule. We were unable to obtain sufficient information to properly evaluate the merits of using the Nielsen Station Index for establishing fees. The Commission's data bases do not contain data necessary to establish fees from Grade B Contour coverage or percentage of audience share. Thus, we will retain the Arbitron market groupings for FY 1995.

e. Commercial television satellite stations. 60. Pursuant to our authority to make permissive amendments to our regulatory fees, Television Satellite Stations (authorized pursuant to Note 5 of Section 73.3555 of the Commission's Rules) that retransmit programming of the primary station will be assessed a fee separate from the fee for fully operational television stations. This fee is based upon the \$500 fee passed by the House of Representatives for Television Satellite Stations for FY 1994. While not legally binding, the \$500 base fee was determined to be appropriate for licensees of Television Satellite Stations in our FY 1994 authorization bill passed in the House of Representatives. See H.R. 4522. In addition, pursuant to the instructions of Section 9, 47 U.S.C. § 159(b)(3), a separate fee for Television Satellite Stations would take into account the public interest factors reflected in comments filed in the proceeding to adopt the FY 1994 Schedule of Regulatory Fees. In developing the FY 1995 fee for Television Satellite Stations, we use the \$500 fee proposed by the House of

¹⁷ Interested parties may file petitions for rule making setting forth a proposed AM and FM fee methodology as long as the proposal is supported by readily available data to be considered in connection with the development of the Notice of Proposed Rulemaking for FY 1996.

¹⁸ Appendix E shows the payment volumes and cost allocations for assessing regulatory fees for AM and FM radio.

Representatives for FY 1994 to calculate a FY 1995 fee for Television Satellite Stations. We divide a "simulated" FY 1994 revenue requirement by the estimated number of Television Satellite Station licensees. Our FY 1995 revenue requirement for Television Satellite Stations is \$68,200. Following release of our *Notice*, we revised our estimate of payment units to 110 licensed Television Satellite Stations based on an updated analysis of these stations. Therefore, we are exercising our authority to make permitted amendments to the Regulatory Fee Schedule to establish a Television Satellite fee of \$620 per station. We caution that only those stations designated as Television Satellite Stations in the 1994 Edition of the Television and Cable Factbook (No. 62) are eligible to submit the fee applicable to Television Satellite Stations. Full-service television licensees are subject to the regulatory fee payment required for their class of station and market.¹⁹ See Guidelines, Appendix H at ¶ 20.

f. *Construction permits—Commercial VHF television stations.* 61. This category includes holders of permits to construct new Commercial VHF Television Stations covered under Part 73 of the Commission's Rules. The FY 1995 revenue requirement for this service category is \$54,725. The number of permits is 11. Dividing the revenue requirement for VHF Television Construction Permits by its payment units results in a fee of \$4,975. Therefore, for FY 1995, we are assessing permittees \$4,975 for each VHF Television Construction Permit held. Upon issuance of an operating license, this fee would no longer be assessed. Instead, for the next regulatory fee period, licensees must pay a fee based upon the designated market of the station. We are making no changes to the rules for calculating and submitting regulatory fees by VHF Television Construction Permittees. See Guidelines, Appendix H at ¶ 21.

g. *Construction permits—Commercial UHF television stations.* 62. This category includes holders of permits to construct new UHF Television Stations covered under Part 73 of the Commission's Rules. The FY 1995 revenue requirement for this service category is \$576,375. Payment units for

UHF Television Construction Permits are estimated to be 145 permits. Dividing the revenue requirement for this service category by its estimated payment units results in a fee of \$3,975 for each UHF Television Construction Permit held. Therefore, we are assessing a fee of \$3,975 per UHF Television Construction Permit. Upon issuance of an operating license, this fee would no longer be assessed. Instead, for the next regulatory fee period, licensees must pay a fee based upon the designated market of the station. We are making no changes to the rules for calculating and submitting regulatory fees by UHF Television Construction Permittees. See Guidelines, Appendix H at ¶ 22.

h. *Construction permits—Satellite television stations.* 63. We are exercising our authority to make permitted amendments to add a new service category to the Regulatory Fee Schedule in recognition that the holders of Construction Permits for UHF and VHF Television Satellite Stations should be charged a separate, lower fee than the fee charged holders of Construction Permits for fully operational Television Stations. See ¶ 56 above, where we exercised our authority to make permitted amendments to the Regulatory Fee Schedule relating to the fee for Television Satellite Stations. We developed the fee for Television Satellite Construction Permits by taking the average fee for VHF and UHF Television Stations and relating it to the average fee for Construction Permits for VHF and UHF Television Stations. Using this relationship and the revenue requirement for Television Satellite Stations results in a computed fee of \$225 for Construction Permits for Television Satellite Stations. An individual regulatory fee payment is to be made for each Television Satellite Station Construction Permit held. Upon issuance of an operating license, this fee would no longer be assessable. Instead, for the next fee period the licensee will be assessed the fee for an operating Television Satellite Station. See Guidelines, Appendix H at ¶ 23.

i. *Low power television, FM translator and booster stations, TV translator and booster stations.* 64. This category includes Low Power UHF/VHF Television stations operating under Part 74 of the Commission's Rules with a transmitter power output limited to 0.01kw for a UHF facility and, generally, 1kw for a VHF facility. Low Power Television (LPTV) stations may retransmit the programs and signals of a TV broadcast station, originate programming, and/or operate as a subscription service. This category also includes translators and boosters

operating under Part 74 that rebroadcast the signals of full service stations on a frequency different from the parent station (Translators) or on the same frequency (Boosters).

65. We are exercising our authority to make permitted amendments to the Regulatory Fee Schedule to include FM Translator and Booster Stations because we believe these facilities were inadvertently omitted from the Regulatory Fee Schedule and we are unaware of any reason not to establish a fee for these services. The stations in this category are secondary to full service stations in terms of frequency priority.

66. We have also received requests for waivers of the regulatory fees from operators of community based Translators. These Translators are generally not affiliated with commercial broadcasters, they are nonprofit, non-profitable, or only marginally profitable, serve small rural communities, and are supported financially by the residents of the communities served. We are aware of the difficulties these Translators have in paying even minimal regulatory fees, and we will address those concerns in the ruling on reconsideration of the *FY 1994 Order*.

67. The revenue requirement for this service category is \$1,210,400. Our estimated payment units is 7,120 licenses, including licenses covering FM translators. Dividing the revenue requirement for this category by its estimated payment units results in a fee of \$170 per license. Thus, for FY 1995, we assess licensees of Low Power Television Stations and licensees of both FM and TV Translators and Boosters an annual regulatory fee of \$170 for each license held. We are making no changes to the rules for calculating and submitting regulatory fee payments by licensees in this service category. See Guidelines, Appendix H at ¶ 24.

j. *Broadcast auxiliary stations.* 68. This category includes licensees of Remote Pickup Stations, Aural Broadcast Auxiliary Stations, Television Broadcast Auxiliary Stations, and Low Power Auxiliary Stations, authorized under Part 74 of the Commission's Rules. Auxiliary stations are generally associated with a particular Television or Radio Broadcast Station or Cable Television System.

69. The FY 1995 revenue requirement for this category is \$900,000. We have revised estimated payment units to 30,000 licenses based upon a review of our license records. Dividing the category's revenue requirement by its estimated payment units results in a fee

¹⁹ We recognize that an ongoing rule making proceeding is addressing whether Television Satellite Stations should continue to be exempt from the Commission's national television ownership restrictions. Our decision to assess a regulatory fee for Television Satellite Stations that is less than the amount for Commercial Television Stations should not be taken as a signal that any determination has been made with regard to the outcome of that proceeding.

of \$30 per license. Thus, we are assessing licensees of Commercial Auxiliary Stations a \$30 annual regulatory fee for FY 1995 on a per call sign basis. We are making no changes to the rules for calculating or submitting regulatory fee payments by licensees of facilities in this service category. See Guidelines, Appendix at ¶ 25.

k. *International HF broadcast (Short Wave)*. 70. This category covers International HF Broadcast Stations licensed under Part 73 of the Commission's Rules to operate on a frequency in the 5,950 KHz to 26,100 KHz range to provide service to the general public in foreign countries. The proposed fees for International HF Broadcast are set forth in the International Service category in the FY 1995 fee schedule.

71. For FY 1995, the revenue requirement for this category is \$4,750. Payment units are estimated to be 19 short wave licenses. Dividing the category's revenue requirement by its estimated payment units results in a fee of \$250 per license. See Appendix E. Thus, for FY 1995, we are assessing an annual regulatory fee of \$250 per station license. We are making no changes to the rules for calculating and submitting fees by licensees of facilities in this service category. See Guidelines, Appendix at ¶ 26.

4. Cable Services

a. *Cable television systems*. 72. This category includes operators of Cable Television Systems, as that term is defined in Section 76.5 of the Commission's Rules, providing or distributing programming or other services to subscribers under Part 76 of the Commission's Rules.

73. The National Cable Television Association (NCTA), the Small Cable Business Association (SCBA), and the Cable Telecommunications Association contend that our allocation of full-time equivalents (FTEs) to cable television is unsupported and is unduly high. SCBA urges us to exempt small systems from payment of regulatory fees. Finally, NCTA and SCBA contend that we have understated the number of payment units, *i.e.*, cable television subscribers, subject to the fee.

74. We have addressed in paras. 11 through 26 our allocation of FTEs. Therefore, no further discussion of this issue is required here. Further, we find that the Regulatory Fee Schedule adequately considers the financial circumstances of small cable systems by basing the fee payment for cable systems on their number of subscribers so that payments by cable systems reflect their relative size and their relative benefits

from our regulation. We have divided the cable system revenue requirement of \$29,400,000 by our estimate of 60,000,000 payment units to derive the FY 1995 fee for cable systems of \$.49 per subscriber. See Appendix F. Therefore, we are assessing a fee of \$.49 per cable television subscriber.²⁰

75. Payments for cable systems are to be made on a per subscriber basis by community unit determined as of December 31, 1994 as reported on each cable system's 1994 Annual Report of Cable Systems (FCC Form 325). We are making no change in the rules for calculating or submitting regulatory fees by cable system operators. See Appendix F for a description of the development of the fee for cable systems. See also, Guidelines, Appendix H at ¶ 27.

b. *Cable antenna relay service*. 76. This category includes Cable Television Relay Service (CARS) Stations authorized under Part 78 of the Commission's Rules. These stations transmit television and related audio signals, signals of AM and FM broadcast stations and cablecasting from the point of reception to a terminal point from which the signals are distributed to the public by a cable television system.

77. SCBA contends that the CARS fee is out of proportion to the benefits received from our regulation of these facilities. Since SCBA has provided no support for its argument, we will give no consideration to an adjustment of the CARS fee. Further, we reject the argument of SCBA that we should exempt small cable systems from the CARS fee. SCBA has not demonstrated that the fee is unreasonable or that small cable systems receive any less benefit from our regulation than other cable systems.

78. Our FY 1995 revenue requirements for CARS is \$603,780 and our estimated payment units are 2,082 licenses. Dividing the revised revenue requirements for CARS by our estimated payment units results in a fee of \$290 per license. See Appendix F. Thus, for FY 1995, we are assessing a \$290 regulatory fee per CARS license. We are making no change to the rules for calculating and submitting regulatory fees by CARS licensees. See Appendix F for a description of the development of the fee for CARS. See also, Guidelines, Appendix H at ¶ 29.

²⁰ Consistent with our earlier interpretation of congressional intent, we require payment of the cable system regulatory fees on a per subscriber basis rather than per 1,000 subscribers as set forth in the statutory Regulatory Fee Schedule. See *FY 1994 Order* at para. 100.

5. Common Carrier Services

79. We have received numerous comments from providers of Common Carrier Services objecting to the amount of the fees proposed for their particular categories of service. Several of these parties complain that the FTEs assigned to the Common Carrier category and the costs apportioned to their particular service category are unduly high, and that the *Notice* miscalculated the estimated payment units for their services. We have discussed our FTE allocations, cost allocations and unit estimates in paragraphs 8 through 23. We will, however, address issues related to cost allocation and payment units where the arguments presented have not been previously considered. See Appendix G for a description of the development of the fee for services within the Common Carrier category.

80. The Commission is exercising its authority pursuant to Section 9(b)(3) in order to revise the fees associated with regulation by the International Bureau. Numerous commenters have expressed concern that the proposed fees would not be representative of the costs associated with the regulatory activities of the International Bureau, nor would the proposed fees reflect the benefits provided to the payers of the proposed fees.

81. Section 9(b)(3) provides the Commission authority to adjust the Schedule of Regulatory Fees provided the following two conditions are met: (1) the Commission determines that the Schedule requires amendment to comply with the requirements of paragraph (1)(A), which states, "The fees assessed under subsection (a) shall be derived by determining the full-time equivalent number of employees performing the activities described in subsection (a) within the Private Radio Bureau, Mass Media Bureau, Common Carrier Bureau, and other offices of the Commission. . . ." and (2) the basis for changing or reclassifying services in the Schedule reflects additions, deletions, or changes in the nature of its services as a consequence of Commission rulemaking proceedings or changes in law.

82. The Commission has determined that the reorganization establishing the International Bureau satisfies both of the requirements described above. Specifically, the reorganization was a Commission rulemaking proceeding, as defined in 47 CFR 1.412(b)(5), which resulted in the Commission being able to determine the full-time equivalent number of employees performing regulatory fee-based activities in the International Bureau.

83. Specifically, the Commission will adjust the Common Carrier Fee category so that the total collected from the individual services associated with International Bureau fees²¹ totals approximately \$8.3 million, which is the estimated regulatory cost associated with the International Bureau.²² The revisions to the Common Carrier fee category have been made by reallocating the difference between what would have been collected under the International Bureau fees proposed in the *Notice* and \$8.3 million to all remaining services in the Common Carrier fee category on a proportional basis.

a. *Public mobile/cellular radio services.* 84. Fees for the Public Mobile and Cellular Radio Services are set forth in the FY 1995 Regulatory Fee Schedule within the Wireless Radio service category. These services include common carriers and others (e.g., cellular radio licensees) offering a wide variety of land-based or air-to-ground mobile telephone, paging or data transmission services to the public, under Parts 22 and 24 of the Commission's Rules. Licensees include those using radio to provide telephone services at fixed locations, such as Basic Exchange Telecommunications Radio Services, Rural Radio and Offshore Radio.

85. In the *Notice*, we proposed to assess a fee for this service category based upon the total number of telephone numbers or call signs that a licensee provides to its customers. The Regulatory Fee Schedule assessed the fee based on the number of a licensee's subscribers. Reliance on a subscriber count, however, does not fully reflect the benefit of our regulation *i.e.*, usage of channel capacity, because individual subscribers vary in the number of mobile units or telephone numbers utilized. In order to assure that all cellular/mobile units in operation are, in fact, assessable as customers, we are reviving our fee structure to assess the fee based on mobile units or telephone numbers provided by a licensee as a more equitable payment formulation because it better reflects actual usage of our frequency assignments and related benefits of our regulation. Therefore, for FY 1995, we amend our Regulatory Fee Schedule so that each cellular licensee

will pay an annual fee based on the number of telephone numbers provided, and each licensee in the Public Mobile Radio Service pays an annual regulatory fee for each mobile unit, including paging units, assigned to its customers, including resellers of its services.

86. A number of commenters²³ argue that our proposal to base the fees on units (telephone numbers or mobile units) rather than subscribers is inconsistent with the Regulatory Fee Schedule developed by Congress. They assert that the change to units is not an adjustment permitted under Section 9(b)(2) or a change pursuant to law or regulation as required by Section 9(a)(3).

87. Congress, however, has authorized the Commission to modify the Regulatory Fee Schedule to ensure that the fees are reasonably related to the benefits of the Commission's regulatory activities. See 47 U.S.C. 159(b)(1)(A). Under Section 9, "the Commission is required to adjust the fees to reflect proportionate changes in its appropriations, and is permitted through a rule making, to make changes to the Regulatory Fee Schedule, including adding, deleting or reclassifying services when the Commission determines that such changes are necessary to ensure such fees are reasonably related to the benefits provided to the payor of the fee by the Commission's activities." Conference Report H. Rept. No. 213, 103d Cong., 1st Sess. 1188 (1993). Thus, Congress intended that we modify the fee structure in instances where we find that a revision to the Regulatory Fee Schedule better reflects the relative benefits licensees receive from our regulatory activities and achieves a more equitable distribution of the fee burden. We find that assessing fees on the basis of mobile units or telephone numbers, equitably reflects the actual benefit received from the Commission's regulation.

88. Alltel argues the Commission should modify the date for determining fees so that the burden of the fees would be shared by new service providers. It

asserts that equity requires that the fee burden be shared by licensees authorized during the year.

89. We recognize that Alltel's suggestion would distribute the fee burden among additional service providers. However, such a system would be difficult to administer and lead to confusion because regulatees are directed to count payment units as of a date certain, and as new regulatees are authorized, would involve utilization of different dates for computing fees for different licensees. Moreover, we do not believe that a calculation date later in the fiscal year would significantly affect the amounts of the fee payments that we are adopting since many new service providers subject to the fee would be in an early start-up phase of their operations and existing providers would have accounted for substantially all their units of payment under the calculation date that we have proposed. In the *FY 1994 Order*, establishing December 31 as the calculation date for regulatees paying fees based upon subscriber lines or circuits, we noted that many regulatees file reports based upon information collected as of that date. 9 FCC Rcd at 5365-66 ¶ 96. In other instances, regulatees calculate subscriber counts as of that date for internal purposes. Reliance on December 31 as a date certain for calculating fees facilitates both the computation of fee payments and our verification that the correct fee payments are submitted. 9 FCC Rcd at 5350, ¶¶ 48-49. Further, since our regulatory fee program is ongoing, new carriers will be subject to payment of fees in the next fiscal year. Thus, we have decided to adopt December 31, 1994, as the date for calculation of fee payments for all mobile regulatees.

90. Frontier and Alltel also argue that cellular and paging licensees are being treated differently from carriers using the interstate network. Frontier asserts that cellular resellers are exempt from the regulatory fee and that this places an unfair burden on facilities-based carriers who must pay for regulatory activities benefitting resellers of mobile services. Also, these parties contend that our treatment of mobile resellers is inconsistent with our proposal to include resellers of interstate services in the fee schedule.

91. We recognize that the fees for mobile service providers are assessed in a manner different from the fee for users of the interstate network and that we are including resellers of interstate services directly in the fee schedule, but not resellers of mobile services. We also recognize that there are substantial equity issues that must be addressed

²¹ Specifically: International Circuits, Space Stations, Earth Stations and International Public Fixed Radio Stations.

²² There are 72 FTEs within the International Bureau that are directly associated with regulatory fee activities. To the number we have added an additional 40%, or 28 FTEs, for the indirect support FTEs as explained in paragraph 8. The resulting cost is \$8.3 million (100 FTEs multiplied by \$83,000 per FTE).

²³ See comments filed by Personal Communications Industry Association (PCIA), Alltel Mobile Communications and Alltel Service Corporation (Alltel), Frontier Cellular Holding, Inc. (Frontier), Mobilmedia Communications, Inc., Vanguard Cellular Systems (Vanguard), Arch Communications Group, and Metrocall, Inc. Vanguard also argues that the computation of the regulatory fee based on units could result in disclosure of commercially sensitive information. To date we have not had FOIA or other requests for access to the information submitted by cellular/mobile carriers with their fee proposals. However, any carrier concerned that the information submitted may be used to its detriment, can request that the Commission protect its submission from routine disclosure to the public.

before assessing resellers a fee, in order to protect them from having their mobile units or telephone numbers double counted. For non-mobile common carriers we are adopting a proposal to assess fees on the basis of gross revenues, and we are protecting resellers from double payments by permitting them to deduct from their gross revenues the payment made to facilities based carriers. In the case of mobile resellers, we do not have the data necessary to structure a fee schedule on the basis of gross revenues or in a manner which would protect mobile resellers from double payments.

However, by revising the Regulatory Fee Schedule to require a fee payment for every mobile unit or telephone number made available by a licensee to a third party, we will collect a fee for each unit made available to a licensee's customers, including resellers. Moreover, to the extent that the regulatory fees are included in the carriers' charges to the resellers, the resellers will be sharing in the regulatory burden.

92. A number of mobile regulatees also assert that their fees are increasing at a disproportionate rate because of the increase in the per unit rate and because of the change in counting from subscribers to mobile units or telephone numbers used. Our modification of the methodology for computing fees was required because reliance on a subscriber count does not fully reflect actual usage of the frequencies we have authorized mobile providers to operate. For FY 1994, regulatees often paid only a nominal \$.06 fee for a single subscriber even though that subscriber may have subscribed to numerous mobile units or telephone numbers. Thus, as a result of the fee methodology, fee payments did not necessarily reflect the direct benefit of our regulation to individual licensees. For those regulatees whose fees reflected actual usage, the modification in counting units will not result in a significant increase in fees. However, the fact that other regulatees may be subjected to larger increases is only a reflection of the fact that their prior fees did not reflect the benefits they received and does not establish that they are being subjected to an unwarranted or disproportionate increase in fees.

93. Several parties, including PCIA, Mobile Media Communications, and Airtouch Paging, requested that the Commission establish a separate and lower fee category for regulatees offering one-way paging services. We have reviewed these requests and determined that a reduced fee for Part 22 one-way pagers is appropriate in view of the

quality of the channels afforded paging entities versus cellular providers. Pagers are authorized only to transmit one-way data messages whereas cellular providers operate systems providing two-way voice communications. We are also aware that the paging industry is very competitive and generally has low profit margins compared to the cellular industry and to other public mobile services. We have therefore established a reduced annual fee of \$.02 per pager for FY 1995. This permitted amendment should provide an equitable cost allocation among cellular and other public mobile licensees and paging licensees based upon their relative market pricing structures while minimizing any adverse impact on the one-way paging industry.

94. Our revenue requirement for FY 1995 for Cellular and Other Public Mobile (non-one way paging) carriers is \$3,510,000. The revenue requirement for Public Mobile One Way Pagers is \$392,000. Based on the comments of parties, we have also revised the estimated payment units for these services to 19.6 million one way pagers and 23.4 million Cellular/Other Public Mobile units. Dividing the revenue requirement for Cellular/Other Public Mobile by its estimated units results in an annual regulatory fee of \$.15 per payment unit.²⁴ Thus, we will assess a fee of \$.15 per mobile unit or telephone number in this service. For one way pagers the resulting fee is \$.02 per pager.^{25 26} See Guidelines, Appendix H at ¶¶ 30-33.

²⁴ As we decided in our *FY 1994 Order*, we require licensees in the Air-Ground Radiotelephone Service to pay their fee based upon their number of transceivers leased for operation in aircraft.

²⁵ PCIA notes that the fees for several categories of service proposed in the *Notice* were the same and questions whether the then-proposed fees were developed pursuant to the statutory scheme or whether the Commission decided on the amount of the fee without regard to Section 9's methodology for developing the fees. Plainly, an examination of the methodology used to calculate the mandatory adjustments required by Section 9 reveals that when fee amounts within the same fee category (e.g., Common Carrier) are pro-rated upward or downward, the existing relationship between each fee is retained. Therefore, two fee amounts within the same fee category having the same dollar value would both have similar values after the pro-rata mandatory adjustment is made.

²⁶ We will incorporate into our fee payment procedures the substance of Public Notice No. 43189, *Paying Regulatory Fees* (July 8, 1994), requiring public mobile providers to list all their call signs on the Form 159/159C and to distribute their total number of mobile units for each call sign in one of the following ways: (1) Allocate one mobile unit for every call sign, except one, and allocate the remainder of mobile units to the remaining call sign; or (2) determine the average number of mobile units per call sign and use this number of mobile units for each call sign. The filer is responsible for documenting its fee payment.

b. *Domestic public fixed radio service.* 95. The Domestic Public Fixed Radio Service includes stations authorized under Part 21 of the Commission's Rules to use microwave frequencies for video and data distribution within the United States. This category includes licensees in the Point-to-Point Microwave Radio Service, Local Television Transmission Radio Service, Digital Electronic Message Service, Multipoint Distribution Service (MDS), and Multichannel Multipoint Distribution Service (MMDS).²⁷ We received no comments related to the proposed fee.

96. The FY 1995 revenue requirement for this service is \$1,960,000, and the payment units are estimated to be 14,000 licenses. Therefore, we will adopt for Domestic Public Fixed Radio Service licensees a \$140 annual regulatory fee per call sign payable on a specified date to be announced by the Commission. Moreover, in response to Southwestern Bell Corporation's request, we will modify our fee payment procedures to permit licensees in the Public Fixed Radio Service to file a single Form 159 stating their number of call signs and the total fee amount with an attached listing of each call sign covered by the fee payment. Licensees with up to 100 call signs may submit a hard copy list with their Form 159. However, we require licensees with greater than 100 call signs to file a data diskette containing their listing of call signs along with a hardcopy Form 159. We are adopting no other change to the rules for calculation and submission of the fee payment by licensees in the Domestic Public Fixed Radio Services. See Guidelines, Appendix H at ¶134.

c. *International public fixed radio service.* 97. The International Public Fixed Radio Service (IPFRS) is set forth in the FY 1995 Regulatory Fee Schedule within the International fee category. It includes common carriers authorized under Part 23 of the Commission's Rules to provide radio communications between the United States and a foreign point via microwave or H troposcatter systems, other than satellites and satellite earth stations, but not including service between the United States and Mexico and the United States and Canada using frequencies above 72 MHz. The FY 1995 revenue requirement for this service is \$4,000, and the payment units are estimated to be 20 licenses. Thus, we are adopting a regulatory fee for IPFRS licensees of \$200 per call sign. We are proposing no

²⁷ MDS and MMDS are now regulated by the Mass Media Bureau and, therefore, the regulatory fees for these services are shown within the Mass Media category in the FY 1995 fee schedule. See Appendix B.

change to the rules for calculating and submitting fees by licensees in the International Public Fixed Radio Services. See Guidelines, Appendix H at ¶35.

d. *Earth stations.* 98. Earth stations are set forth in the FY 1995 Regulatory Fee Schedule within the International fee category. The earth station category encompasses *all* domestic and international earth station facilities authorized or registered under Part 25 of the Commission's rules. These facilities include transmit/receive, transmit-only, and receive-only earth stations; Very Small Aperture Terminals (VSATs) operating in the 12/14 GHz frequency bands; Mobile Satellite Earth stations; and equivalent C-band antennas operating in the 4/6 GHz frequency bands authorized pursuant to blanket authority.

99. In Section 9's Schedule of Regulatory Fees, these facilities were grouped into several categories. Within these categories, some fees were assessed on a per meter basis; other fees were assessed on a per 100 antennas basis. For example, in our *FY 1994 Order*, we adopted the Regulatory Fee Schedule's requirement that a higher fee be assessed for fixed satellite earth station antennas of 9 meters or more than for those less than 9 meters. This distinction resulted in the anomaly that antennas performing the same function were subjected to different fees, a fee several thousand percent higher for large earth stations than for small earth stations. To rectify this disparity, we proposed in the *Notice* to exercise our permitted authority to eliminate the dual fee levels for these earth stations. Therefore, we proposed that any earth station antenna in this service category be charged a fee based upon its size as measured in meters in order to eliminate the disparity in fees under the former schedule and to assure that smaller antennas would continue to be subject to a smaller fee requirement than larger antennas.

100. EDS Corporation argues that their small transmit/receive and transmit only earth stations should continue to be assessed fees similar to those charged for earth stations in VSAT networks (a per antenna fee), as Congress prescribed in its fee schedule, instead of fees similar to those for larger transmit/receive, transmit only earth stations (a per antenna-meter fee), as proposed in the *Notice*. EDS contends that since the enactment of Section 9, no change in the regulation of small transmit/receive and transmit only earth stations has taken place that would justify a revision in the manner in which its fees are assessed. In addition, COMSAT Video contends

that C-band transmit/receive and transmit only earth stations should be assessed fees distinct from the fees assessed for Ku-band transmit/receive and transmit only earth stations. COMSAT Video questions our estimated payment unit estimates for transmit-receive and receive only earth stations.

101. We reject EDS's argument that we lack the authority to revise the Regulatory Fee Schedule. As noted, Congress specifically provided that we were to adjust the fees to ensure that they are reasonably related to the benefits received. 9 U.S.C. 159(b)(1)(A). We conclude that we cannot find sufficient difference in our regulation of earth stations (regardless of size or intended use) to warrant establishing separate fees for these facilities.

102. For FY 1995, we proposed to modify the Regulatory Fee Schedule for receive-only earth stations by assessing the fee on a per meter basis, in the amount of \$120 per meter, regardless of whether a facility was more or less than 9 meters in diameter.

103. The Associated Press (AP) the National Cable Television Association (NCTA), the Cable Telecommunications Association (CATA), Joint Cable Commenters²⁸ and the Wireless Cable Industry Association (WCIA) object to the substantial increase in fees proposed for receive only earth stations of less than 9 meters. NCTA and the Joint Commenters contend that the proposed fee would amount to as much as a 10,000 percent increase for receive only earth stations smaller than 9 meters in diameter. CATA and WCIA claim that the burden of the increase would fall upon small cable and wireless cable operators in rural areas, unable to share earth stations among systems. Further, CATA and WCIA argue that Congress distinguished between the fees for large and small receive only earth stations in order not to overburden cable and wireless entities.

104. NCTA argues that the assessment for small receive only earth stations is not substantiated by a description of how the assessment was developed. GE American states that our unit estimate for receive only earth stations is low. Further, AP, CATA and NCTA contend that our deregulation of receive only earth stations and, in particular, our policy to permit operators to decide individually whether to register their facilities for interference protection, demonstrates that only a minimal degree of our regulatory activities are

involved with regulation of receive only earth stations.

105. In view of the comments received, we have reevaluated our proposed fee for receive only earth stations. We are aware that our regulatory requirements for these facilities have been substantially modified in recent years, notwithstanding the inclusion of receive only earth stations in Section 9(g)'s fee schedule. In particular, we recognize that domestic receive only earth stations are no longer subject to licensing. (International receive only earth stations are currently licensed). Rather, operations of receive only earth stations may register these facilities with us in order to obtain interference protection and other benefits. Further, our review of the resource burden of providing interference protection to receive only earth stations demonstrates to us that regulation of these facilities accounts for an insignificant portion of the costs attributable to these activities. Therefore, we have decided to exercise our authority to make "permitted amendments" and to delete receive only earth stations as a service subject to a regulatory fee requirement for FY 1995. See 47 U.S.C. § 159(b)(3). Therefore, we will assess no fee for receive only earth stations.

106. In addition, we have received the fee structure in effect in FY 1994 for earth stations and conclude that the current structure is not the most equitable for regulatory fee purposes. As noted, all satellite earth stations require a certain amount of regulatory activity. Commenters have focused on individual elements of our regulatory activities in arguing against the changes in fees for particular types of earth stations. For example, certain classes of earth stations require more international activity than others (*i.e.*, coordination and consultation); other classes of earth stations require more rulemaking and enforcement activity than others (*i.e.*, zoning related matters). Since we do not yet have a cost accounting system capable of assigning the cost of specific regulatory activities to specific classes of earth stations, we find that assessing the fee on a per authorization or registration basis, rather than a per meter or 100 antennas basis is the most equitable method of allocating the regulatory costs assigned to satellite earth stations. Moreover, we find no reasonable basis for charging a per meter fee when it appears that the regulatory costs associated with a five or nine meter antenna are similar and the benefits to the payer are no less at five meters than at nine meters. Consequently, we are eliminating the

²⁸ The Cable Industries Corp., Multimedia Cablevision, Inc., Providence Journal Company, and Star Cable Associates jointly filed comments.

size distinctions and assessing fees on a per authorization or registration basis.²⁹

107. Accordingly, we have revised our estimate of the number of payment units to conform to the number of authorizations or registrations contained in this service category (includes VSATs, mobile equivalents, transmit/receive and transmit only earth stations). As of October 1, 1994, 3,378 authorizations and registrations had been issued. The FY 1995 revenue requirement attributable to all earth stations is \$1,114,740. Dividing the requirement by our estimate of 3,378 earth stations results in a fee of \$330 per authorization or registration. See Appendix G.

e. *Space stations (Geosynchronous).* 108. Geosynchronous space stations are domestic and international satellites positioned in orbit to remain fixed relative to the earth. They are authorized under Part 25 of the Commission's Rules to provide communications between satellites and earth stations on a common carrier and/or private carrier basis.

109. In addition to issues addressed above relating to FTEs, the satellite parties raise several issues in opposing our proposed space segment fees. Columbia and Panamsat, supported by GE Americom, argue that Comsat is obligated to pay space segment fees for its Intelsat and Inmarsat satellites in addition to the fees it pays for its domestic satellites. Also, Columbia and Panamsat argue that we should base our space segment fee on the number of transponders operated by a licensee rather than its number of operational satellites because transponder usage and bandwidth capacity more rationally reflect the benefits that licensees receive from our regulation. Finally, these parties argue that the number of satellites in operation as of October 1, 1994, the date for calculating fees, is higher than the estimated number of satellites we used to calculate the per satellite fee.

110. We reject the parties' contention that Comsat General must pay fees on a per space station basis for the Intelsat and Inmarsat satellites that it manages. Section 9's legislative history discloses that Congress intended that Comsat General would be subject to a space segment fee only for its licensed operations. Specifically, Congress stated with respect to space station fees that:

The Committee intends that fees in this category be assessed on operators of U.S. facilities, consistent with FCC jurisdiction. Therefore, these fees will only apply to space stations directly licensed by the Commission under Title III of the Communications Act. Fees will not be applied to space stations operated by international organizations subject to the International Organization Immunities Act, 22 U.S.C. Section 288 et seq.³⁰

This language was incorporated by reference in the Conference Report accompanying the 1994 Budget Reconciliation Act, which included the regulatory fee program.³¹ Thus Congress did not intend for the Commission to assess a fee per space station for the space segment facilities of Intelsat and Inmarsat. Therefore, we will not require Comsat General to submit fee payments for their satellites. For FY 1996, however, we intend to explore other ways to recover the regulatory costs imposed on the Commission on behalf of Comsat's participation in the Intelsat and Inmarsat programs.

111. Further, we reject the parties' arguments that we should base the space segment fee on transponders aboard operational satellites rather than on the number of operational satellites. Our calculation of fees using space segments rather than transponders is reasonable and reflects Congress' decision to assess satellite fees based on operational satellites. Moreover, Panamsat has provided us with no demonstrable evidence that the costs of regulating the various satellite systems is more closely related to the number of transponders that a satellite carries than to the total number of operational satellites. Nor has Panamsat considered the administrative burden of its proposed fee structure on regulatees subject to the fee and upon our own resources. Because the cost of satellite regulatory activities is reasonably related to the number of operational satellites, we find no basis for modifying our reliance on space stations as payment units.

112. COMSAT General contends that the proposed fee is contrary to the public interest because it will discourage maintenance of older satellites even though they may remain viable providers of low-cost, full time and occasional use commercial services. COMSAT General further contends that the proposed fee will discourage competitive discounting or exploitation

of innovative satellite technologies and is harmful to consumers of satellite services, particularly start-up and small businesses, because it results in higher prices for services.

113. We reject Comsat General's contention that our fees may have an adverse impact on innovation in the satellite and other industries by precluding the use of older satellites. Newer satellites offer the public access to faster, more efficient, and more advanced telecommunications services. Providing an incentive to maintain older, less efficient satellites may have a negative impact on the end users of satellite services. Newer satellites are available to perform any service that Comsat general may have intended for older generation satellites. Although Comsat General states that older satellites "may remain viable as providers of low-cost providers of full time and occasional use commercial services", they provide us no documentation that the cost per user to least capacity on a newer, high capacity satellite that can serve more customers.

114. Finally, several satellite parties contend that our estimate of payment units for the satellite fee is flawed because we did not calculate the number of satellites in operation on October 1, 1994, the date for the calculation of fees. We have reviewed our records and find that 39 satellites were operational on October 1, 1994. The revenue requirement for regulation of satellites is \$2,925,000. Dividing this by 39 operational satellites yields a fee of \$75,000. See Guidelines, Appendix H at ¶40.

f. *International bearer circuits.*

115. Regulatory fees for international bearer circuits are set forth in the International Service category in the FY 1995 Regulatory Fee Schedule. The fee proposed in the Notice is to be paid by the facilities-based common carrier activating the circuit in any transmission facility for the provision of service to an end user or resale carrier. Also as proposed in the Notice, we are modifying our requirements for payment of the fee for bearer circuits by private submarine cable operators to require that they pay fees for circuits sold on an indefeasible right of use (IRU) basis or leased to any customer other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. Compare FY 1994 Order at 5367. As provided in the FY 1995 fee schedule, 64 Kbps circuits or their equivalent will be assessed a fee. Equivalent circuits include the 64 Kbps circuit equivalent of larger bit stream circuits. For example, the 64 Kbps

²⁹ An "authorization" is defined on a per call sign basis. A single call sign may either authorize one earth station antenna, or may provide a "blanket authorization" covering several earth station antennas.

³⁰ H.R. Rep. No. 102-207, 102d Cong., 1st Sess. 26. Both Intelsat and Inmarsat are subject to the International Organizations Immunities Act. See Exec. Order No. 11,996, 42 FR 4331 (1977); Exec. Order No. 12,238, 45 FR 60,877 (1980).

³¹ Conference Report H. Rept. No. 213, 103d Cong., 1st Sess. 499 (1993).

circuit equivalent of a 2.048 Mbps circuit is thirty 64 Kbps circuits. Analog circuits such as 3 and 4 KHz circuits used for international service are also included as 64 Kbps circuits. However, circuits derived from 64 Kbps circuits by the use of digital circuit multiplication systems are not equivalent 64 Kbps circuits. Such circuits are not subject to fees. Only the 64 Kbps circuit from which they have been derived will be subject to payment of a fee.

116. In the *Notice* we estimated the volume of active 64 Kbps circuits or equivalent to be 62,000. AT&T, supported by Sprint, contends that our estimate of the number of bearer circuits subject to the fee was low. We have re-examined our estimate of the number of bearer circuits subject to a fee as of October 1, 1994. Based on this re-examination, we have revised the number of bearer circuits to 125,000. The FY 1995 revenue requirement for this service is \$500,000. Dividing the revenue requirement for this service by the number of active bearer circuits results in a fee of \$4.00 per circuit.

117. For purposes of calculating equivalent units subject to the bearer circuit fee, we will assess fees as follows:

Analog television channel, size in MHz	No. of equivalent 64 Kbps, circuits
36	630
24	288
18	240

See Appendix G. for a description of the development of the fees for international bearer circuits; see also Guidelines, Appendix H at ¶41.

g. *Inter-exchange and local exchange carriers, competitive access providers, pay telephone providers, and other non-mobile providers of interstate service.*

118. Inter-Exchange Carriers (long distance telephone companies) and Local Exchange Carriers (local telephone operating companies) provide commercial and private residential telephone service.

119. In the *Notice*, we proposed to require a regulatory fee payment from inter-exchange carriers (IXLs), local exchange carriers (LECs), and competitive access providers (CAPs), consistent with our FY 1994 fee schedule. Also, we proposed to add to the schedule all domestic and international carriers that provide operator services, WATS, 800, 900, telex, telegraph, video, other switched services, interstate access, special access, and alternative access services. We stated that the fee requirement

would apply to carriers using their own facilities or reselling facilities and services of other carriers or telephone holding companies, including companies other than traditional telephone companies that provide interstate access service to long distance companies and other customers.

120. In addition, we proposed to modify our methodology for assessing fees upon these carriers generally, including CAPs and resellers, by basing the fee upon the number of customer units, *i.e.*, the number of users of a service. As in FY 1994, inter-exchange and local exchange carriers would be required to calculate their total fee payments based upon their total number of presubscribed lines (PSLs). In the alternative, we proposed to assess fees on providers of interstate services based on their minutes of interstate service in calendar year 1994. For each methodology, we proposed the use of certain equivalency assumptions in recognition that several categories of service providers would be unable to calculate their fees based on either PSLs or minutes of use (MOUs). Moreover, we invited interested parties to file comments proposing "the most efficient and equitable method for assessment of fees." See *Notice* at paragraph 58.

121. Numerous parties submitted comments opposing our proposal to add resellers and other users of the interstate network to the fee schedule.³² The parties argue that Section 9 authorizes us to add services to the Regulatory Fee Schedule only if a regulation or change in the law so dictates. See 47 U.S.C. § 159(b)(3). Thus, in the view of these parties, no such rule making or change in the law has occurred since the enactment of Section 9 to justify the addition of resellers to the fee schedule. Further the interested parties contend that the Regulatory Fee Schedule precludes inclusion of resellers because it specifically limits the fees to providers of "presubscribed lines," and resellers do not provide presubscribed lines. See 47 U.S.C. § 9(g). Finally, the commenters argue that the imposition of a fee on resellers is contrary to our

procompetitive and deregulatory policies, particularly since resellers, in their view, are subject to minimal regulation and derive little benefit from our regulation.

122. We disagree with the argument that our regulation of resellers is so minimal that these carriers should not be subject to a fee requirement. As we observed in the *Notice*, we required facilities based carriers to remove any restrictions on the resale and sharing of private line facilities and services and our oversight of the interstate communications market has fostered the growth of the strong resale market that currently exists.³³ Nothing that the parties have presented persuades us that their regulation is so minimal or their benefits so attenuated that these carriers should not be subject to a fee. Resellers are subject to tariffing requirements and are obligated to provide their services pursuant to just, reasonable and nondiscriminatory rates and practices in accordance with Sections 201 and 202 of the Act. Their rates and services are also subject to our review pursuant to Section 208 of the Act.

123. In addition, we reject the argument that Section 9 requires a rule making other than the instant proceeding to add services to the Regulatory Fee Schedule. Nor do we believe that the fee schedule's provision that we assess fees for FY 1994 based upon PSLs amounts to a congressional directive that we limit our assessment of fees to interstate service providers capable of calculating their fees by a PSL count. 47 U.S.C. § 159(g). Section 9's legislative history establishes that we "are permitted through a rule making, to make changes to the fee schedule, including adding, deleting, or reclassifying services when the Commission determines that such changes are necessary to ensure such fees are reasonably related to the benefits provided to the payor of the fee by the Commission's activities."³⁴

Thus, our inclusion in the Regulatory Fee Schedule of resellers and other

³² Parties opposed to adding resellers to the Regulatory Fee Schedule include America's Carriers Telecommunications Association (ACTA), Airtouch, Avis Rent A Car (AVIS), Competitive Telecommunications Association (Comptel), GTE Service Corporation (GTE), Hertz Technologies, Inc., LDDS Communications, Inc., and the Telecommunications Resellers Association (TRA). The American Public Communication Counsel (APCC), a trade association consisting, in part, of pay telephone operators, while not opposing inclusion of independent pay phone (IPP) operators in the fee schedule, argues that the fee for OPPs must be reasonable, fairly allocated fee and imposed on all payphones, including payphones operated by the local exchange carriers (LECs).

³³ See *Resale and Shared Use of Common Carrier Services*, 60 FCC Rcd 2d 588, 600 (1977) (In allowing resellers to obtain lines from facilities based carriers, we declared that "[resale carriers] * * *, whether they be brokers or value added carriers * * *, are equally subject to the requirements of Title II of the Communications Act."); see also *American Tel. and Tel. Co. v. F.C.C.*, 978 F.2d 727, 735 (D.C. Circuit 1992) (finding that resellers and other nondominant carriers must file tariffs and offer their services pursuant to just, reasonable and nondiscriminatory rates and practices pursuant to Sections 201 and 202 of the Act.) Resellers currently are subject to filing fees pursuant to Section 8 of the Communications Act.

³⁴ Conference Report H. Rept. No. 213, 103d Cong., 1st Sess. 499 (1993).

carriers using the interstate network is fully consistent with Section 9's provisions.

124. Many common carriers, including inter-exchange carriers, local exchange carriers, resellers, CAPs, and pay telephone operators filed comments addressing our proposal to revise our methodology for assessing fees based on customers units or, in the alternative, on MOUs. In addition, several commenters responded to our invitation to propose a method for assessing regulatory fees on common carriers by urging that we assess the fee based upon the gross revenues of the subject carriers.

125. In describing our proposed methodology, we stated that fees would be assessed based upon the number of customer units. We defined customer units for LECs and pre-selected IXC as their total number of presubscribed lines, as defined by Section 69.116 of the rules. 47 CFR 69.116. For any other switched services, such as MTS, WATS, 800, 900 and operator service not billed to the number from which the call is placed, the number of units would equal the number of billing accounts less those already associated with those presubscribed lines reported by the carrier. For non-switched service providers, including service provided by CAPs, special access, and private (alternative access) line providers, the number of customer units would be based on the total capacity provided to customers measured as voice equivalent lines. For this purpose, 4 KHz or 64 Kbps equivalents would equate to one voice equivalent line. We proposed to assess the fee for pay phone operators by their number of units based upon the number of pay telephones used for pay telephone compensation.

126. The *Notice's* alternative fee structure based fee on a carrier's number of MOUs of interstate service in calendar year 1994. For access service provided by local exchange carriers, interstate minutes would equal the number of originating and terminating access minutes. For interstate service subject to access charges, the number of minutes would equal the number of originating and terminating access minutes. For other interstate services billed based on timed usage, the number of minutes would equal the number of billed minutes. For interstate services not billed on the basis of timed usage, minutes would be estimated as the billed revenue in dollars times ten.

127. Several commenters support our proposed assessment of carrier fees based upon customer units.³⁵ These

parties contend that the customer unit methodology parallels the existing fee structure, under which LECs have planned and budgeted for their payments of the fees, and that a count of presubscribed access lines represents both an equitable measure of a carrier's relative market presence and a relatively stable measure. Also, they favor the proposal because its methodology forms the basis for calculation of Universal Service Fund requirements, familiar to the carriers, and because its calculations are simple and straightforward.

128. Other parties disagree that the customer unit approach is the methodology best suited to assessing regulatory fees.³⁶ These parties claim that allocation mechanisms based on PSLs do not accurately reflect the various interexchange carriers' shares of switched services. According to AT&T, our FY 1994 PSL methodology failed to assess fees upon inter-exchange carrier's in a nondiscriminatory manner because AT&T's customers average significantly less usage and per line revenue than customers of other IXCs and, therefore, discourages its competitors from seeking out and serving low volume users. Further, several carriers state that our proposed equivalency ratios for carriers that cannot calculate their fees by PSLs do not accurately reflect the participation of these carriers in the market.

129. NYNEX and America's Carriers Telecommunications Association (ACTA) support assessing the fee for carriers based on MOUs, as described in the *Notice's* alternative methodology. NYNEX asserts that the MOU approach better reflects the relative size of each carrier's customer base and its regulatory benefits than do customer units and, thus, would ensure that every carrier pays an equitable share of regulatory costs. Further, NYNEX contends that MOU data is easy to administer and verify and avoids unnecessary reliance on assumptions, calculations and projections. ACTA favors adoption of the MOU approach if resellers are subjected to the fee because, in its view, assessment of the fee by MOUs has the advantages of

Telecommunications Corporation (MCI) and Sprint Corporation (Sprint). In addition, Allnet Communications Services, Inc. (Allnet), Avis, Hertz and TRA support assessing the fee by customer units if resellers are added to the schedule.

³⁶ Parties opposing assessing the fee by customer units include AT&T, LDDS, MFS, SBC and US West. Comptel opposes levying the fee on operator service providers (OSPs) based upon "billing accounts" because, in its view, the methodology proposed in the *Notice* would result in a fee for OSPs higher than the fee imposed on carriers for which fees are based upon the number of presubscribed lines.

lower administrative costs and resource burdens since calculation of the fee does not depend on a line count by the LECs or NECA.

130. Several carriers oppose reliance on MOUs due to the large fluctuations in minutes of use which may lead to anomalies that distort the measure of a company's market presence and risk imposing an unfair burden of fees or a windfall in reduced fees for reasons other than a carrier's actual market size.³⁷ Opponents points out that many LEC services, such as Special Access facilities sold to inter-exchange carriers, are not measured on a minutes of use basis. In this connection, the parties contend that a methodology based on MOUs would be difficult to administer because it relies on complex assumptions in order to calculate the fees for services that are not billed on a time usage basis. Several parties contend that our proposal to rely upon network usage assumptions in assessing fees for competitive access providers will result in excessive and unjustified fees from these carriers.

131. In response to our invitation to propose efficient and equitable methodologies for assessing the carrier fee several commenters support adoption of a methodology based upon a carrier's gross interstate revenues.³⁸ These parties contend that fees based on a multiplier of each carrier's total gross interstate revenues would result in a fair allocation of costs in as competitively neutral a manner as possible. Further, they argue a gross revenue assessment methodology permits dispensing with assumptions or projections, necessary to the implementation of the customer unit and MOU methodologies. Moreover, they state that gross interstate revenues are widely reported and are readily verifiable by reference to corporate tax filings.

132. Several parties support a revenue-based fee calculation because it would permit the assessment of fees on the basis of data that could be compiled by carriers in a manner similar to our methodology for funding the Telecommunications Relay Service (TRS). NECA states that the TRS model would ensure that the carriers subject to the fee would be equitably charged through use of an interstate revenue

³⁷ Parties opposed to assessing the fee based upon MOUs include Alltel, AT&T, Bell Atlantic, LDDS, MCI, MFS, National Exchange Carriers Association (NECA), Pacific Bell and Nevada Bell, and SBC.

³⁸ Parties that support reliance on a methodology to assess the fee based on gross interstate revenues include Alltel, Ameritech, AT&T, Cablevision Lightpath, GTE Service Corporation (GTE), MFS, NECA, National Telephone Cooperative Association (NTCA), SBC, Time Warner, U S West, and Teleport Communications Group Inc. (Teleport).

³⁵ Commenters supporting assessing the fee by customer units include Bell Atlantic, MCI

basis, easily administered and based on externally verifiable data. Further, according to NECA, the TRS mechanism would permit the allocation of fees to special access services without administrative difficulty because exchange carriers could base their fees on submitted TRS data. Resellers supporting assessment of the fee by gross revenues urge that we permit carriers to reduce their fee payments by the amount that they pay to other carriers for facilities and services in order to avoid double payment of the fee.

133. MCI and Sprint oppose assessing fees based on gross interstate revenues. MCI contends that the revenue method is flawed because it is the byproduct of a carrier's minutes of use and, therefore, may fluctuate greatly and be unrepresentative of a carrier's market presence. For its part, Sprint contends that the term "gross revenues" is open to several definitions and that revenue figures are more subject to revision than presubscribed line counts that could necessitate delay, or shortfalls, in the collection of fees.

134. After considering the arguments of the many commenters in this proceeding, we have decided to adopt a gross revenues methodology for assessing carrier fees. A revenue based allocation will effectively spread the cost recovery burden of the fee requirement in proportion to the benefits realized by those carriers subject to our jurisdiction. We find that assessing fees by interstate gross revenues is reasonably related to the benefits of the regulation that these carriers receive. Properly administered, a gross revenues methodology will ease administrative burdens of carriers in calculating fee payments, provide reliable and verifiable information upon which to calculate the fee and equitably distribute the fee requirement in a competitively neutral manner. Interstate revenues are widely reported and more easily verifiable than customer units or MOUs and, therefore, avoid the need for burdensome reporting requirements. A revenue based methodology avoids the calculation problems inherent in both the customer unit and minutes of use alternative and permits the assessment of fees without any need to rely upon assumptions and projections.

135. We will require non-mobile common carriers, including resellers, that provide interstate telecommunications services to calculate their fee payments based upon their proportionate share of gross interstate revenues using the methodology that we have adopted for carriers to calculate their contributions

to the TRS fund.³⁹ Interstate revenue data is already reported to NECA due to its role as administrator of the TRS fund.⁴⁰ In order to avoid imposing a double payment burden on resellers, we will permit interexchange carriers to subtract from their reported gross interstate revenues any payments made to underlying carriers for telecommunications facilities or services. This would include payments for interstate access services. It should be emphasized that the assessment and collection of regulatory fees is a Commission activity, totally separate and apart from TRS funding. However, we intend that carriers subject to payment of regulatory fees calculate and file their fees consistent with the TRS methodology, as modified by Public Notice to be published in the **Federal Register**. The FY 1995 revenue requirement is \$46,310,880, and the total TRS revenue is estimated to be \$52,626,000,000, resulting in a fee of 0.00088 per TRS revenue dollar.⁴¹ See Guidelines, Appendix H at ¶¶42-44.

136. On October 7, 1994, the Common Carrier Bureau, on its own motion, issued a waiver permitting price cap regulated common carriers to treat the initial assessment of regulatory fees and any subsequent changes in the level of the fees paid, either as a result of Commission modification of the fee schedule, or due to increases or decreases in the number of presubscribed or access lines on which the fees must be paid, as an exogenous cost by making appropriate adjustments to their price cap indexes. *Price Cap Treatment of Regulatory Fees Imposed by Section 9 of the Act*, 9 FCC Rcd 6060 (Com. Car. Bur., 1994), *Erratum*, 9 FCC Rcd 6487 (Com. Car. Bur., 1994). MCI Telecommunications Inc. (MCI) filed a petition for reconsideration of that decision on November 7, 1994. In that petition, as well as in comments in this proceeding, MCI requests that the Commission reverse the Bureau

regulatory fees order and require LECs to file for a waiver of the exogenous costs rules. In support of its petition, MCI alleges that the Common Carrier Bureau failed to follow Commission procedures requiring the LECs to file for waivers of the exogenous cost rules, shifted the burden of proof from the LECs, lacked a record on which to make a decision, and prejudged the petitions for reconsideration that were filed on the original regulatory fees order. Several LECs opposed the MCI petition.

137. MCI has not presented any evidence that would undermine the Bureau's conclusion that the Section 9 regulatory fees meet our criteria for exogenous cost treatment. As explained in the Bureau order, regulatory fees imposed pursuant to Section 9 of the Act are a legislatively-imposed charge on telecommunications common carriers, the imposition of which is beyond the control of the carrier. Moreover, MCI has not shown that the grant of the waiver *sua sponte* violates any Commission rules or procedures. In fact, Section 1.3 of the Commission's rules specifically authorizes grant of waivers *sua sponte*. Accordingly, MCI's petition seeking reconsideration of the Bureau's order is denied. In addition, we take this opportunity to clarify that carriers subject to price caps may file tariffs reflecting the effects of Commission-mandated changes in the regulatory fee schedule after the annual tariff filing is due. See *LEC Price Cap Performance Review* at para. 317.

B. Procedures for Payment of Regulatory Fees

138. Generally, as proposed in the *Notice*, we are retaining the procedures established in our *FY 94 Order* for the payment of regulatory fees. Consistent with Section 9(f) of the Act, we are again providing for three categories of fee payments, based upon the category of service for which the fee payment is due and the amount of the fee to be paid. 47 U.S.C. § 159(f). The fee categories are (1) "standard" fees, (2) "large" fees, and (3) "small" fees.

1. Annual Payments of Standard Fees

139. Standard fees are those regulatory fees that are payable in full on an annual basis. Payers of standard fees are not required to make advance payments for their full license term. All standard fees are payable in full on the date we establish for payment of fees in their regulatory fee category. The payment dates for each regulatory fee category will be announced by public notice in the **Federal Register** following the termination of this proceeding.

³⁹ See *Telecommunications Relay Services*, 8 FCC Rcd 5300 (1993), 58 FR 39671 (1993).

⁴⁰ Pursuant to our *FY 1994 Order*, NECA acted as our payment agent for approximately 800 exchange carriers who elected to make their fee payments through NECA. We are instructing the Managing Director to determine what, if any, assistance NECA may provide in the collection of regulatory fees for FY 1995.

⁴¹ For FY 1995, we are limiting the use of gross revenues to assess fees on providers of communications services, including resellers, using the interstate network. It is our intention to monitor and analyze the reliance on gross revenues, and if our experience shows that this methodology results in an equitable and readily administered fee structure, we will consider reliance on gross revenues as the mechanism for determining fees for other carriers, including mobile carriers, for FY 1996 and thereafter.

2. Installment Payments for Large Fees

140. Our *Notice* proposed that regulatees in any category of service with a payment due of \$12,000 or greater would be eligible to pay their fees in two installments. However, as a practical matter since the time for collecting fees will be extremely limited, regulatees subject to a fee will be required to submit their fees on a single date. In most instances, the requirement to submit a single payment should work no hardship since regulatees will have had no less than ninety days notice of the amount of their fee requirement and the use of these funds throughout substantially the entire fiscal year.⁴²

3. Advance Payments of Small Fees

141. As proposed in the *Notice*, we will again treat regulatory fee payments by certain radio licensees as small fees subject to advance payments. Advance payments will be required from licensees of those services that we decided would be subject to advance payments in our *FY 1994 Order*.⁴³ Payers of advance fees will submit the entire fee due for the full term of their licenses when filing their initial, reinstatement or renewal application. Those subject to the fee must pay the amount due for the current fiscal year multiplied by the number of years in the term of their requested license. The payor would not be subject to the payment of a new fee until filing an application for renewal or reinstatement of the license. Thus, payment for the full license term would be made based upon the regulatory fee applicable at the time the application is filed. Refunds will not be made in cases where the fee for a service is lower for FY 1995 than the fee paid under the FY 1994 fee schedule. The Commission will announce by public notice in the **Federal Register** the effective date for the payment of small fees pursuant to the FY 1995 fee schedule.

4. Timing of Standard Fee Calculations and Payment Dates

142. As noted, the date for payment of standard fees will be published in the **Federal Register**. For licensees, permittees and holders of other authorizations in the Common Carrier, Mass Media, and Cable Services, whose

fees are not based on a subscriber, unit or circuit count, fees should be submitted for any authorization held as of October 1, 1994. As in our *FY 1994 Order*, we are establishing October 1 as the date to be used for calculating standard fees since it is the first day of the fiscal year and, therefore, current licensees subject to the fees would have benefited from our regulatory activities from the beginning of the period covered by the payment.

143. In the case of regulatees whose fees are based upon a subscriber, unit or circuit count, the number of a regulatee's, subscribers, licenses or circuits on December 31, 1994, will be used to calculate the fee payment. We have selected the last date of the calendar year because many of these entities file reports with us as of that date. Others calculate their subscriber numbers as of that date for internal purposes. Therefore, calculation of the regulatory fee as of that date will facilitate both an entity's computation of its fee payment and our verification that the correct fee payment has been submitted.⁴⁴

C. Ordering Clauses

144. Accordingly, it is ordered that the rule changes as specified below are adopted.

145. It is further ordered that the rule changes made herein will become effective September 18, 1995. This action is taken pursuant to Sections 4(i), 4(j), 9, and 303(r) of the Communications Act of 1934 as amended, 47 U.S.C. §§ 154(i) and 154(j) and 159 and 303(r).

146. It is further ordered that the petition for reconsideration filed by MCI Telecommunications Inc. is denied.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Communication common carriers, Radio, Telecommunications, Television.

Federal Communications Commission.

William F. Caton,
Acting Secretary.

Appendix A—Regulatory Flexibility Analysis

Need and Purpose for This Action

This *Report and Order* adopts a Schedule of Regulatory Fees in order to collect \$116,400,000, the amount that Congress has

required the Commission to recover through regulatory fees for FY 1995. The *Report and Order* seeks to ease the burden of compliance with the fee requirement by increasing estimated payment units, where appropriate, and by revising methodologies for assessing fees to better assure that fee payments are reasonably related to the benefits that regulatees derive from the Commission's regulation. The Commission has also reduced the threshold payment amounts for eligibility for installment payments.

Summary of Comments.

America's Carriers Telecommunications Association (ACTA) argues that proposals set forth in the *Notice of Proposed Rulemaking* would adversely impact on resale carriers, contending that the proposed fee would double the fee for interstate exchange carriers, including resellers and other carriers newly subject to the fee. Further, ACTA contends that resale carriers would be subject to a "double fee payment" because resellers would pay the fee directly and also be charged the fee by facilities-based carriers from whom they obtain facilities and services.

Proposals Adopted

In response to comments by numerous parties, the Commission rejected the methodologies for assessing fees for interstate carriers set forth in the *Notice of Proposed Rulemaking*. Instead, the Commission has adopted a methodology for assessing fees based upon a carrier's gross interstate communications revenues, similar to the method that the Commission adopted for calculating carrier contributions to the fund for the Telecommunications Relay Services (TRS). The Commission found that the TRS methodology provides an efficient and equitable mechanism for assessing fees. Carriers subject to the fee would not be unduly burdened because they already report the information needed to calculate the fee to the National Exchange Carriers Association (NECA), the administrator of the TRS fund. Moreover, the Commission has eliminated the "double fee payment" of concern to ACTA by permitting resale carriers to subtract from their reported gross revenues any payments made for facilities and services to facilities-based carriers.

Appendix B—FY 1995 Schedule of Regulatory Fees

Fee category	Annual regulatory fee
Wireless Radio	
Land Mobile (per license) 220–222 Mhz, above 470 Mhz, Base Station and SMRS) (47 CFR Part 90)	6
Microwave (per license) (47 CFR Part 94)	6
Interactive Video Data Service (per license) (47 CFR Part 95)	6
Marine (Ship) (per station) (47 CFR Part 80)	3

⁴² Section 8(b)(4)(B) provides for notification to Congress ninety days before permitted amendments to the Schedule of Regulatory Fees become effective. 47 U.S.C. § 159(b)(4)(B).

⁴³ Advance payments are required from applicants for new, renewal and reinstatement licenses in services which pay annual fees of \$6 or less and are listed in the Wireless Radio category of the Regulatory Fee Schedule. See Appendix B.

⁴⁴ Cable systems should calculate their FY 1995 regulatory fees using the subscriber data to be submitted to the Commission in their 1994 Annual Report of Cable Television Systems (FCC Form 325). Accordingly, their number of subscribers will not necessarily be based on December 31, 1994, but rather on "a typical day in the last full week" of December 1994. (See FCC Form 325 Instructions).

Fee category	Annual regulatory fee	Fee category	Annual regulatory fee
Marine (Coast) (per license) (47 CFR Part 87)	3	Local Exchange Carrier (per revenue dollar) .....	.00088
General Mobile Radio Service (per license) (47 CFR Part 95)	3	Competitive Access Provider (per revenue dollar) .....	.00088
Land Mobile (per license) (all stations not covered above)	3	Operator Service Provider/Pay Telephone Operators (per revenue dollar) .....	.00088
Aviation (Aircraft) (per station) (47 CFR Part 87)	3	Resellers (per revenue dollar) .....	.00088
Aviation (Ground) (per license) (47 CFR Part 87)	3	Other Interstate Providers (per revenue dollar) .....	.00088
Amateur Vanity Call Signs (per call sign) (47 CFR Part 97)	3	Domestic Public Fixed (per call sign) (47 CFR Part 21)	140
Cellular (per unit) (47 CFR Part 22) .....	.15	International	
Public Mobile Radio (per unit) (47 CFR Part 22) .....	.15	Earth Stations (47 CFR Part 25):	
Public Mobile One-Way Paging (per unit) (47 CFR Part 22) .....	.02	VSATs/Equivalent C-Band/Mobile Earth Stations (per authorization or registration)	330
Mass Media		Transmit/Receive and Transmit Only Earth Stations (per authorization or registration)	330
AM Radio (47 CFR Part 73):		Space Stations (per operational station in geosynchronous orbit) (47 CFR Part 25)	75,000
Class A	1,120	International Circuits (per active 64KB circuit)	4
Class B	620	International Public Fixed (per call sign) (47 CFR Part 23)	200
Class C	250	International (HF) Broadcast (47 CFR Part 73)	250
Class D	310	Appendix C—How Full Time Equivalents (FTEs) and Fee Category Cost Allocations Were Calculated	
Construction Permits	125	(1) FTE allocations represent how the Commission anticipates FTEs will actually be spent during the course of the fiscal year. ⁴⁵ Many factors influence how FTEs are actually employed during the year, including varying rates of attribution, speed of hiring new and replacement staff, the use of part time or temporary employees in lieu of permanent staff, changing Commission priorities, and reorganizations and other activities requiring a reallocation or reassignment of staff. The FTE allocations used in the fee development process were updated as of December 1994 to reflect a number of personnel reassignments made incident to recent reorganizations within the Commission. The impact on the fee development process by the reorganizations is negligible since they have not significantly changed the type of work the reassigned staff is performing. ⁴⁶	
FM Radio (47 CFR Part 73):		⁴⁵ It should be noted that FTE allocations are year-end estimates and thus represent projected work time of existing staff as well as new and replacement staff yet to be hired. The Office of Management and Budget (OMB) has established a ceiling of 2,271 FTEs for the Commission for FY 1995.	
Classes C, C1, C2, B	1,120	⁴⁶ The Commission has chosen to retain, for fee determination purposes, the fee classifications (i.e., Private Radio, Common Carrier, Cable Services and Mass Media) contained in 47 U.S.C. Section 159. Although we believe that we have authority to change the classifications to align them more	
Classes A, B1, C3	745		
Construction Permits	620		
TV (47 CFR Part 73) VHF Commercial:			
Markets 1–10	22,420		
Markets 11–25	19,925		
Markets 26–50	14,950		
Markets 51–100	9,975		
Remaining Markets	6,225		
Construction Permits	4,975		
TV (47 CFR Part 73) UHF Commercial:			
Markets 1–10	17,925		
Markets 11–25	15,950		
Markets 26–50	11,950		
Markets 51–100	7,975		
Remaining Markets	4,975		
Construction Permits	3,975		
Satellite Television Stations (All Markets)	620		
Construction Permits—Satellite Television Stations	225		
Low Power TV, TV/FM Translators & Boosters (47 CFR Part 74)	170		
Broadcast Auxiliary (47 CFR Part 74)	30		
Multipoint Distribution Service (per call sign) (47 CFR Part 21)	140		
Cable Television			
Cable Antenna Relay Service (47 CFR Part 78)	290		
Cable Television Systems (per subscriber) (47 CFR Part 76) .....	.49		
Common Carrier			
Inter-Exchange Carrier (per revenue dollar) .....	.00088		

(2) Only the Commission's enforcement, policy and rulemaking, international, and user information activities are covered by the regulatory fee program.⁴⁷ Of the Commission's total ceiling of 2,271 FTEs, 846 FTEs are directly assigned to the agency's primary operating bureaus to perform enforcement, policy and rulemaking international, and user information activities. An additional 560 FTEs have been identified by agency officials as supporting these feeable activities.⁴⁸ The result of our FTE allocations are as follows:

Fee Category	Direct FTEs	Support FTEs	Total FTEs
Mass Media	152	101	253
Common Carrier	415	274	689
Private Radio	62	41	103
Cable Services ..	217	144	361
Total	846	704	1406

(3) The total of the costs to be offset by regulatory fees in FY 1995 is \$116,400,000. Each fee category (e.g., cable services) was allocated its share of regulatory fee activity costs based upon the ratio of its FTEs to the total number of FTEs allocated to all regulatory fee categories. The results of this allocation of costs are shown below:

Fee Category	FTEs	Regulatory Fee Percentage ⁴⁹	Cost allocation (in millions)
Mass Media	253	18.0	\$21.0
Common Carrier	689	49.0	57.0
Private Radio	103	7.3	8.5
Cable Services ..	361	25.7	29.9
Total	1406	100.00	116.4

⁴⁹ These percentages represent the FTEs associated with regulatory fees only. As a percent of all FCC FTEs, the regulatory fee FTEs make up the following percentages: Mass Media (11.1%), Common Carrier (30.3%), Private Radio (4.5%) and Cable Services (15.9%).

Appendix D—Development of Private Radio Services Regulatory Fees

Activity Cost Allocation: The Private Radio Activity was allocated 7.3% (103 FTEs) of the total 1,406 FTEs associated with all

closely with our current organizational structure, we wanted to prevent any adverse impacts to the schedule brought about solely by such a classification change.

⁴⁷ The regulatory fee program encompasses a total of 1,406 FTEs or 61.9% of the agency's total FTEs. The agency's Authorization of Service, Legal Services and Executive Direction Activities cover an additional 865 FTEs. See Section III (A) for a discussion of how FTEs were estimated. Authorization of Service regulatory costs are recovered pursuant to Section 8 of the Communications Act.

⁴⁸ These support activities include a proportionate share of field operations, engineering and technology and certain general program support staff FTEs.

regulatory fee activities.⁵⁰ The same percentage (7.3%) was applied to total regulatory fee activity costs (\$116.4 million times 7.3%=\$8.5 million).

Revision of Payment Unit Volumes: Payment volume estimates (units of payment) were updated for FY 1995. See Table #1 below.

Projected Revenue Using FY 1994 Fee Amounts & Revised FY 1995 Payment Volumes: Projected revenue for FY 1995 for Private Radio Activities using FY 1994 fee amounts was calculated by multiplying the FY 1995 payment volume in each fee

category by the FY 1994 fee amounts. The resulting revenues in these categories totaled approximately \$21.7 million. This is the amount of revenue we would collect in this category if we did not change any fee amounts from FY 1994.

Pro-Rata Application of FY 1995 Revenue Requirement: Because projected revenues using FY 1994 fee amounts would have resulted in excess collections of \$13.2 million (\$21.7 million minus \$8.5 million), Private Radio fees for FY 1995 needed to be multiplied by 39% (\$8.5 million divided by \$21.7 million=39%)⁵¹ so that revenue would

better approximate the \$8.5 million cost allocation for this Activity. Table #1 below shows revenue requirements that were computed for each fee category within the Private Radio Activity.

Calculation of Fee: We divided each of the individual revenue requirements shown in the chart below by the applicable license term and then divided that result by the FY 1995 projected payment volume to determine the new fee requirement for each fee category within the Private Radio Activity.

TABLE #1

Category	Revenue requirement	Divided by license term (Yrs)	Divided by payment volume	Equals new fee ⁵²
Land Mobile (220–222 MHz, 470 MHz and above, unless otherwise noted)	\$396,390	5	13,213	6
Microwave	193,200	5	6,440	6
IVDS	43,500	5	1,450	6
Marine (Ship)	5,070,420	10	169,014	3
GMRS	41,775	5	2,785	3
Land Mobile (Other)	1,396,275	5	93,085	3
Aviation (Aircraft)	1,130,430	10	37,681	3
Marine (Coast)	41,955	5	2,797	3
Aviation (Ground)	39,900	5	2,660	3
Amateur Vanity Call Signs	840,000	10	28,000	3
Total	8,500,000			

⁵² Fees are rounded to the nearest dollar. On subsequent tables the fees have been rounded pursuant to the requirements of 47 U.S.C. § 159.

Appendix E—Development of Mass Media Services Regulatory Fees

Activity Cost Allocation: The Mass Media Activity was allocated 18.0% (253 FTEs) of the total 1,406 FTEs associated with all regulatory fee activities.⁵³ The same percentage (18.0%) was applied to total regulatory fee activity costs (\$116.4 million times 18.0% = \$21.0 million).

Revision of Payment Unit Volumes: Payment volume estimates (units of payment) were updated for FY 1995. See Table #2 below.

Projected Revenue Using FY 1994 Fee Amounts & Revised FY 1995 Payment

Volumes: Projected revenue for FY 1995 for Mass Media Activities using FY 1994 fee amounts was calculated by multiplying the FY 1995 payment volume in each fee category by the FY 1994 fee amounts. The resulting total revenue in these categories totaled approximately \$16.9 million. This is the amount of revenue we would collect in this category if we did not change any fee amounts from FY 1994.

Pro-Rata Application of FY 1995 Revenue Requirement: Because projected revenues using FY 1994 fee amounts would have resulted in collections of \$4.1 million less than required (\$21.0 million minus \$16.9

million), Mass Media fees for FY 1995 needed to be adjusted upward by 24.6% (\$4.1 million divided by \$16.9 million=24.6%)⁵⁴ so that revenue would better approximate the \$21.0 million cost allocation for this Activity. Table #2 below shows revenue requirements that were computed for each fee category within the Mass Media Activity.

Calculation of Fee: We divided each of the individual revenue requirements shown in the chart below by the FY 1995 projected payment volume to determine the new fee requirement for each fee category within the Mass Media Activity.

TABLE #2

Category	Revenue requirement	Divided by payment volume	Equals new fee
AM Radio (Class A)	\$86,240	77	1,120
AM Radio (Class B)	1,060,820	1,711	620
AM Radio (Class C)	258,250	1,033	250
AM Radio (Class D)	657,200	2,120	310
AM Radio (Construction Permit)	9,875	79	125
FM Radio (Classes C, C1, C2, B)	2,778,720	2,481	1,125
FM Radio (Classes A, B1, C3)	1,926,570	2,586	745
FM Radio (Construction Permit)	435,860	703	620
VHF TV (Mkt 1–10)	964,060	43	22,420
VHF TV (Mkt 11–25)	1,135,725	57	19,925
VHF TV (Mkt 26–50)	1,166,100	78	14,950
VHF TV (Mkt 51–100)	1,007,475	101	9,975
VHF TV (Remaining Mkts)	1,045,800	168	6,225
VHF TV (Construction Permit)	54,725	11	4,975

⁵⁰ Represents 4.5% of all FCC FTEs.

⁵¹ Actual percentage is 39.2368026%.

⁵³ Represents 11.1% of all FCC FTEs.

⁵⁴ Actual percentage is 24.5691982%.

TABLE #2—Continued

Category	Revenue requirement	Divided by payment volume	Equals new fee
UHF TV (Mkt 1–10)	1,541,550	86	17,925
UHF TV (Mkt 11–25)	1,164,350	73	15,950
UHF TV (Mkt 26–50)	1,087,450	91	11,950
UHF TV (Mkt 51–100)	1,084,600	136	7,975
UHF TV (Remaining Mkts)	731,325	147	4,975
UHF TV (Construction Permit)	576,375	145	3,975
Auxiliaries	900,000	30,000	30
LPTV/FM & TV Translators & Boosters	1,210,400	7,120	170
Int'l Short Wave	4,750	19	250
TV Satellite (Any Mkt) ⁵⁵	68,200	110	620
TV Satellite (Construction Permit) ⁵⁶	1,125	5	225
Multipoint Distribution Service ⁵⁷			140
Total	21,000,000		

⁵⁵ The FY 1994 legislated fee schedule did not distinguish between full service television stations and satellite television stations. Although the Congress did not pass final legislation to assess satellite stations a reduced fee, the House of Representatives did pass legislation establishing a \$500 fee for satellite stations in FY 1994. While not legally binding, we used the \$500 fee proposed by the House as a "simulated" FY 1994 fee in order to calculate a FY 1995 fee for satellite stations.

⁵⁶ Unlike other fees proposed for FY 1995, the TV satellite station construction permit fee of \$225 was determined by taking the average fee for UHF & VHF television stations and relating it to the average UHF/VHF construction permit fee. Using these relationships for satellite television stations results in a computed fee of \$225 (rounded to the nearest \$5) for satellite television station construction permits.

⁵⁷ The fee for single-channel and multi-channel Multipoint Distribution Service (MDS & MMDS) was developed as part of the Domestic Public Fixed Radio Service, a common carrier service. The payment units are included in the total volume for the Domestic Public Fixed Radio Service included in Appendix C. Regulation of the MDS and MMDS services has been transferred to the Mass Media Bureau.

Appendix F—Development of Cable Services Regulatory Fees

Activity Cost Allocation: The Cable Services Activity was allocated 25.7% (361 FTEs) of the total 1,406 FTEs associated with all regulatory fee activities.⁵⁸ The same percentage (25.7%) was applied to total regulatory fee activity costs (\$116.4 million times 25.7%=\$29.9 million).

Revision of Payment Unit Volumes: Payment volume estimates (units of payment) were updated for FY 1995. See Table #3 below.

Projected Revenue Using FY 1994 Fee Amounts & Revised FY 1995 Payment

Volumes: Projected revenue for FY 1995 for Cable Services Activities using FY 1994 fee amounts was calculated by multiplying the FY 1995 payment volume in each fee category by the FY 1994 fee amounts. The resulting total revenue in these categories totaled approximately \$22.7 million. This is the amount of revenue we would collect in this category if we did not change any fee amounts from FY 1994.

Pro-Rata Application of FY 1995 Revenue Requirement: Because projected revenues using FY 1994 fee amounts would have resulted in collections of \$7.2 million less than required (\$22.7 million minus \$29.9

million), proposed Cable Services fees for FY 1995 needed to be adjusted upward by 32.0% (\$7.2 million divided by \$22.7 million = 32.0%)⁵⁹ so that revenue would better approximate the \$29.9 million cost allocation for this Activity. Table #3 below shows revenue requirements that were computed for each fee category within the Cable Services Activity.

Calculation of Fee: We divided each of the individual revenue requirements shown in the chart below by the FY 1995 projected payment volume to determine the new fee requirement for each fee category within the Cable Services Activity.

TABLE #3

Category	Revenue requirement	Divided by payment volume	Equals new fee
CARS	\$603,780	2,082	290
Cable Television Systems	29,400,000	60,000,000	.49
Total	29,900,000		

Appendix G—Development of Common Carrier Services Regulatory Fees

Activity Cost Allocation: The Common Carrier Activity was allocated 49.0% (689 FTEs) of the total 1,406 FTEs associated with all regulatory fee activities.⁶⁰ The same percentage (49.0%) was applied to total regulatory fee activity costs (\$116.4 million times 49.0% = \$57.0 million).

Revision of Payment Unit Volumes: Payment volume estimates (units of payment) were updated for FY 1995. See Table #4 below.

Projected Revenue Using FY 1994 Fee Amounts & Revised FY 1995 Payment Volumes: Projected revenue for FY 1995 for Common Carrier Activities using FY 1994 fee amounts was calculated by multiplying the FY 1995 payment volume in each fee category by the FY 1994 fee amounts. The resulting total revenue in these categories totaled approximately \$28.4 million. This is the amount of revenue we would collect in this category if we did not change any fee amounts from FY 1994.

Pro-Rata Application of FY 1995 Revenue Requirement: Because projected revenues

using FY 1994 fee amounts would have resulted in collections of \$28.6 million less than required (\$57.0 million minus \$28.4 million), Common Carrier fees for FY 1995 needed to be adjusted upward by 100.5% (\$28.6 million divided by \$28.4 million = 100.5%)⁶¹ so that revenue would better approximate the \$57.0 million cost allocation for this Activity. Table #4 below shows revenue requirements that were computed for each fee category within the Common Carrier Activity.

Calculation of Fee: We divided each of the individual revenue requirements shown in

⁵⁸ Represents 15.9% of all FCC FTEs.

⁵⁹ Actual percentage is 31.9619879%.

⁶⁰ Represents 30.3% of all FCC FTEs.

⁶¹ Actual percentage is 100.4512615%.

the chart below by the FY 1995 projected payment volume to determine the new fee

requirement for each fee category within the Common Carrier Activity:

Table #4

Category	Revenue requirement	Divided by payment volume	Equals new fee
Domestic Public Fixed Radio	\$1,960,000	14,000	140
Cellular/Public Mobile Radio	3,510,000	23,400,000	.15
Public Mobile One-way Paging	392,000	19,600,000	.02
International Public Fixed Radio	4,000	20	200
Earth Stations (VSATs/Mob. Eq./Tr. & T/R)	1,114,740	3,378	330
Space Stations	2,925,000	39	75,000
IXC, LEC, CAPS, Other Providers	46,310,880	52,626,000,000	.00088
International Circuits	500,000	125,000	4
Total	57,000,000		

Appendix H—FY 1995 Guidelines for Regulatory Fee Categories

1. The guidelines below provide an explanation of regulatory fee categories established by the Schedule of Regulatory Fees in Section 9(g) of the Communications Act, 47 U.S.C. § 159(g) as modified in the instant *Memorandum Opinion and Order*. Where regulatory fee categories need interpretations or clarification, we have relied on the legislative history of Section 9, our own experience in establishing and regulating the Schedule of Regulatory Fees for Fiscal Year (FY) 1994 and the services subject to the fee schedule, and the comments of the parties in our proceeding to adopt fees for FY 1995. The categories and amounts set out in the schedule have been modified to reflect changes in the Commission's appropriation, our costs of providing the regulatory services to be recovered by the fee program, additions and changes in the services subject to the fee requirement and the benefits derived from the Commission's regulatory activities. The schedule may be similarly modified or adjusted in future years to reflect changes in the Commission's budget and in the services regulated by the Commission. See 47 U.S.C. § 159(b) (2), (3).

1. Private Radio Services

2. The Private Radio Services are regulated by the Wireless Telecommunications Bureau. Two levels of statutory fees were established—exclusive use services and shared use services. Thus, licensees who generally receive a higher quality communication channel due to exclusive or lightly shared frequency assignments, will pay a higher fee than those who share marginal quality assignments. This dichotomy is consistent with the directive of section 9 that the regulatory fees reflect the benefits provided to the licensees. See 47 U.S.C. § 159(b)(1)(A). In addition, because of the generally small amount of the fees assessed against Private Radio Service licensees, applicants for new licenses and reinstatements and for renewal of existing licenses are required to pay a regulatory fee covering the entire license term, with only a percentage of all licensees paying a regulatory fee in any one year. Applications for modification or assignment of existing

authorizations do not require the payment of regulatory fees. The expiration date of those authorizations will reflect only the unexpired term of the underlying license rather than a new license term.

3. There have been no changes from FY 1994 in the rules for calculating and paying regulatory fees in the Private Radio Services.

a. Exclusive Use Services

4. *Land Mobile Services*: Regulatees in this category include those authorized under Part 90 of the Commission's Rules to provide limited access Wireless Radio service that allows high quality voice or digital communications between vehicles or to fixed stations to further the business activities of the licensee. These services, using the 220–222 MHz band and frequencies at 470 MHz and above, may be offered on a private carrier basis in the Specialized Mobile Radio Services (SMRS).

5. For FY 1995, Land Mobile licensees will pay a \$6 annual regulatory fee per license, payable for an entire five or ten year license term at the time of application for a new, renewal or reinstatement license.⁶² The total regulatory fee due is either \$30 for a license with a five year term or \$60 for a license with a 10 year term.

6. *Microwave Services*: Set forth in the FY 1995 fee schedule within the Wireless Radio Service category, these services include private microwave systems and private carrier systems authorized under Part 94 of the Commission's Rules to provide telecommunications services between fixed points on a high quality channel of communications. Microwave systems are often used to relay data and to control railroad, pipeline and utility equipment. For FY 1995, Microwave licensees will pay a \$6 annual regulatory fee per license, payable for an entire five year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee due is \$30 for the five year license term.

7. *Interactive Video Data Service (IVDS)*: As set forth in the FY 1995 fee schedule within the Wireless Radio Service category,

⁶² Although this fee category includes licenses with ten year terms, the estimated volume of ten year license applications in FY 1995 is less than one tenth of one percent and, therefore, is statistically insignificant.

IVDS is a two-way point-to-multi-point radio service allocated high quality channels of communications and authorized under Part 95 of the Commission's Rules. IVDS provides information, products and services, and also the capability to obtain responses from subscribers in a specific service area. IVDS is offered on a private carrier basis. For FY 1995, IVDS licensees will pay a \$6 annual regulatory fee per license, payable for an entire five year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee due is \$30 for the five year term of the license.

b. Shared Use Services

8. *Marine (Ship) Service*: This service is a shipboard radio service authorized under Part 80 of the Commission's Rules to provide telecommunications between watercraft or between watercraft and shore-based stations. Radio installations are required by domestic and international law for large passenger or cargo vessels. Radio equipment may be voluntarily installed on smaller vessels, such as recreational boats. For FY 1995, Marine (Ship) Station licensees will pay a \$3 annual regulatory fee per station, payable for an entire ten year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee due is \$30 for the ten year license term.

9. *Marine (Coast) Service*: This service, set forth in the FY 1995 Schedule of Regulatory Fees within the Wireless Radio Service category, includes land-based stations in the maritime services, authorized under Part 80 of the Commission's Rules, to provide communications services to ships and other watercraft in coastal and inland waterways. For FY 1995, licensees will pay a \$3 annual regulatory fee per call sign, payable for the entire five year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee due is \$15 per call sign for the five year license term.

10. *Private Land Mobile (Other) Services*: These services, set forth in the FY 1995 Schedule of Regulatory Fees within the Wireless Radio Service category, include Land Mobile Radio Services operating under Parts 90 and 95 of the Commission's Rules. Services in this category provide one or two way communications between vehicles, persons or to fixed stations on a shared basis

and include radiolocation services, private carrier paging services, industrial radio services and land transportation radio services. For FY 1995, licensees of services in this category will pay a \$3 annual regulatory fee per call sign, payable for an entire five year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee due is \$15 for the five year license term. There are no changes to the rules for calculating and submitting regulatory fee payments by Private Land Mobile Service licensees.

11. *Aviation (Aircraft) Service*: These services, set forth in the FY 1995 Schedule of Regulatory Fees within the Wireless Radio Service category, include stations authorized to provide communications between aircraft and from aircraft to ground stations and includes frequencies used to communicate with air traffic control facilities pursuant to Part 87 of the Commission's Rules. For FY 1995, licensees of Aviation (Aircraft) Stations will pay a \$3 annual regulatory fee per station, payable for the entire ten year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee due is \$30 per station for the ten year license term.

12. *Aviation (Ground) Service*: This service, set forth in the FY 1995 Schedule of Regulatory Fees within the Wireless Radio Service category, includes stations authorized to provide ground-based communications to aircraft for weather or landing information, or for logistical support pursuant to Part 87 of the Commission's Rules. For FY 1995, licensees of Aviation (Ground) Stations will pay a \$3 annual regulatory fee per license, payable for the entire five year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee is \$15 per call sign for the five year license term.

13. *General Mobile Radio Service (GMRS)*: These services, set forth in the FY 1995 Schedule of Regulatory Fees within the Wireless Radio Service category, include Land Mobile Radio licensees providing personal and limited business communications between vehicles or to fixed stations for short-range, two-way communications pursuant to Part 95 of the Commission's Rules. For FY 1995, GMRS licensees will pay a \$3 annual regulatory fee per license, payable for an entire five year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee due is \$15 per license for the five year license term.

c. Amateur Radio Vanity Call-Signs

14. *Amateur Vanity Call-Signs*: As set forth in the FY 1995 Schedule of Regulatory Fees within the Wireless Radio Service category, the fee covers voluntary requests for specific call-signs in the Amateur Radio Service authorized under part 97 of the Commission's Rules. For FY 1995, applicants for Amateur Vanity Call-Signs will pay a \$3 annual regulatory fee per call-sign, payable for an entire ten year license term at the time of application for a vanity call sign. The total

regulatory fee due would be \$30 per license for the ten year license term.⁶³

2. Mass Media Bureau

15. The regulatory fees for the Mass Media fee category apply to broadcast licensees and permittees. Noncommercial Educational Broadcasters are exempt from the fees.

a. Commercial AM and FM Radio

16. These categories include licensed Commercial AM (Classes A, B, C, and D) and FM (Classes A, B, B1, C, C1, C2, and C3) Radio Stations operating under Part 73 of the Commission's Rules. The regulatory fees for AM and FM Stations for FY 1995 are as follows:

AM Radio

Class A.....	\$1,120
Class B.....	620
Class C.....	250
Class D.....	310

FM Radio

Classes C, C1, C2, B.....	\$1,120
Classes A, B1, C3.....	745

b. Construction Permits—Commercial AM Radio

17. This category includes holders of permits to construct new Commercial AM Stations. For FY 1995 permittees will pay a fee \$125 for each permit held. Upon issuance of an operating license, this fee would no longer be applicable and licensees would be required to pay the applicable fee for the designated class of the station.

c. Construction Permits—Commercial FM Radio

18. This category includes holders of permits to construct new Commercial FM Stations. For FY 1995 permittees will pay a fee of \$620 for each permit held. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a regulatory fee based upon the designated class of the station. There are no changes in the rules for calculating and submitting regulatory fees by FM construction permittees.

d. Commercial Television Stations

19. This category includes licensed Commercial VHF and UHF Television Stations covered under Part 73 of the Commission's Rules, except commonly owned Television Satellite Stations, addressed separately below. The fees for each category of station are as follows:

VHF Markets 1-10.....	\$22,420
VHF Markets 11-25.....	19,925
VHF Markets 26-50.....	14,950
VHF Markets 51-100.....	9,975
VHF Remaining Markets.....	6,225
UHF Markets 1-10.....	\$17,925
UHF Markets 11-25.....	15,950
UHF Markets 26-50.....	11,950
UHF Markets 51-100.....	7,975
UHF Remaining Markets.....	4,975

⁶³ Section 9(h) exempts "amateur radio operator licenses under Part 97 of the Commission's rules (47 CFR Part 97)" from the requirement. However, Section 9(g)'s fee schedule explicitly includes "Amateur vanity call signs" as a category subject to the payment of a regulatory fee.

e. Commercial Television Satellite Stations

20. Commonly owned Television Satellite Stations in any market (authorized pursuant to Note 5 of Section 73.3555 of the Commission's Rules) that retransmit programming of the primary station are assessed a fee of \$620 annually. Only those stations designated as Television Satellite Stations in the 1994 edition of the *Television and Cable Factbook* are eligible to submit the fee applicable to Television Satellite Stations. All other television licensees are subject to the regulatory fee payment required for their class of station and market.

f. Construction Permits—Commercial VHF Television Stations

21. This category includes holders of permits to construct new Commercial VHF Television Stations. For FY 1995 VHF permittees will pay an annual regulatory fee \$4,975. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a fee based upon the designated market of the station.

g. Construction Permits—Commercial UHF Television Stations

22. This category includes holders of permits to construct new VHF Television Stations. For FY 1995 UHF Television permittees will pay an annual regulatory fee \$3,975. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a fee based upon the designated market of the station.

h. Construction Permits—Satellite Television Stations

23. The fee for UHF and VHF Television Satellite Station construction permits for FY 1995 is \$225. An individual regulatory fee payment is to be made for each Television Satellite Station construction permit held.

i. Low Power Television, FM Translator and Booster Stations, TV Translator and Booster Stations

24. This category includes Low Power UHF/VHF Television stations operating under Part 74 of the Commission's Rules with a transmitter power output limited to 0.01 kw for a UHF facility and, generally, 1 kw for a VHF facility. Low Power Television (LPTV) stations may retransmit the programs and signals of a TV Broadcast Station, originate programming, and/or operate as a subscription service. This category also includes translators and boosters operating under Part 74 which rebroadcast the signals of full service stations on a frequency different from the parent station (translators) or on the same frequency (boosters). We have amended the fee schedule to include FM Translator and Booster stations in this fee service because we believe these facilities were inadvertently omitted from the statutory fee schedule and we are unaware of any reason not to establish a fee for these services. We have also received requests for waivers of the regulatory fees from operators of community based Translators. These Translators are generally not affiliated with commercial broadcasters, they are nonprofit, non-profitable, or only marginally profitable,

serve small rural communities, and are supported financially by the residents of the communities served. We are aware of the difficulties these Translators have in paying even minimal regulatory fees, and we will address those concerns in the ruling on reconsideration of the *FY 1994 Order*. The stations in this category are secondary to full service stations in terms of frequency priority. For FY 1995, licensees in this category will pay a regulatory fee of \$170 for each license held.

j. Broadcast Auxiliary Stations

25. This category includes licensees of remote pickup stations, Aural Broadcast Auxiliary Stations, Television Broadcast Auxiliary Stations, and Low Power Auxiliary Stations, authorized under Part 74 of the Commission's Rules. Auxiliary Stations are generally associated with a particular television or radio broadcast station or cable television system. For FY 1995 licensees of Commercial Auxiliary Stations will pay a \$30 annual regulatory fee on a per call sign basis.

k. International HF Broadcast (Short Wave)

26. This category covers International Broadcast Stations licensed under Part 73 of the Commission's Rules to operate on frequencies in the 5,950 khz to 26,100 Khz range to provide service to the general public in foreign countries. The fees for International HF Broadcast Stations are set forth in the International Service category in the FY 1995 fee schedule. For FY 1995 International HF Broadcast Stations will pay an annual regulatory fee of \$250 per station license.

3. Cable Services

a. Cable Television Systems

27. This category includes operators of Cable Television Systems, providing or distributing programming or other services to subscribers under Part 76 of the Commission's Rules. For FY 1995 Cable Systems will pay a regulatory fee of \$.49 per subscriber.⁶⁴

28. Payments for Cable Systems are to be made on a per subscriber by community unit basis as of December 31, 1994, as reported on each Cable System's 1994 Annual Report of Cable Systems (FCC Form 325). Cable Systems should determine their subscriber numbers by calculating the number of single family dwellings, the number of individual households in multiple dwelling units, e.g., apartments, condominiums, mobile home parks, etc., paying at the basic subscriber rate, the number of bulk rate customers and the number of courtesy or fee customers. In order to determine the number of bulk rate subscribers, a system should divide its bulk charge by the annual subscription rate for individual households. See *FY 1994 Order*, Appendix B at para. 31.

b. Cable Antenna Relay Service

29. This category includes Cable Antenna Relay Service (CARS) stations used to transmit television and related audio signals,

signals of AM and FM Broadcast Stations and cablecasting from the point of reception to a terminal point from where the signals are distributed to the public by a Cable Television System. For FY 1995, licensees will pay an annual regulatory fee of \$290 per CARS license.

4. Common Carrier Services

a. Mobile Services

30. *Public Mobile/Cellular Radio Services:* These services are included within the FY 1995 Schedule of Regulatory Fees in the Wireless Radio Service category. They include common carriers and others (e.g., cellular radio licensees) offering, under Parts 22 and 24 of the Commission's Rules, a wide variety of land-based or air-to-ground mobile telephone, paging or data transmission services to the public. Licensees include those using radio to provide telephone services at fixed locations, such as Basic Exchange Telecommunications Radio Services, Rural Radio and Offshore Radio.

31. For FY 1995, each licensee in the Public Mobile/Cellular Radio Services will pay an annual regulatory fee for each mobile or cellular unit (mobile or cellular call sign or telephone number), including paging units, assigned to its customers, including resellers of its services. For FY 1995, the regulatory fee is \$.15 per unit.

32. *Public Mobile One-Way Paging Services:* These services are included within the FY 1995 Schedule of Regulatory Fees in the Wireless Radio Service category. They include common carriers offering, under Parts 22 of the Commission's Rules, one-way paging services to the public.

33. For FY 1995, each licensee in the Public Mobile One-Way Paging Services will pay an annual regulatory fee for each paging unit, assigned to its customers, including resellers of its services. For FY 1995, the regulatory fee of \$.02 per unit.

b. Fixed Radio Services

34. *Domestic Public Fixed Radio Service:* This category includes licensees in the Point-to-Point Microwave Radio Service, Local Television Transmission Radio Service, Digital Electronic Message Service, Multipoint Distribution Service (MDS), and Multichannel Multipoint Distribution Service (MMDS), authorized under Part 21 of the Commission's Rules to use microwave frequencies for video and data distribution within the United States. For FY 1995, Domestic Public Fixed Radio Service licensees pay a \$140 annual regulatory fee per call sign, payable on a specified date to be announced by the Commission.

35. *International Public Fixed Radio Service:* This fee category includes common carriers authorized under Part 23 of the Commission's Rules to provide radio communications between the United States and a foreign point via microwave or HF troposcatter systems, other than satellites and satellite earth stations, but not including service between the United States and Mexico and the United States and Canada using frequencies above 72 MHz. For FY 1995, International Public Fixed Radio Service licensees will pay a \$200 annual regulatory fee per call sign, payable on a

specified date to be announced by the Commission.

c. VSATs and Equivalent C-Band Stations/Mobile Satellite Earth Stations

36. *VSATs and Equivalent C-Band Stations:* This fee category includes VSAT Earth Stations and equivalent C-Band Earth Stations and antennas and earth station systems comprised of very small aperture terminals operating in the 12 and 14 GHz bands and providing a variety of communications services to other stations in the network. VSAT systems consist of a network of technically-identical small Fixed-Satellite Earth Stations which often include a larger hub station. VSAT Earth Stations and C-Band Equivalent Earth Stations are authorized pursuant to Part 25 of the Commission's Rules. *Mobile Satellite Earth Stations*, operating pursuant to Part 25 of the Commission's Rules under blanket licenses for mobile antennas (transceivers), are smaller than one meter and provide voice or data communications, including position location information for mobile platforms such as cars, buses or trucks. For FY 1995, licensees of VSATs and Mobile Satellite Earth Stations will pay an annual regulatory fee of \$330 per authorization or registration.

d. Fixed Satellite Earth Stations

37. *Transmit/Receive and Transmit Only Earth Stations.* This category includes fixed-satellite transmit/receive and transmit only earth station antennas, authorized or registered under Part 25 of the Commission's Rules, operated by private and public carriers to provide telephone, television, data, and other forms of communications. The proposed fees for this fee category are set forth in the FY 1995 fee schedule in the International Service category. Included in this category are telemetry, tracking, and control (TT&C) ear stations and earth station uplinks.

38. For FY 1995 licensees of transmit/receive and transmit only earth stations will pay a fee of \$330 per authorization or registration.

39. *Received only earth stations.* For FY 1995 there is no regulatory fee for receive-only earth stations.

e. Space Stations (Geosynchronous)

40. Geosynchronous Space Stations set forth in the FY 1995 Schedule of regulatory Fees within the International Service category, are domestic and international satellites positioned in orbit to remain approximately fixed relative to the earth. They are authorized under Part 25 of the Commission's Rules to provide communications between satellites and earth stations on a common carrier and/or private carrier basis. For FY 1995, entities authorized to operate Geosynchronous Space Stations in accordance with section 25.120(d) will be assessed an annual regulatory fee of \$75,000 per operational station in orbit. Payment is required for any Geosynchronous Satellite that has been launched and tested and is authorized to provide service.

f. International Bearer Circuits

41. Regulatory fees for International Bearer Circuits are set forth in the International Service category in the FY 1995 fee schedule.

⁶⁴ Cable systems are to pay their regulatory fees on a per subscriber basis rather than per 1,000 subscribers as set forth in the statutory fee schedule. See *FY 1994 Order* at para. 100.

The proposed fee is to be paid by the facilities-based common carrier activating the circuit in any transmission facility for the provision of service to an end user or resale carrier. Payment of the fee for bearer circuits sold on an indefeasible right of use (IRU) basis or leased to any customer other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. *Compare FY 1994 Order at 5367.* The fee is based upon active 64 Kbps circuits, or equivalent circuits. Under this formulation, 64 Kbps circuits or their equivalent will be assessed a fee. Equivalent circuits include the 64 Kbps circuit equivalent of larger bit stream circuits. For example, the 64 Kbps circuit equivalent of a 2.048 Mbps circuit is 30 64 Kbps circuits. Analog circuits such as 3 and 4 KHz circuits used for international service are also included as 64 Kbps circuits. However, circuits derived from 64 Kbps circuits by the use of digital circuit multiplication systems are not equivalent 64 Kbps circuits. Such circuits are not subject to fees. Only the 64 Kbps circuit from which they have been derived will be subject to payment of a fee. For FY 1995, the regulatory fee is \$4.00 for each active 64 Kbps circuit or equivalent. For analog television channels we will assess fees as follows:

Analog Television Channel Size in MHz Circuits	No. of equivalent 64 Kbps
36	630
24	288
18	240

g. Inter-Exchange and Local Exchange Carriers, Competitive Access Providers, Pay Telephone Providers, and other Non-Mobile Providers of Interstate Service

42. We have revised the Schedule of Regulatory Fees for carriers to include not only IXCs, LECs and CAPs, but also domestic and international carriers that provide operator services, WATS, 800, 900, telex, telegraph, video, other switched, interstate access, special access, and alternative access services either by using their own facilities or by reselling facilities and services of other carriers or telephone carrier holding companies, and companies other than traditional local telephone companies that provide interstate access services to long distance carriers and other customers.

43. These common carriers, including resellers, must submit fee payments based upon their proportionate share of gross interstate revenues using the methodology that we have adopted for calculating contributions to the TRS fund. See *Telecommunications Relay Services*, 8 FCC Rcd 5300 (1993). In order to avoid imposing any double payment burden on resellers, we will permit carriers to subtract from their gross interstate revenues as reported to NECA in connection with their TRS contribution, any payments made to underlying carriers for the telecommunications facilities or services, including payments for interstate access service. For FY 1995, carriers will multiply their gross revenue figure by the 0.00088 to determine the appropriate fee for this

category of service and may reduce this amount by the total amount of their payments to underlying carriers for telecommunications facilities or services.

44. The FY 1995 revenue requirement for this category is \$46,310,880. For FY 1995, carriers will multiply their gross revenue figure by 0.00088 to determine the appropriate fee for this category of service and may reduce this amount by the total amount of their payments to underlying carriers for telecommunications facilities or services.

Appendix I—Description of FCC Activities

Executive Direction and Support: Overall policy direction, program development and executive direction as provided by the Chairman and staff, Commissioners and their staffs and by the Managing Director. Also includes support services such as management planning, budgeting and financial management, personnel resource management, information resources management and ADP operations, security, and administrative and office services. Includes the activities of the Office of Legislative Affairs and the Office of the Inspector General. These costs are not recoverable through regulatory fees.

Legal Services: Legal review and support services including matters of administrative law, litigation and adjudication. Includes the Office of General Counsel, Office of Administrative Law Judges and the Review Board. These costs are not recoverable through regulatory fees.

Authorization of Service: The authorization or licensing of radio stations, telecommunications equipment and radio operators. Also includes the authorization of common carrier services and facilities. These costs are not recoverable through regulatory fees.

Policy and Rule Making: Formal inquiries, rule making proceedings to establish or amend the Commission's rules and regulations, action on petitions for rule making and requests for rule interpretations or waivers; economic studies and analyses; spectrum planning, modeling, propagation-interference analyses and allocation; and development of equipment standards. Also includes policy and rule making associated with FCC participation in international organizations, conferences and negotiations. These costs are recoverable through regulatory fees.

Enforcement: Enforcement of the Commission's rules, regulations and authorizations, including investigations, inspections, compliance monitoring and sanctions of all types. Also includes the receipt and disposition of formal and informal complaints regarding common carrier rates and services, the review and acceptance/rejection of carrier tariffs, and the review, prescription and audit of carrier accounting practices. These costs are recoverable through regulatory fees.

International: The preparation for and participation in international, regional and bilateral conferences, meetings and negotiations; and administration of Commission responsibilities under

international radio regulations and other treaties, conventions and agreements. Also includes activities associated with international frequency coordination and notification. These costs are recoverable through regulatory fees.

Public Information Services: The publication and dissemination of Commission decisions and actions, and related activities; public reference and library services; the duplication and dissemination of Commission records and databases; the receipt and disposition of public inquiries; consumer, small business and public assistance; and public affairs and media relations. These costs are recoverable through regulatory fees.

Comments were filed:
 —Dudman Communications Corp.
 —Sandra R. Swanson
 —Bruce Hood
 —KGRR-FM 97.3
 —Sierra Cascade Communications
 —Coleman Broadcasting Company
 —WTIM et al.
 —Aircraft Owners and Pilots Association
 —Personal Communications Industries Association
 —Fant Broadcasting Company
 —Grove Cable Co.
 —United States Coast Guard
 —AllNet Communication Services, Inc.
 —MobileMedia Communications
 —KVPA
 —Sovereign Broadcasting, Inc.
 —KVRW-FM
 —Northern Broadcasting, Inc.
 —PanAmSat Corporation
 —Competitive Telecommunications Association
 —LDDS Communications, Inc.
 —Ameritech
 —Cablevision Industries Corp.
 —Montana Broadcasters Association
 —Century Cellunet, Inc.
 —GTE Services Corp.
 —Maine Association of Broadcasters
 —James P. Wagner
 —Livingston Radio Company
 —Associated Press
 —Frontier Cellular Holding, Inc.
 —Sprint Corporation
 —De La Hunt Broadcasting
 —Cable Telecommunications Association
 —Columbia Communications Corp.
 —Hertz Technologies, Inc.
 —National Cable Television Association, Inc.
 —KUSK, Inc.
 —Duhamel Broadcasting Enterprises
 —Southwestern Bell, Inc.
 —EDS Corp.
 —Wireless Cable Association International, Inc.
 —MCI Telecommunications Corporation
 —MFS Communications Company, Inc.
 —AllTell Mobile Communications
 —America's Carriers Telecommunications Association
 —Mid-State Television, Inc.
 —Whithers Broadcasting Company of Texas, et al.
 —National Association of Broadcasters
 —American Public Communications Council
 —Radio 840, Inc.
 —Teleport Communication's Group, Inc.
 —Bell Atlantic

—Cellular Telecommunications Industry Association
 —Comsat General Corp.
 —NYNEX companies
 —Association for Local TeleCommunications Services
 —Telecommunications Resellers Association
 —Broadcast Media Associates
 —National Exchange Carriers Association, Inc.
 —Cablevision Lightpath, Inc.
 —Beaverkettle Company
 —Comsat Video Enterprises
 —Stellar Communications
 —Bloomington Broadcasting
 —Washington Broadcasting Company
 —American Radio Relay League
 —U.S. West Communications
 —AT&T
 —WPKR Radio
 —GE American Communications
 —Avis Rent A Car
 —Airtouch Paging
 —Thomas Clements
 —KBZQ-FM
 —C&S Radio-South Fork L.P.
 —National Cable Television Association
 Reply pleadings were filed by:
 —WNAL-TV
 —Southwestern Bell Corporation
 —Vanguard Cellular Systems, Inc.
 —Telecommunications Resellers Association
 —National Cable Television Association
 —Bell Atlantic
 —MCI Telecommunications Corporation
 —Personal Communications
 —*Columbia Communications
 —Sprint Corporation
 —*National Wireless Resellers
 —*Directv
 —LDDS Communications, Inc.
 —Time Warner Corporation
 —GE American Communications
 —Arch Communications Group
 —Airtouch Paging
 —Alltel Mobile Corporation
 —National Association of Broadcasters
 —Pacific Bell and Nevada Bell
 —Paging Newtwork, Inc.
 —AT&T
 —Small Cable Business Association
 —Ameritech
 —NFS Communications Company
 —*Comsat
 —GTE
 —Metrocall, Inc.
 —KUSK, Inc.
 —Pabamasat Corporation
 —Columbia Communications
 —American Public Communications Council

*Parties also filed comments.

Rule Changes

47 CFR Part 1 is amended as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

2. Section 1.1152 is revised to read as follows:

§ 1.1152 Schedule of annual regulatory fees and filing locations for wireless radio services.

Exclusive use services (per license)	Fee amount	Address
1. Land Mobile (Above 470 MHz, Base Station & SMRS) (47 CFR, Part 90):		
(a) 800 MHz: New, Renewal, Reinstatement (FCC 574).	\$600	FCC, 800 MHz, P.O. Box 358235, Pittsburgh, PA, 15251-5235.
(b) 900 MHz: New, Renewal, Reinstatement (FCC 574).	6.00	FCC, 900 MHz, P.O. Box 358240, Pittsburgh, PA, 15251-5240.
(c) 470-512, 800, 900, 220 MHz, Nationwide: Renewal (FCC 574R, FCC 405A).	6.00	FCC, 470-512, 800, 900, 220 MHz, P.O. Box 358245, Pittsburgh, PA, 15251-5245.
(d) Correspondence: Blanket Renewal (470-512, 800, 900, 220 MHz) (Remittance Advice, Correspondence).	6.00	FCC, Corres., P.O. Box 358305, Pittsburgh, PA, 15251-5305.
(e) 220 MHz: New, Renewal, Reinstatement (FCC 574).	6.00	FCC, 220 MHz, P.O. Box 358360, Pittsburgh, PA, 15251-5360.
(f) 470-512 MHz: New, Renewal, Reinstatement (FCC 574).	6.00	FCC, 470-512, P.O. Box 358810, Pittsburgh, PA, 15251-5810.
(g) MHz Nationwide: New, Renewal, Reinstatement.	6.00	FCC, Nationwide, P.O. Box 358820, Pittsburgh, PA, 15251-5820.
2. Microwave (47 CFR Pt. 94):		
(a) Microwave: New, Renewal, Reinstatement (FCC 402).	6.00	FCC, FCC, Microwave, P.O. Box 358250, Pittsburgh, PA 15251-5250.

Exclusive use services (per license)	Fee amount	Address
(b) Microwave: Renewal (FCC 402R).	6.00	FCC, Microwave, P.O. Box 358255, Pittsburgh, PA 15251-5255.
(c) Correspondence: Blanket Renewal (Microwave) (Remittance Advice, Correspondence).	6.00	FCC, Corres., P.O. Box 358305, Pittsburgh, PA, 15251-5305.
3. Interactive Video Data Service:		
(a) IVDS: Renewal (FCC 574R, FCC 405A).	6.00	FCC, IVDS, P.O. Box 358245, Pittsburgh, PA 15251-5245.
(b) Correspondence: Blanket Renewal (IVDS) (Remittance Advice, Correspondence).	6.00	FCC, Corres., P.O. Box 358305, Pittsburgh, PA, 15251-5305.
(c) IVDS: New, Renewal Reinstatement (FCC 574)..	6.00	FCC, IVDS, P.O. Box 358365, Pittsburgh, PA 15251-5365.
4. Shared Use Services:		
(a) Land Transportation (LT): New, Renewal, Reinstatement (FCC 574).	3.00	FCC, Land Trans., P.O. Box 358215, Pittsburgh, PA 15251-5215.
(b) Business (Bus.): New, Renewal, Reinstatement (FCC 574).	3.00	FCC, Business, P.O. Box 358220, Pittsburgh, PA, 15251-5220.
(c) Other Industrial (OI): New, Renewal, Reinstatement (FCC 574).	3.00	FCC, Other Indus., P.O. Box 358225, Pittsburgh, PA 15251-5225.
(d) General Mobile Radio Service (GMRS): New, Renewal, Reinstatement (FCC 574).	3.00	FCC, GMRS, P.O. Box 358230, Pittsburgh, PA, 15251-5230.

Exclusive use services (per license)	Fee amount	Address	Exclusive use services (per license)	Fee amount	Address		Fee amount	Address
(e) Business, Other Industrial, Land Transportation, GMRS: Renewal (FCC 574R, FCC 405A).	3.00	FCC, Bus., OI, LT, GMRS, P.O. Box 358245, Pittsburgh, PA, 15251-5245.	(p) Correspondence: Blanket Renewal (Coast) (Remittance Advice, Correspondence).	3.00	FCC, Corres., P.O. Box 358305, Pittsburgh, PA, 15251-5305.	FM Radio (47 CFR, Part 73):		
(f) Ground: New, Renewal, Reinstatement (FCC 406).	3.00	FCC, Ground, P.O. Box 358260, Pittsburgh, PA, 15251-5260.	(q) Correspondence: Blanket Renewal (Aircraft) (Remittance Advice, Correspondence).	3.00	FCC, Corres., P.O. Box 35803, Pittsburgh, PA, 15251-5305.	1. Classes C, C1, C2, B.	1,120	FCC, FM Branch, P.O. Box 358835, Pittsburgh, PA 15251-5835.
(g) Coast: New, Renewal, Reinstatement (FCC 503).	3.00	FCC, Coast, P.O. Box 358265, Pittsburgh, PA, 15251-5265.	(r) Correspondence: Blanket Renewal (Ship) (Remittance Advice, Correspondence).	3.00	FCC, Corres., P.O. Box 358305, Pittsburgh, PA, 15251-5305.	2. Classes A, B1, C3.	745	
(h) Ground: Renewal (FCC 452R).	3.00	FCC, Ground, P.O. Box 358270, Pittsburgh, PA, 15251-5270.	Amateur Vanity Call Signs.	3.00	FCC, Amateur Vanity, P.O. Box 358924, Pittsburgh, PA, 15251-5924.	3. Construction Permits.	620	
(i) Coast: Renewal (FCC 452R).	3.00	FCC, Coast, P.O. Box 358270, Pittsburgh, PA, 15251-5270.	Cellular Radio/Public Mobile (per unit).	.15	FCC, Cellular, P.O. Box 358835, Pittsburgh, PA, 15251-5835.	TV (47 CFR, Part 73) VHF Commercial:		
(j) Ship: New, Renewal, Reinstatement (FCC 506).	3.00	FCC, Ship, P.O. Box 358275, Pittsburgh, PA, 15251-5275.	Public Mobile One-Way Paging (per unit).	.02	FCC, Paging, P.O. Box 358835, Pittsburgh, PA, 15251-5835.	1. Markets 1 thru 10.	22,420	FCC, TV Branch, P.O. Box 358835, Pittsburgh, PA 15251-5835.
(k) Aircraft: New, Renewal, Reinstatement (FCC 404).	3.00	FCC, Aircraft, P.O. Box 358280, Pittsburgh, PA, 15251-5280.				2. Markets 11 thru 25.	19,925	
(l) Ship: Renewal (FCC 405B).	3.00	FCC, Ship, P.O. Box 358920, Pittsburgh, PA, 15251-5290.				3. Markets 26 thru 50.	14,950	
(m) Aircraft: Renewal (FCC 405B).	3.00	FCC, Aircraft, P.O. Box 358290, Pittsburgh, PA, 15251-5290.				4. Markets 51 thru 100.	9,975	
(n) Correspondence: Blanket Renewal (Bus., OI, LT, GMRS) (Remittance Advice, Correspondence).	3.00	FCC, Corres., P.O. Box 358305, Pittsburgh, PA, 15251-5305.				5. Remaining Markets.	6,225	
(o) Correspondence: Blanket Renewal (Ground) (Remittance Advice, Correspondence).	3.00	FCC, Corres., P.O. Box 358305, Pittsburgh, PA, 15251-5305.				6. Construction Permits.	4,975	
						UHF Commercial:		
						1. Markets 1 thru 10.	17,925	FCC, UHF Commercial, P.O. Box 348835, Pittsburgh, PA 15251-5835.
						2. Markets 11 thru 25.	15,950	
						3. Markets 26 thru 50.	11,950	
						4. Markets 51 thru 100.	7,975	
						5. Remaining Markets.	4,975	
						6. Construction Permits.	3,975	
						Satellite UHF/VHF Commercial:		
						1. All Markets.	620	FCC Satellite TV, P.O. Box 358835, Pittsburgh, PA 15251-5835.
						2. Construction Permits.	225	
						Low Power TV, TV/FM Translator, & TV/FM Booster (47 CFR, Part 74).	170	FCC, Low Power, P.O. Box 358835, Pittsburgh, PA 15251-5835.
						Broadcast Auxiliary.	30	FCC, Auxiliary, P.O. Box 358835, Pittsburgh, PA 15251-5835.
						Multipoint Distribution.	140	FCC, Multipoint P.O. Box 358835, Pittsburgh, PA 15251-5835.

3. Section 1.1153 is revised to read as follows:

§ 1.1153 Schedule of annual regulatory fees and filing locations for mass media services.

	Fee amount	Address
AM Radio (47 CFR, Part 73):		
1. Class D Daytime.	\$310	FCC, Am Branch, P.O. Box 358835, Pittsburgh, PA 15251-5835.
2. Class A Fulltime.	1,120	
3. Class B Fulltime.	620	
4. Class C Fulltime.	250	
5. Construction Permits.	250	

4. Section 1.1154 is revised to read as follows:

§ 1.1154 Schedule of annual regulatory charges and filing locations for common carrier services.

	Fee amount	Address
Radio Facilities: 1. Domestic Public Fixed.	\$140	FCC, Dom. Pub. Fixed, P.O. Box 358835, Pittsburgh, PA, 15251-5835.
Carriers: 1. Inter-Exchange Carrier (per dollar contributed to TRS Fund).	.00088	FCC, Carriers, P.O. Box 358835, Pittsburgh, PA, 15251-5835.
2. Local Exchange Carrier (per dollar contributed to TRS Fund).	.00088	
3. Competitive Access Provider (per dollar contributed to TRS Fund).	.00088	
4. Other Interexchange Carriers and Service Providers (per dollar contributed to TRS Fund).	.00088	

5. Section 1.1155 is revised to read as follows:

§ 1.1155 Schedule of regulatory fees and filing locations for cable television services.

	Fee amount	Address
1. Cable Antenna Relay Service.	\$290	FCC, Cable, P.O. Box 358835, Pittsburgh, PA, 15251-5835.
2. Cable TV System (per subscriber).	.49	

§§ 1.1167 and 1.1168 [Removed]**§§ 1.1156 through 1.1166 [Redesignated as §§ 1.1157 through 1.1167]**

6. Sections 1.1167 and 1.1168 are removed, §§ 1.1156 through 1.1166 of Subpart G are redesignated as §§ 1.1157 through 1.1167 respectively and are revised, and a new § 1.1156 is added to read as follows:

§ 1.1156 Schedule of regulatory fees and filing locations for international services.

	Fee amount	Address
Radio Facilities: 1. International (HF): Broadcast. International Public: Fixed.	\$250 200	FCC, International, P.O. Box 358835, Pittsburgh, PA, 15251-5835.
Space Stations (Geosynchronous Orbit).	75,000	FCC, Space Stations, P.O. Box 358835, Pittsburgh, PA, 15251-5835.
Earth Stations: 1. VSAT & Equivalent C-Band antennas, Mobile Satellite Earth Stations, Fixed Earth Stations-Transmit/Receive & Transmit Only (per authorization or registration).	330	FCC, Earth Station, P.O. Box 358835, Pittsburgh, PA, 15251-5835.
Carriers: 1. International Circuits (per active 64KB circuit or equivalent).	4.00	FCC, International, P.O. Box 358835, Pittsburgh, PA, 15251-5835.

§ 1.1157 Payment of charges for regulatory fees.

Payment of a regulatory fee, required under §§ 1.1152 through 1.1156, shall be filed in the following manner:

(a) Payments of regulatory fees shall be submitted with the filing of any application for a new, renewal or reinstatement of a license or other authorization in the wireless radio services. (1) Any regulatory fee submitted with an application in the wireless radio services shall include an advance payment of the total annual regulatory fee payment due for the entire term of the license or other authorization. The amount of the regulatory fee payment due with any application in the wireless radio service shall be the multiple of the number of years in the entire term of the requested license or other authorization multiplied by the annual fee payment required in the Schedule of Regulatory Fees, effective at the time the application is filed. Except as set forth in § 1.1160, advance payments shall be final and shall not be readjusted during the term of the license or authorization,

notwithstanding any subsequent increase or decrease in the annual amount of a fee required under the Schedule of Regulatory Fees.

(2) Failure to file the appropriate regulatory fee with an application in the wireless radio service will result in the return of the accompanying application, including an application, for which the Commission has assigned a specific filing deadline.

(b)(1) Payments of standard regulatory fees, applicable to mass media, common carrier, cable and international services, shall be filed in full on an annual basis at a time announced by the Commission or the Managing Director, pursuant to delegated authority, and published in the **Federal Register**.

(2) Large regulatory fees, as annually defined by the Commission, may be submitted in installment payments or in a single payment on a date certain as announced by the Commission or the Managing Director, pursuant to delegated authority, and published in the **Federal Register**.

(c) Standard regulatory fee payments, as well as any installment payment, must be filed with a FCC Form 159, FCC Remittance Advice, and a FCC Form 159C, Remittance Advice Continuation Sheet, if additional space is needed. Failure to submit a copy of FCC Form 159 with a standard regulatory fee payment, or an installment payment, will result in the return of the submission and a 25 percent penalty if the payment is resubmitted after the date the Commission establishes for the payment of standard regulatory fees and for any installment payment.

(1) Any late filed regulatory fee payment will be subject to the penalties set forth in section 1.1164.

(2) If one or more installment payments are untimely submitted or not submitted at all, the eligibility of the subject regulatee to submit installment payments may be cancelled.

§ 1.1158 Form of payment for regulatory.

Any regulatory fee payment must be submitted in the form of a check, bank draft or money order denominated in U.S. dollars and drawn on a United States financial institution and made payable to the Federal Communications Commission or by Visa or Mastercard credit cards only. The Commission discourages applicants from submitting cash payments and will not be responsible for cash sent through the mail. Personal or corporate checks dated more than six months prior to their submission to the Commission's lockbox bank and postdated checks will not be accepted and will be returned as deficient.

(a) Upon authorization from the Commission following a written request, electronic fund transfer (EFT) payment of a regulatory fee may be made as follows:

(1)(i) The payor may instruct its bank to make payment of the regulatory fee directly to the Commission's lockbox bank, or

(ii) The payor may authorize the Commission to direct its lockbox bank to withdraw funds directly from the payor's bank account.

(2) No EFT payment of a regulatory fee will be accepted unless the payor has obtained the written authorization of the Commission to submit regulatory fees electronically. Procedures for electronic payment of regulatory fees will be announced by Public Notice. It is the responsibility of the payor to insure that any electronic payment is made in the manner required by the Commission. Failure to comply with the Commission's procedures for electronic fee payment will result in the return of the fee payment, and a penalty fee of 25 percent if the subsequent refiling of the fee payment is late. Failure to comply will also subject the payor to the penalties set forth in § 1.1164.

(b) Multiple payment instruments for a single regulatory fee are not permitted, except that the Commission will accept multiple money orders in payment of any fee where the fee exceeds the maximum amount for a money order established by the issuing entity and the use of multiple money orders is the only practicable means available for payment.

(c) Payment of multiple standard regulatory fees (including an installment payment) due on the same date, may be made with a single payment instrument and cover mass media, common carrier, international, and cable service fee payments. Each regulatee is solely responsible for accurately accounting for and listing each license or authorization and the number of subscribers, access lines, or other relevant units on the accompanying FCC Form 159 and, if needed, FCC Form 159C and for making full payment for every regulatory fee listed on the accompanying form. Any omission or payment deficiency of a regulatory fee will result in a 25 percent penalty of the amount due and unpaid.

(d) Any regulatory fee payment (including a regulatory fee payment submitted with an application in the wireless radio service) made by credit card or money order must be submitted with a completed FCC Form 159. Failure to accurately enter the credit card number and date of expiration and the payor's signature in the appropriate

blocks on FCC Form 159 will result in rejection of the credit card payment.

§ 1.1159 Filing locations and receipts for regulatory fees.

(a) Regulatory fee payments must be directed to the location and address set forth in §§ 1.1152 through 1.1156 for the specific category of fee involved. Any regulatory fee required to be submitted with an application must be filed as a part of the application package accompanying the application. The Commission will not take responsibility for matching fees, forms and applications submitted at different times or locations.

(b) Petitions for reconsideration or applications for review of fee decisions submitted with a standard regulatory fee payment pursuant to §§ 1.1152 through 1.1156 of the rules are to be filed with the Commission's lockbox bank in the manner set forth in §§ 1.1152 through 1.1156 for payment of the fee subject to the petition for reconsideration or the application for review. Petitions for reconsideration and applications for review that are submitted with no accompanying payment should be filed with the Secretary, Federal Communications Commission, Attention: Managing Director, Washington, D.C. 20554.

(c) Any request for exemption from a regulatory fee shall be filed with the Secretary, Federal Communications Commission, Attention: Managing Director, Washington, D.C. 20554, except that requests for exemption accompanied by a tentative fee payment shall be filed at the lockbox set forth for the appropriate service in §§ 1.1152 through 1.1156.

(d) The Commission will furnish a receipt for a regulatory fee payment only upon request. In order to obtain a receipt for a regulatory fee payment, the package must include an extra copy of the Form FCC 159 or, if a Form 159 is not required with the payment, a copy of the first page of the application or other filing submitted with the regulatory fee payment, submitted expressly for the purpose of serving as a receipt for the regulatory fee payment and application fee payment, if required. The document should be clearly marked "copy" and should be the top document in the package. The copy will be date stamped immediately and provided to the bearer of the submission, if hand delivered. For submissions by mail, the receipt copy will be provided through return mail if the filer has attached to the receipt copy a stamped self-addressed envelope of sufficient size to contain the receipt document.

§ 1.1160 Refunds of regulatory fees.

(a) Regulatory fees will be refunded, upon request, only in the following instances:

(1) When no regulatory fee is required or an excessive fee has been paid. In the case of an overpayment, the refund amount will be based on the applicants', permittees', or licensees' entire submission. All refunds will be issued to the payor named in the appropriate block of the FCC Form 159.

(2) In the case of advance payment of regulatory fees, subject to § 1.1152, a refund will be issued based on unexpired full years:

(i) When the Commission adopts new rules that nullify a license or other authorization, or a new law or treaty renders a license or other authorization useless;

(ii) When a licensee in the wireless radio service surrenders the license or other authorization subject to a fee payment to the Commission; or

(iii) When the Commission declines to grant an application submitted with a regulatory fee payment.

(3) When a waiver is granted in accordance with § 1.1166.

(b) No pro-rata refund of an annual fee will be issued.

(c) No refunds will be issued based on unexpired partial years.

(d) No refunds will be processed without a written request from the applicant, permittee, licensee or agent.

§ 1.1161 Conditional license grants and delegated authorizations.

(a) Grant of any application or an instrument of authorization or other filing, for which a regulatory fee is required to accompany the application or filing, will be conditioned upon final payment of the regulatory fee. Final payment shall mean receipt by the U.S. Treasury of funds cleared by the financial institution on which the check, bank draft, money order, credit card, wire or electronic payment is drawn.

(1) If, prior to a grant of an instrument of authorization, the Commission is notified that final payment of the regulatory fee has not been made, the application or filing:

(i) Will be dismissed and returned;

(ii) Shall lose its place in the processing line; and

(iii) Will not be treated as timely filed if resubmitted after the relevant filing deadline.

(2) If, subsequent to a grant of an instrument of authorization or other filing, the Commission is notified that final payment has not been made, the Commission will:

(i) Automatically rescind that instrument of authorization for failure to

meet the condition imposed by this subsection;

(ii) Notify the grantee of this action; and

(iii) Treat as late filed any application resubmitted after the original deadline for filing the application.

(3) Upon receipt of a notification of rescission of the authorization, the grantee will immediately cease operations initiated pursuant to the authorization.

(b) In those instances where the Commission has granted a request for deferred payment of a regulatory fee, further processing of the application or filing or the grant of authority shall be conditioned upon final payment of the regulatory fee and any required penalties for late payment prescribed by the deferral decision. Failure to comply with the terms of the deferral decision shall result in the automatic dismissal of the submission or rescission of the Commission authorization. Further, the Commission shall:

(1) Notify the grantee that the authorization has been rescinded. Upon such notification, the grantee will immediately cease operations initiated pursuant to the authorization; and

(2) Treat as late filed any application resubmitted after the original deadline for filing the application.

(c) Where the procedures described in paragraphs (a) and (b) of this section would not provide a meaningful incentive to pay a regulatory fee that is due or would not be a meaningful sanction for failure to pay such a fee, the Commission may, in its discretion, whether the regulatory fee is required to be paid with an application for an instrument of authorization or otherwise, withhold processing and/or grant of any application or filing made by a person or organization who has failed to make full payment of any regulatory fee due.

(1) Before taking such action, the staff will make a written request for the fee, together with any penalties that may be rendered under this subpart. Such request shall inform the regulatee that failure to pay may result in the Commission withholding action on any application or request filed by the applicant. The staff shall also inform the regulatee of the procedures for seeking Commission review of the staff's fee determination.

(2) If, after final determination that the fee is due, payment is not made in a timely manner, the staff may terminate processing and/or withhold any grant or petition requested by the person or organization subject to the fee payment requirement, until the matter is resolved.

§ 1.1162 General exemptions from regulatory fees.

No regulatory fee established in §§ 1.1152 through 1.1156, unless otherwise qualified herein, shall be required for: (a) Applicants, permittees or licensees in the Amateur Radio Service, *except that* any person requesting a vanity call-sign shall be subject to the payment of a regulatory fee, as prescribed in § 1.1152.

(b) Applicants, permittees, or licensees who qualify as government entities. For purposes of this exemption, a government entity is defined as any state, possession, city, county, town, village, municipal corporation, or similar political organization or subpart thereof controlled by publicly elected or duly appointed public officials exercising sovereign direction and control over their respective communities or programs.

(c) Applicants, permittees or licensees who qualify as nonprofit entities. For purposes of this exemption, a nonprofit entity is defined as an organization possessing nonprofit, tax exempt status under section 501 of the Internal Revenue Code, 26 U.S.C. 501.

(d) Applicants, permittees or licensees in the Special Emergency Radio and Public Safety Radio services.

(e) Applicants, permittees or licensees of noncommercial educational broadcast stations in the FM or TV services, as well as AM applicants, permittees or licensees operating in accordance with § 73.503 of this chapter.

(f) Applicants, permittees, or licensees qualifying under paragraph (e) of this section requesting Commission authorization in any other mass media radio service (except the international broadcast (HF) service), wireless radio service, common carrier radio service, or international radio service requiring payment of a regulatory fee, if the service is used in conjunction with their noncommercial educational broadcast station on a noncommercial educational basis.

(g) Other applicants, permittees or licensees providing, or proposing to provide, a noncommercial educational or instructional service, but not qualifying under paragraph (e) of this section, may be exempt from regulatory fees, or be entitled to a refund, in the following circumstances:

(1) The applicant, permittee or licensee is an organization that, like the Public Broadcasting Service or National Public Radio, receives funding directly or indirectly through the Public Broadcasting Fund, 47 U.S.C. 396(k), distributed by the Corporation for Public Broadcasting, where the authorization requested will be used in

conjunction with the organization on a noncommercial educational basis;

(2) An applicant, permittee or licensee of a translator or low power television station operating or proposing to operate a noncommercial educational service who, after grant, provides proof that it has received funding for the construction of the station through the National Telecommunications and Information Administration (NTIA) or other showings as required by the Commission; or

(3) An applicant, permittee, or licensee provided a fee refund under § 1.1160 and operating as a noncommercial education station, is exempt from fees for broadcast auxiliary stations (Subparts D, E, and F of Part 74 of this chapter) or stations in the wireless radio, common carrier, or international services where such authorization is to be used in conjunction with the noncommercial educational translator or low power station.

(h) An applicant, permittee or licensee that is the licensee of an instructional television fixed station (Sec. 74.901 through 74.996 of this chapter) is exempt from regulatory fees where the authorization requested will be used by the applicant in conjunction with the provision of the instructional service.

(i) Applications filed in the wireless radio service for the sole purpose of modifying an existing authorization (or a pending application for authorization). However, if the applicant also requests a renewal or reinstatement of its license or other authorization for which the submission of a regulatory fee is required, the appropriate regulatory fee for such additional request must accompany the application.

§ 1.1163 Adjustments to regulatory fees.

(a) For Fiscal Year 1995, the amounts assessed for regulatory fees are set forth in §§ 1.1152 through 1.1156.

(b) For Fiscal year 1996 and thereafter, the Schedule of Regulatory Fees, contained in §§ 1.1152 through 1.1156, may be adjusted annually by the Commission pursuant to section 9 of the Communications Act, 47 U.S.C. 159. Adjustments to the fees established for any category of regulatory fee payment shall include projected cost increases or decreases and an estimate of the volume of licensees or units upon which the regulatory fee is calculated.

(c) The fees assessed shall:

(1) Be derived by determining the full-time equivalent number of employees performing enforcement activities, policy and rulemaking activities, user information services, and international

activities within the Wireless Telecommunications Bureau, Mass Media Bureau, Common Carrier Bureau, Cable Services Bureau, International Bureau and other offices of the Commission, adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities, including such factors as service coverage area, shared use versus exclusive use, and other factors that the Commission determines are necessary in the public interest;

(2) Be established at amounts that will result in collection, during each fiscal year, of an amount that can reasonably be expected to equal the amount appropriated for such fiscal year for the performance of the activities described in paragraph (c)(1) of this section.

(d) The Commission shall by rule amend the Schedule of Regulatory Fees by proportionate increases or decreases that reflect, in accordance with paragraph (c)(2) of this section, changes in the amount appropriated for the performance of the activities described in paragraph (c)(1) of this section, for such fiscal year. Such proportionate increases or decreases shall be adjusted to reflect unexpected increases or decreases in the number of licensees or units subject to payment of such fees and result in collection of an aggregate amount of fees that will approximately equal the amount appropriated for the subject regulatory activities.

(e) The Commission shall, by rule, amend the Schedule of Regulatory Fees if the Commission determines that the Schedule requires amendment to comply with the requirements of paragraph (c)(1) of this section. In making such amendments, the Commission shall add, delete or reclassify services in the Schedule to reflect additional deletions or changes in the nature of its services as a consequence of Commission rulemaking proceedings or changes in law.

(f) In making adjustments to regulatory fees, the Commission will round such fees to the nearest \$5.00 in the case of fees under \$1,000.00, or to the nearest \$25.00 in the case of fees of \$1,000.00 or more.

§ 1.1164 Penalties for late or insufficient regulatory fee payments.

Any late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee of installment payment which was not paid in a timely manner. A timely fee payment or installment payment is one received at the Commission's lockbox bank by the due

date specified by the Commission or by the Managing Director. A payment will also be considered late filed if the payment instrument (check, money order, bank draft or credit card) is uncollectible.

(a) The Commission may, in its discretion, following one or more late filed installment payments, require a regulatee to pay the entire balance of its regulatory fee by a date certain, in addition to assessing a 25 percent penalty.

(b) In cases where a fee payment fails due to error by the payor's bank, as evidenced by an affidavit of an officer of the bank, the date of the original submission will be considered the date of filing.

(c) If a regulatory fee is paid in a timely manner, the regulatee will be notified of its deficiency. This notice will automatically assess a 25 percent penalty, subject the delinquent payor's pending applications to dismissal, and may require a delinquent payor to show cause why its existing instruments of authorization should not be subject to rescission.

(d)(1) Where a regulatee's new, renewal or reinstatement application is required to be filed with a regulatory fee (as is the case with wireless radio services), the application will be dismissed if the regulatory fee is not included with the application package. In the case of a renewal or reinstatement application, the application may not be refiled unless the appropriate regulatory fee plus the 25 percent penalty charge accompanies the refiled application.

(2) If the application that must be accompanied by a regulatory fee is a mutually exclusive application with a filing deadline, or any other application that must be filed by a date certain, the application will be dismissed if not accompanied by the proper regulatory fee and will be treated as late filed if resubmitted after the original date for filing application.

(e) Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment. The application may be resubmitted only if accompanied by the required regulatory fee and by any assessed penalty payment.

(f) In instances where the Commission may revoke an existing instrument of authorization for failure to file a regulatory fee, the Commission will provide prior notice to the regulatee of such action and shall allow the licensee no less than 60 days to either pay the fee or show cause why the payment

assessed is inapplicable or should otherwise be waived or deferred.

(1) An adjudicatory hearing will not be designated unless the response by the regulatee to the Order to Show Cause presents a substantial and material question of fact.

(2) Disposition of the proceeding shall be based upon written evidence only and the burden of proceeding with the introduction of evidence and the burden of proof shall be on the respondent regulatee.

(3) Unless the regulatee substantially prevails in the hearing, the Commission may assess costs for the conduct of the proceeding against the respondent regulatee. See 47 U.S.C. 402(b)(5).

(4) Any regulatee failing to submit a regulatory fee, following notice to the regulatee of failure to submit the required fee, is subject to collection of the fee, including interest thereon, any associated penalties, and the full cost of collection to the Federal government pursuant to section 3720A of the Internal Revenue Code, 31 U.S.C. 3717, and to the provisions of the Debt Collection Act, 31 U.S.C. 3717. See 47 CFR 1.1901 through 1.1952. The debt collection processes described above may proceed concurrently with any other sanction in this paragraph.

1.1165 Payment by cashier's check for regulatory fees.

Payment by cashier's check may be required when a person or organization makes payment, on one or more occasions, with a payment instrument on which the Commission does not receive final payment and such error is not excused by bank error.

§ 1.1166 Waivers, reductions and deferrals of regulatory fees.

The fees established by sections 1.1152 through 1.1156 may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest. Requests for waivers, reductions or deferrals of regulatory fees for entire categories of payors will not be considered.

(a) Requests for waivers, reductions or deferrals will be acted upon by the Managing Director with the concurrence of the General Counsel. If the request for waiver, reduction or deferral is accompanied by a fee payment, the request must be submitted to the Commission's lockbox bank at the address for the appropriate service set forth in sections 1.1152 through 1.1156 of this subpart. If no fee payment is submitted and the matter is within the scope of the fee rules, the request

should be filed with the Commission's Secretary and clearly marked to the attention of the Managing Director.

(b) Defferals of fees will be granted for a period of six months following the date that the fee is initially due.

(c) Petitions for waiver of a regulatory fee must be accompanied by the required fee and FCC Form 159. Submitted fees will be returned if a waiver is granted. Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.

(d) Petitions for reduction of a fee must be accompanied by the full fee payment less the amount of the requested reduction and FCC Form 159. Petitions for reduction accompanied by a fee payment must be addressed to the

Federal Communications Commission, Attention: Petitions, Post Office Box 358835, Pittsburgh, Pennsylvania, 15251-5835.

§ 1.1167 Error claims related to regulatory fees.

(a) Challenges to determinations of an insufficient regulatory fee payment should be made in writing. challenges submitted with a fee payment must be submitted to the same location as the original fee payment, marked "Attention: Fee Supervisor". Challenges not accompanied by a fee payment should be filed with the Commission's Secretary and clearly marked to the attention of the Managing Director.

(b) The filing of a petition for reconsideration or an application for review of a fee determination will not relieve licensees from the requirement that full and proper payment of the underlying fee payment be submitted, as

required by the Commission's action, or delegated action, on a request for waiver, reduction or deferment. Petitions for reconsideration and applications for review submitted with a fee payment must be submitted to the same location as the original fee payment. Petitions for reconsideration and applications for review not accompanied by a fee payment should be filed with the Commission's Secretary and clearly marked to the attention of the Managing Director.

(1) Failure to submit the fee by the date required will result in the assessment of a 25 percent penalty.

(2) If the fee payment should fail while the Commission is considering the matter, the petition for reconsideration or application for review will be dismissed.

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