Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Assessment and Collection of Regulatory Fees	)	MD Docket No. 17-134
For Fiscal Year 2017	)	
	)	

REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: September 1, 2017 **Released: September 5, 2017**

Comment Date: [[30 days after Federal Register Publication]]
Reply Comment Date: [[45 days after Federal Register Publication]]

By the Commission: Commissioner O'Rielly concurring in part and dissenting in part, and issuing a statement.

I. INTRODUCTION

1. This Report and Order adopts a schedule of regulatory fees to assess and collect $356,710,992 in regulatory fees for fiscal year (FY) 2017, pursuant to section 9 of the Communications Act of 1934, as amended (Communications Act or Act) and the Commission's FY 2017 Appropriation.[1] The schedule of regulatory fees for FY 2017 adopted here is attached in Appendix C. These regulatory fees are due in September 2017. The FY 2017 regulatory fees are based on the proposals in the *FY 2017 NPRM*,[2] considered in light of the comments received and Commission analysis.

II. BACKGROUND

2. Congress adopted a regulatory fee schedule in 1993[3] and authorized the Commission to assess and collect annual regulatory fees pursuant to the schedule, as amended by the Commission.[4] The Commission annually reviews the regulatory fee schedule, proposes changes to the schedule to reflect changes in the amount of its appropriation, and proposes increases or decreases to the schedule of regulatory fees.[5] The Commission makes changes to the regulatory fee schedule "if the Commission determines that the schedule requires amendment to comply with the requirements"[6] of section 9(b)(1)(A) of the Act.[7] The Commission may also add, delete, or reclassify services in the fee schedule to reflect additions, deletions, or changes in the nature of its services "as a consequence of Commission rulemaking proceedings or changes in law." Regulatory fees must also cover the costs the Commission incurs in

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[1] 47 U.S.C. § 159. Consolidated Appropriations Act, 2017, Division E – Financial Services and General Government Appropriations Act, 2017, Title V – Independent Agencies, Public Law 115-31 (May 5, 2017), available at https://www.congress.gov/bill/115th-congress/house-bill/244/text.

[2] *Assessment and Collection of Regulatory Fees for Fiscal Year 2017*, Notice of Proposed Rulemaking, 32 FCC Rcd 4526 (2017) (*FY 2017 NPRM*).

[3] 47 U.S.C. § 159(g) (showing original fee schedule prior to Commission amendment).

[4] 47 U.S.C. § 159.

[5] 47 U.S.C. § 159(b)(1)(B).

[6] 47 U.S.C. § 159(b)(2).

[7] 47 U.S.C. § 159(b)(1)(A).

regulating entities that are statutorily exempt from paying regulatory fees,[8] entities whose regulatory fees are waived,[9] and entities that provide nonregulated services. Thus, for each fiscal year, the Commission proposes a fee schedule in the annual Notice of Proposed Rulemaking that reflects changes in the amount appropriated for the performance of the Commission's regulatory activities, changes in the industries represented by the regulatory fee payors, changes in FTE[10] levels, and any other issues of relevance to the proposed fee schedule.[11] After reviewing the comments, the Commission issues a Report and Order adopting the fee schedule for the fiscal year and sets out the procedures for payment of fees.

3. The Commission calculates the fees by first determining the number of FTEs performing the regulatory activities specified in section 9(a), "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…."[12] FTEs are categorized as "direct" if they are performing regulatory activities in one of the "core" bureaus, i.e., the Wireless Telecommunications Bureau, Media Bureau, Wireline Competition Bureau, and part of the International Bureau. All other FTEs are considered "indirect."[13] The total FTEs for each fee category is calculated by counting the number of direct FTEs in the core bureau that regulates that category, plus a proportional allocation of indirect FTEs. Next, the Commission allocates the total amount to be collected among the various regulatory fee categories. This allocation is based on the number of FTEs assigned to work in each regulatory fee category. Each regulatee within a fee category pays its proportionate share based on an objective measure, e.g., revenues, number of subscribers, or licenses.[14]

4. As part of its annual review, the Commission seeks to improve its regulatory fee analysis.[15] For example, in the *FY 2013 Report and Order*, the Commission updated FTE allocations to more accurately reflect the number of FTEs working on regulation and oversight of the regulatees in the

[8] *Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, Report and Order, 19 FCC Rcd 11662, 11666, para. 11 (2004) (*FY 2004 Report and Order*). For example, governmental and nonprofit entities are exempt from regulatory fees under section 9(h) of the Act. 47 U.S.C. § 159(h); 47 CFR § 1.1162.

[9] 47 CFR § 1.1166.

[10] One FTE, a "Full Time Equivalent" or "Full Time Employee," is a unit of measure equal to the work performed annually by a full-time person (working a 40 hour workweek for a full year) assigned to the particular job, and subject to agency personnel staffing limitations established by the U.S. Office of Management and Budget.

[11] Section 9(b)(2) discusses mandatory amendments to the fee schedule and Section 9(b)(3) discusses permissive amendments to the fee schedule. Both mandatory and permissive amendments are not subject to judicial review. 47 U.S.C. §§ 159(b)(2) and (3).

[12] 47 U.S.C. § 159(b)(1)(A). When section 9 was adopted, the total FTEs were to be calculated based on the number of FTEs in the Private Radio Bureau, Mass Media Bureau, and Common Carrier Bureau. (The names of these bureaus were subsequently changed.) Satellites, earth stations, and international bearer circuits were regulated through the Common Carrier Bureau before the International Bureau was created.

[13] As of September 2016, for regulatory fee purposes, excluding auctions-funded FTEs, the direct FTEs are Wireline Bureau (167); Media Bureau (141); Wireless Bureau (92); and International Bureau (24), for a total of 424 direct FTEs. The indirect FTEs, for regulatory fee purposes, non-auctions-funded, are from the International Bureau (81), Enforcement Bureau (237), Consumer & Governmental Affairs Bureau (148), Public Safety & Homeland Security Bureau (101), Chairman and Commissioners' offices (21), Office of the Managing Director (159), Office of General Counsel (77), Office of the Inspector General (43), Office of Communications Business Opportunities (9), Office of Engineering and Technology (78), Office of Legislative Affairs (11), Office of Strategic Planning and Policy Analysis (19), Office of Workplace Diversity (3), Office of Media Relations (16), and Office of Administrative Law Judges (4), totaling 1,007 indirect FTEs. The total direct and indirect FTEs number 1,431.

[14] *See Procedures for Assessment and Collection of Regulatory Fees*, Notice of Proposed Rulemaking, 27 FCC Rcd 8458, 8461-62, paras. 8-11 (2012) (*FY 2012 NPRM*).

[15] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, MD Docket No. 08-65, Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6388 (2008) (*FY 2008 Further Notice*).

various fee categories;[16] reallocated some FTEs from the International Bureau as indirect;[17] combined the UHF and VHF television stations into one regulatory fee category;[18] and added Internet Protocol Television (IPTV) to the cable television fee category.[19] In the *FY 2014 Report and Order*, the Commission adopted a new fee subcategory for toll free numbers in the Interstate Telecommunications Service Provider (ITSP)[20] fee category;[21] increased the de minimis threshold to $500 for annual regulatory fee payors;[22] and eliminated several categories from the regulatory fee schedule.[23] In the *FY 2015 Report and Order*, the Commission reduced the regulatory fee for submarine cable, terrestrial, and satellite international bearer circuits.[24] The Commission also adopted a regulatory fee for DBS, as a subcategory of the cable television and IPTV fee category,[25] and for toll-free numbers[26] and reallocated four International Bureau FTEs from direct to indirect.[27] In the *FY 2016 Report and Order*, the Commission adjusted regulatory fees for radio and television broadcasters, based on the type and class of service and on the population served;[28] adopted an increase in the regulatory fee for DBS providers within the cable television and IPTV regulatory fee category;[29] and adopted an across the board fee increase for the Commission's moving expenses.[30] In this proceeding, the Commission continues to improve and reform the regulatory fee process.

5. In our *FY 2017 NPRM,* we proposed to collect $356,710,992 in regulatory fees and included a detailed, proposed fee schedule. We received 17 comments and six reply comments.[31]

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[16] *Assessment and Collection of Regulatory Fees for Fiscal Year 2013*, Report and Order, 28 FCC Rcd 12351, 12354-58, paras. 10-20 (2013) (*FY 2013 Report and Order*). The Commission now updates the FTE allocations annually. This was recommended in a report issued by the Government Accountability Office (GAO) in 2012. *See* GAO "Federal Communications Commission Regulatory Fee Process Needs to be Updated," GAO-12-686 (Aug. 2012) (GAO Report) at 36 (available at http://www.gao.gov/products/GAO-12-686).

[17] *FY 2013 Report and* Order, 28 FCC Rcd at 12355-58, paras. 13-20.

[18] *Id.*, 28 FCC Rcd at 12361-62, paras. 29-31.

[19] *Id.*, 28 FCC Rcd at 12362-63, paras. 32-33.

[20] The ITSP category includes interexchange carriers (IXCs), incumbent local exchange carriers, toll resellers, and other IXC service providers.

[21] *Assessment and Collection of Regulatory Fees for Fiscal Year 2014*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 10767, 10777-79, paras. 25-28 (2014) (*FY 2014 Report and Order*).

[22] *FY 2014 Report and Order*, 29 FCC Rcd at 10774-76, paras. 18-21.

[23] *Id.*, 29 FCC Rcd at 10776-77, paras. 22-24.

[24] *Assessment and Collection of Regulatory Fees for Fiscal Year 2015*, Report and Order and Further Notice of Proposed Rulemaking, 30 FCC Rcd 10268, 10273, para. 12 (2015) (*FY 2015 Report and Order*).

[25] *FY 2015 Report and Order*, 30 FCC Rcd at 10276-77, paras. 19-20.

[26] *Id.*, 30 FCC Rcd at 10271-72, para. 9.

[27] *Id.*, 30 FCC Rcd at 10278, para. 24. The Commission also, in the *FY 2015 NPRM and Report and Order*, eliminated two fee categories. *See Assessment and Collection of Regulatory Fees for Fiscal Year 2015*, Notice of Proposed Rulemaking, Report and Order, and Order, 30 FCC Rcd 5354, 5361-62, paras. 19-22 (2015) (*FY 2015 NPRM and Report and Order*).

[28] *Assessment and Collection of Regulatory Fees for Fiscal Year 2016*, Report and Order, 31 FCC Rcd 10339, 10350-51, paras. 31-33 (2016) (*FY 2016 Report and Order*).

[29] *FY 2016 Report and Order,* 31 FCC Rcd at 10347-350, paras. 25-30.

[30] *Id.*, 31 FCC Rcd at 10341, para. 7.

[31] Commenters to the *FY 2017 NPRM* are listed in Appendix A.

III. REPORT AND ORDER

6. In this *FY 2017 Report and Order*, we adopt a regulatory fee schedule for FY 2017, pursuant to section 9 of the Communications Act and the 2017 Consolidated Appropriations Act[32] in order to collect $356,710,992 in regulatory fees.[33] Of this amount, we project approximately $22.17 million (6.22 percent of the total FTE allocation) in fees from the International Bureau regulatees;[34] $88.69 million (24.86 percent of the total FTE allocation) in fees from the Wireless Telecommunications Bureau regulatees;[35] $115.58 million (32.40 percent of the total FTE allocation) from Wireline Competition Bureau regulatees;[36] and $130.27 million (36.52 percent of the total FTE allocation) from the Media Bureau regulatees.[37] These regulatory fees are due in September 2017. The schedule of regulatory fees for FY 2017 adopted here is attached as Appendix C.

A. Allocating FTEs for Regulatory Fee Purposes

7. Under section 9 of the Act, regulatory fees are to "be derived by determining the full-time equivalent number of employees performing" these activities, "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 . . . ."[38] As a general matter, we reasonably expect that the work of the FTEs in the core bureaus should remain focused on the industry segment regulated by each of those bureaus. The work of the FTEs in the indirect bureaus and offices benefits the Commission and the telecommunications industry and is not specifically focused on the regulatees and licensees of a core bureau. Given the significant implications of reassignment of FTEs in our fee calculation, we make changes to FTE classifications only after performing considerable analysis and finding the clearest case for reassignment.[39]

8. In the *FY 2017 NPRM*, we proposed to reallocate 38 FTEs in the Wireline Competition Bureau associated with Universal Service Fund work as indirect and to reallocate four FTEs from the Wireline Competition Bureau that work on wireless numbering issues to the Wireless Telecommunications Bureau due to the changes to the Universal Service regulatory landscape that no longer affect only ITSPs and the fact that approximately half the benefit of the work done by FTEs on numbering issues accrue to the CMRS industry.

1. FTEs Associated with the Universal Service Fund

9. In the *FY 2017 NPRM*, the Commission explained that changes to the Universal Service Fund regulatory landscape require us to reexamine the treatment of Universal Service Fund FTEs as

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[32] 47 U.S.C. § 159. Consolidated Appropriations Act, 2017, Division E – Financial Services and General Government Appropriations Act, 2017, Title V – Independent Agencies, Public Law 115-31 (May 5, 2017), available at https://www.congress.gov/bill/115th-congress/house-bill/244/text.

[33] Section 9 regulatory fees are mandated by Congress and collected to recover the regulatory costs associated with the Commission's enforcement, policy and rulemaking, user information, and international activities. 47 U.S.C. § 159(a).

[34] Includes satellites, earth stations, and international bearer circuits (submarine cable systems and satellite and terrestrial bearer circuits).

[35] Includes Commercial Mobile Radio Service (CMRS), CMRS messaging, Broadband Radio Service/Local Multipoint Distribution Service (BRS/LMDS), and multi-year wireless licensees.

[36] Includes ITSP and toll free numbers.

[37] Includes AM radio, FM radio, television (including low power and Class A), TV/FM translators and boosters, cable television and IPTV, DBS, and Cable Television Relay Service (CARS) licenses.

[38] 47 U.S.C. § 159(b)(1)(A).

[39] *FY 2013 Report and Order*, 28 FCC Rcd at 12357, para. 19. The Commission observed that the International Bureau was a "singular case" because the work of those FTEs "primarily benefits licensees regulated by other bureaus." *Id.*, 28 FCC Rcd at 12355, para. 14.

direct FTEs. There are currently approximately 51 FTEs in the Wireline Competition Bureau, including the bureau front office, working on Universal Service Fund issues, with 13 of those FTEs focused on the High-Cost program. Currently, there are approximately three FTEs in the Wireless Telecommunications Bureau, including the bureau front office, implementing the Mobility Fund, a universal service High-Cost support mechanism devoted exclusively to mobile services.[40] These Wireline Competition Bureau and Wireless Telecommunications Bureau FTEs are considered direct FTEs for regulatory fee purposes. Other FTEs throughout the Commission working on universal service issues are indirect FTEs, including the FTEs working on universal service issues in the Enforcement Bureau, the Office of the Managing Director, the Office of the Inspector General, and the Office of the General Counsel.

10. In the *FY 2017 NPRM*, we proposed to reallocate the 38 FTEs in the Wireline Competition Bureau assigned to work on the non-high-cost programs of the Universal Service Fund as indirect for regulatory fee purposes, for several reasons.[41] The 38 FTE count is based on coordination between the Office of Managing Director and Wireline Competition Bureau staff which analyzed how many FTEs work on each of the USF programs.[42] In doing so, we noted that contributions to the Universal Service Fund are required from service providers using any technology that has end-user interstate telecommunications.[43] As we discussed in the *FY 2017 NPRM*, continuing changes in the universal service fund regulatory landscape requires us to reexamine the appropriateness of treating the FTEs working on universal service issues as Wireline Competition Bureau direct FTEs.[44] Initially, universal service programs were focused on wireline services, but now wireless carriers, and more recently broadband providers, are involved in the E-Rate,[45] Lifeline,[46] and Rural Healthcare[47] programs. In addition, three of the universal service fund programs—E-Rate, Lifeline, and Rural Healthcare—tie funding eligibility to the beneficiary, i.e., a school, a library, a low-income individual or family, or a rural healthcare provider, and not to Commission regulatees.[48] Wireless carriers now serve a substantial, if not

[40] *See Connect America Fund, et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011).

[41] *FY 2017 NPRM*, 32 FCC Rcd at 4529-4530, para. 10.

[42] The FCC Time and Attendance system does not provide a breakdown of USF work by technology or bureau.

[43] 47 CFR § 54.706(a).

[44] *FY 2017 NPRM*, 32 FCC Rcd at 4529, para. 9.

[45] "The schools and libraries universal service support program, commonly known as the E-rate program, helps schools and libraries to obtain affordable broadband. . . . Eligible schools, school districts and libraries may apply individually or as part of a consortium [for] . . . category one services to a school or library (telecommunications, telecommunications services and Internet access), and category two services that deliver Internet access within schools and libraries (internal connections, basic maintenance of internal connections, and managed internal broadband services)." *See* FCC website, "E-Rate – Schools & Libraries USF Program," available at https://www.fcc.gov/general/e-rate-schools-libraries-usf-program#block-menu-block-4 (last visited July 17, 2017).

[46] "Since 1985, the Lifeline program has provided a discount on phone service for qualifying low-income consumers. . . . The Lifeline program is available to eligible low-income consumers in every state, territory, commonwealth, and on Tribal lands. . . . In . . . 2016 . . . the Commission included broadband as a support service in the Lifeline program." *See* FCC website, "Lifeline Program for Low-Income Consumers," available at https://www.fcc.gov/general/lifeline-program-low-income-consumers#block-menu-block-4 (last visited July 17, 2017).

[47] "The Rural Health Care Program, which includes the new Healthcare Connect Fund, provides funding to eligible health care providers (HCPs) for telecommunications and broadband services necessary for the provision of health care. The goal of the program is to improve the quality of health care available to patients in rural communities by ensuring that eligible HCPs have access to telecommunications and broadband services." *See* FCC website, "Rural Health Care Program," available at https://www.fcc.gov/general/rural-health-care-program#block-menu-block-4 (last visited July 17, 2017).

[48] *FY 2017 NPRM*, 32 FCC Rcd at 4530, para. 10.

majority, of Lifeline subscribers.[49] Also, satellite operators, Wi-Fi network installers, and fiber builders may all receive funding through the E-Rate and Rural Healthcare universal service programs.[50] Similarly, multichannel video programming distributors (MVPDs), who also provide supported services, receive universal service funding through participation in both the E-rate and Rural Healthcare programs because they provide telecommunications and Internet access services that are eligible for support in those programs.[51] And given that the applicants in these programs are not even regulatees—instead, they are the schools and libraries and healthcare providers—the bulk of the Commission's oversight of these programs (i.e., the costs incurred that create a need for regulatory fees) are not generated by regulatees. Indeed, seven of the ten E-Rate forms that make up the bulk of the Commission's oversight of the program are filed by schools and libraries, not service providers. Similarly, seven of the nine rural healthcare program forms are filed by healthcare providers, not service providers. In other words, ITSPs are not the sole or even majority contributors or beneficiaries of these three programs. Reallocating these Wireline Competition Bureau FTEs as indirect FTEs would be more consistent with how FTEs working on universal service issues are treated elsewhere in the Commission, e.g., similar to the 10 FTEs working on USF matters in the Enforcement Bureau, the 5 FTEs in the Office of the Managing Director, the 10 FTEs in the Office of the Inspector General, and the 5 FTEs in the Office of the General Counsel.[52]

11. ITTA and Frontier support the proposal in the *FY 2017 NPRM* to reallocate 38 Wireline Competition Bureau FTEs as indirect, and CTIA argues that if the Commission reclassifies any of these FTEs, they should be reallocated as indirect.[53] CenturyLink also agrees with this proposal and observes that the concern that the reallocation would impose a burden on broadcasters which do not participate in the universal service program is misplaced "as there is no completely pure way to precisely allocate every Commission FTE."[54] After consideration of the record on this issue and for the reasons discussed in the *FY 2017 NPRM*, i.e., that ITSPs are no longer the sole contributors or beneficiaries of the E-Rate, Lifeline, and Rural Healthcare programs and allocating these Wireline Competition Bureau FTEs as indirect FTEs would be more consistent with how FTEs working on universal service issues are treated elsewhere in the Commission, we adopt the proposal to reallocate 38 FTEs in the Wireline Competition Bureau assigned to work on the non-high-cost programs of the Universal Service Fund as indirect. The regulatory fee rates set forth in Appendix C reflect this reallocation of FTEs for regulatory fee purposes.

12. We disagree with SIA's argument that such a reallocation of FTEs from direct to indirect is "premature" because satellite operators do not yet benefit from the contributions of the FTEs working on universal service fund issues.[55] The FTEs working on these universal service issues have already devoted substantial time to making sure that satellite operators are eligible to participate in these programs, such as by becoming ETCs or being eligible for funding under the Rural Healthcare program or E-Rate. Permitting satellite operators into the USF programs uses FTE resources at the beginning of a satellite operators' participation. And some satellite providers have begun to take advantage of that

[49] *Id.*

[50] *Id.*

[51] *See* USAC website, 2017 E-Rate Eligible Services List, *available at* http://www.usac.org/sl/applicants/beforeyoubegin/eligible-services-list.aspx (last visited July 28, 2017); USAC website Rural Healthcare Eligible Services, *available at* http://www.usac.org/rhc/telecommunications/health-care-providers/step01/eligible-services.aspx (last visited July 28, 2017). *See also* Universal Service Administrative Company Third Quarter 2017 FCC Filings (E-rate and Rural Healthcare), *available at* http://www.usac.org/about/tools/fcc/filings/2017/q3.aspx (last visited July 28, 2017).

[52] *Id.*

[53] ITTA Comments at 5; Frontier Comments at 3; CTIA Reply Comments at 4-5.

[54] CenturyLink Comments at 4.

[55] SIA Comments at 2-3; SIA Comments at 2 (observing that no satellite operator has yet been designated an eligible telecommunications carrier, or ETC, which is required for Lifeline funding).

eligibility in, for example, the Rural Healthcare program. Thus, these FTEs are both overseeing satellite operators and benefiting satellite operators, making reallocation appropriate.

13. ITTA and Frontier suggest that we also reallocate to the Wireless Telecommunications Bureau and/or Media Bureau direct FTEs working on universal service high cost issues.[56] Frontier argues that we should reallocate FTEs working on High-Cost Fund issues as indirect FTEs because all universal service programs, including the High-Cost Fund, "benefit the public and all members of the Internet ecosystem, not specifically or uniquely wireline companies."[57] CTIA opposes the proposal to reallocate FTEs working on High-Cost issues, and observes that ITTA and Frontier have failed to show a clear case for reclassification of the Wireline Competition Bureau FTEs.[58] We agree with CTIA that the case for reallocation has not been made at this time.

14. Several parties also ask that we go farther. For example, ITTA argues that the Wireline Competition Bureau FTEs are "no longer focused exclusively on ITSPs"[59] and the Commission "must make adjustments to ensure that its regulatory fees reflect *its actual costs by industry sector*."[60] Similarly, ITTA, Frontier, and CenturyLink also argue that we should combine CMRS into the ITSP category.[61] We do not believe the case has been made for such large changes at this time, because (among other things) advocates of such changes have not fully accounted for the substantial differences in regulatory oversight between different groups of regulatees nor the fact that allocating regulatory fees is not and cannot be an exact science. On the last point, it would be nigh impossible to determine the precise costs attributable to FTEs and the precise benefits flowing from Commission regulation to any one regulatee, let alone a particular cross-section of regulatees or even an entire industry—not to mention the complications associated with regulatees statutorily exempt from paying regulatory fees (such as governmental licensees) and with beneficiaries (such as schools and libraries) that are not regulatees, all of whom nonetheless create costs that must be recovered. As such the Commission has long taken an incrementalist approach, requiring substantial and specific evidence about regulatory burdens and benefits before making changes to the allocation of fees. And those seeking to change our allocations even further have not yet made the case for doing so.

15. After reviewing the record, we conclude that our proposal in the *FY 2017 NPRM* to reallocate 38 FTEs in the Wireline Competition Bureau assigned to work on the non-high cost programs of the Universal Service Fund as indirect for regulatory fee purposes is warranted and consistent with section 9 of the Act. We therefore adopt the proposal in the *FY 2017 NPRM*. The regulatory fee rates set forth in Appendix C reflect this reallocation of FTEs.

2. FTEs Associated with Numbering Issues

16. In the *FY 2017 NPRM*, we estimated that seven to eight FTEs in the Wireline Competition Bureau work on numbering issues.[62] We proposed to reallocate for regulatory fee purposes four of these direct FTEs from the Wireline Competition Bureau to the Wireless Telecommunications Bureau "to take into account factors that are reasonably related to the benefits provided to the payor of the

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[56] ITTA Comments at 6. CenturyLink also supports allocating four Wireline Competition Bureau FTEs as Wireless Telecommunications Bureau FTEs for regulatory fee purposes because "wireless carriers now serve over 90% of Lifeline subscribers." CenturyLink Reply Comments at 4.

[57] Frontier Comments at 3-4. CenturyLink agrees with this proposal. *See* CenturyLink Reply Comments at 3-4.

[58] CTIA Reply Comments at 6.

[59] ITTA Comments at 2.

[60] ITTA Comments at 3 (emphasis added).

[61] *See* ITTA Comments at 10-11; Frontier Comments at 6-7; CenturyLink Reply Comments at 4-5.

[62] *FY 2017 NPRM*, 32 FCC Rcd at 4530, para. 13.

fee by the Commission's activities . . . ."[63] Specifically, we estimated approximately half of the benefit of the work of these FTEs accrue to Wireless Telecommunications Bureau regulatees.[64] Commenters agree with our proposal to reallocate four of the Wireline Competition Bureau FTEs that work on numbering issues to the Wireless Telecommunications Bureau as direct FTEs for regulatory fee purposes.[65]

17. After reviewing the record, we conclude that reallocating four FTEs in the Wireline Competition Bureau assigned to work on numbering issues to the Wireless Telecommunications Bureau for regulatory fee purposes is warranted and consistent with section 9 of the Act. Reallocating four direct FTEs from the Wireline Competition Bureau to the Wireless Telecommunications Bureau will "take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities"[66] because approximately half of the benefit of the work of these FTEs accrue to Wireless Telecommunications Bureau regulatees.[67] We therefore adopt our proposal to reallocate for regulatory fee purposes four direct FTEs from the Wireline Competition Bureau to the Wireless Telecommunications Bureau. The regulatory fee rates set forth in Appendix C reflect this reallocation of FTEs.

B. Direct Broadcast Satellite (DBS) Regulatory Fees

18. DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic dish antenna at the subscriber's location. The two DBS providers, AT&T[68] and DISH Network, are MVPDs.[69] Following the 2012 GAO Report, in which the GAO observed that an evaluation of Media Bureau FTEs was long overdue,[70] the Commission concluded that the Media Bureau FTEs regulate the DBS industry together with the other MVPDs.[71] Subsequently, the Commission adopted a regulatory fee for DBS as a subcategory in the cable television and IPTV category, of 12 cents per year per subscriber.[72] This regulatory fee subcategory was based on Media Bureau FTE activity involving regulation and oversight of all MVPDs, which included DBS providers.[73]

19. As the Commission discussed in the *FY 2015 NPRM*, the DBS providers were established as large MVPDs by 2015 and significant Media Bureau FTE resources were used in regulation and oversight of all MVPDs, including DBS.[74] The Commission concluded there was no reasonable basis to continue to exclude DBS providers from sharing in the cost of MVPD oversight and regulation with cable

[63] 47 U.S.C. § 159(b)(1)(A).

[64] *See* Industry Analysis and Technology Division, Wireline Competition Bureau, FCC, Voice Telephone Services: Status as of December 31, 2015, at 2 Figure 1 (2016).

[65] ITTA Comments at 9-10; CenturyLink Comments at 5 & Reply Comments at 5; Frontier Comments at 5-6.

[66] 47 U.S.C. § 159(b)(1)(A).

[67] *See* Industry Analysis and Technology Division, Wireline Competition Bureau, FCC, Voice Telephone Services: Status as of December 31, 2015, at 2 Figure 1 (2016).

[68] AT&T and DIRECTV merged in 2015. *See Applications of AT&T and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 30 FCC Rcd 9131 (2015).

[69] MVPD is defined in section 602(13) of the Act, 47 U.S.C. § 522(13). DBS subscribers were 33.2 percent of all MVPD subscribers at the end of 2015. *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Eighteenth Report, 32 FCC Rcd 568, 575, para. 19 (2017) (*Eighteenth Competition Report*) (citing SNL Kagan, U.S. Multichannel Industry Benchmarks).

[70] GAO Report at 17-20.

[71] *FY 2015 NPRM*, 30 FCC Rcd at 5368, para. 32.

[72] *FY 2015 Report and Order*, 30 FCC Rcd at 10276-77, paras. 19-20.

[73] *FY 2015 NPRM*, 30 FCC Rcd at 5367-68, para. 31.

[74] *Id.*, 30 FCC Rcd at 5368, para. 32.

television and IPTV. In lieu of directly including DBS providers in the cable television/IPTV category at the same regulatory fee rate, the Commission elected to phase in the new Media Bureau-based regulatory fee for DBS, starting at 12 cents per subscriber, per year. Since then, the Commission has increased the DBS regulatory fee each year, to bring it closer to the per-subscriber rate paid by cable television and IPTV. In the FY 2016 regulatory fee proceeding, the Commission increased the regulatory fee for DBS providers to 24 cents, plus an across-the-board increase of three cents for the Commission's moving expenses, for a total of 27 cents per subscriber, per year.[75] In the *FY 2017 NPRM*, the Commission noted that the Media Bureau resources focused on MVPD proceedings (including DBS) supported continuing to bring the DBS rate closer to the cable television/IPTV per subscriber rate.[76] At that time, we proposed a regulatory fee rate of 36 cents per subscriber per year, plus two cents due to the increase in the Commission's budget for moving expenses, for a total of 38 cents per subscriber per year for FY 2017.[77] As we discuss below, we are adopting the proposed rate of 38 cents per subscriber, per year in this Report and Order, in our effort to bring the DBS rate closer to the cable television/IPTV per subscriber rate.

20. We agree with the commenters representing the cable television industry that the Media Bureau resources utilized by the DBS providers are similar to those used by the cable television and IPTV industry,[78] and for this reason we have been phasing in the regulatory fee for DBS providers each year. Commenters representing the cable television industry observe that despite the Commission's prior commitment to ensuring "an appropriate level of regulatory parity with cable television and IPTV" the proposed rate is far below the 96 cents proposed rate for cable television and IPTV.[79] These commenters argue that there is no justification for this disparity, due to the fact that DBS operators impose regulatory costs and receive benefits from the Media Bureau that affect all MVPDs;[80] that the proposed fees impose competitive and technological disparities, favoring DBS over cable television and IPTV;[81] and that there

[75] *FY 2016 Report and Order*, 31 FCC Rcd at 10348-49, para. 26.

[76] *FY 2017 NPRM*, 32 FCC Rcd at 4531-32, paras. 15-17.

[77] *FY 2017 NPRM*, 32 FCC Rcd at 4532, para. 17.

[78] For example, as ACA observes, DBS providers have been actively involved in the Media Bureau's proceeding implementing the Satellite Television Extension and Localism Act Reauthorization Act of 2014 (STELAR) and in the market modification proceedings that STELAR directed the Commission to expand to satellite DBS carriage. The STELA Reauthorization Act of 2014 (STELAR), Pub. L. No. 113-200, 128 Stat. 2059 (2014); *Amendment to the Commission's Rules Concerning Market Modification, Implementation of Section 102 of the STELA Reauthorization Act of 2014*, Report and Order, 30 FCC Rcd 10406 (2015) (adopting satellite television market modification rules). *See*, *e.g.*, *Gray Television Licensee, LLC, Petition for Modification of the Satellite Televisions Market for WSAW-TV, Wausau, Wisconsin*, MB Docket No. 16-293, DirecTV, LLC Response to Petition for Special Relief (filed Oct. 6, 2016); *Amendment to the Commission's Rules Concerning Market Modification, Implementation of Section 102 of the STELA Reauthorization Act of 2014*, MB Docket No. 15-71, DISH Network LLC Market Modification Pre-Filing Coordination Letter for Monongalia County, West Virginia (filed May 23, 2017).

AT&T and DISH have also been involved in the Commission's ATSC 3.0 rulemaking. *See*, *e.g.*, *Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, GN Docket No. 16-142, Comments of DISH Network LLC (filed May 9, 2017); Reply Comments of AT&T (filed June 8, 2017). AT&T and DISH Network were also active participants in the Media Bureau's 2016 public notice proceeding. *See*, *e.g.*, *Media Bureau Seeks Comment on Joint Petition for Rulemaking of America's Public Television Stations, the AWARN Alliance, the Consumer Technology Association, and the National Association of Broadcasters Seeking to Authorize Permissive Use of the "Next Generation TV" Broadcast Television Standard*, GN Docket No. 16-142, Comments of DISH Network, LLC (filed May 26, 2016); Comments of AT&T (filed May 26, 2016).

[79] ACA Comments at 2 (quoting *FY 2017 NPRM*, 32 FCC Rcd at 4531, para. 15); NCTA Comments at 3.

[80] ACA Comments at 3-6; NCTA Comments at 3-5.

[81] NCTA Comments at 5-7.

is no evidence in the record to support the disparity in fees.[82] The Media Bureau FTEs regulate the DBS industry together with the other MVPDs and the burden that DBS imposes on Media Bureau FTEs is roughly the same. For example, since October 1, 2016, the Media Bureau has opened 17 proceedings that affect MVPDs; seven of those proceedings are focused on cable operators, six are focused on DBS, and four cover all MVPDs (with three of those also covering other media services like broadcasters). Thus, these regulatees—MVPDs—are a group that includes DBS. In order to continue to bring the DBS fee closer to the cable television/IPTV fee, we are adopting the proposed rate of 38 cents per subscriber, which still remains substantially below the cable television/IPTV fee we adopt today.

21. We reject the argument raised by DISH and AT&T, the two DBS providers, who contend that a fee increase would "harm DBS customers."[83] We do not accept the DISH and AT&T unsupported contention that a regulatory fee increase of several cents per subscriber, per month would "harm" their customers, as such an increase is a negligible fraction of a monthly bill.[84]

22. AT&T and DISH also argue that several recent proceedings involving MVPDs do not justify an increase in regulatory fees.[85] We disagree. The examples of recent proceedings involving MVPDs illustrate that Media Bureau FTEs work on significant MVPD issues that include DBS. DBS, cable television, and IPTV all receive oversight and regulation as a result of the work of Media Bureau FTEs on MVPD issues. This regulatory fee is not based on specific recent proceedings, but that a significant number of Media Bureau FTEs work on MVPD issues that include DBS.[86] We listed examples of several recent proceedings to illustrate that the Media Bureau is involved in numerous MVPD issues.[87] The fee increase we adopt today is not based on particular Media Bureau proceedings, but is an effort to bring the regulatory fee closer to the cable television/IPTV per subscriber fee.

23. AT&T and DISH contend that there is no evidence that DBS providers "usurped the work of such a significant amount of Media Bureau FTEs sufficient to justify this increase."[88] The DBS

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[82] NCTA Comments at 7-8.

[83] DISH and AT&T Comments at 3.

[84] The current least expensive promotional rate for new DBS subscribers is approximately $50 per month for 12 months (not including taxes or leasing charges). Even if the regulatory fee were 72 cents per subscriber per year, approximately what it would be at parity with cable television/IPTV, it would equal 0.12% of the lowest introductory monthly fee for DBS ($600 x .0012 = $0.72). *See* https://www.directv.com/DTVAPP/pepod/configure.jsp#package-section (last visited June 29, 2017); https://www.dish.com/programming/packages/ (last visited June 29, 2017). ACA observes that DISH's reported average revenue per unit was $86.79 per month and AT&T's was $118.00 per month. ACA Reply Comments at 2-3.

[85] DISH and AT&T Comments at 4-5; AT&T Reply Comments at 6-7.

[86] *FY 2015 NPRM*, 30 FCC Rcd at 5369, para. 33.

[87] *See, e.g.*, *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Notice of Proposed Rulemaking, 31 FCC Rcd 2463 (2016); *Expanding Consumers' Video Navigation Choices, Commercial Availability of Navigation Devices*, Notice of Proposed Rulemaking and Memorandum Opinion and Order, 31 FCC Rcd 1544 (2016); *Promoting the Availability of Diverse and Independent Sources of Video Programming*, Notice of Inquiry, 31 FCC Rcd 1610 (2016); *Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, Report and Order, 31 FCC Rcd 526 (2016); *Amendment to the Commission's Rules Concerning Market Modification, Implementation of Section 102 of the STELA Reauthorization Act of 2014*, Report and Order, 30 FCC Rcd 10406 (2015).

[88] DISH and AT&T Comments at 5-6. We also do not agree with AT&T's argument that we have ignored the other regulatory fees paid by the DBS providers. AT&T Reply Comments at 7. The regulatory fee based on the Media Bureau FTEs is not related to the regulatory fee based on International Bureau FTEs. While there is no other industry in the same situation as DBS, we note that the cable television industry pays regulatory fees for CARs licenses.

commenters are misunderstanding the basis for including DBS in the cable television/IPTV regulatory fee.[89] The Commission has never said that the DBS industry "usurped the work" of the Media Bureau staff. The regulatory fee is based on the fact that Media Bureau staff work on significant issues involving MVPDs, including DBS. The DBS regulatory fee is based on the Media Bureau's regulation and oversight of the MVPD industry (including DBS), not on a particular number of FTEs focused solely on DBS. The Commission has specifically rejected the argument that section 9 of the Act requires us to "show that DBS and cable occupy a comparable number of FTEs."[90]

24. Finally, AT&T and DISH contend that there is no legal basis to charge DBS providers the same regulatory fees as cable television and IPTV operators.[91] We disagree. We recognize that DBS is not identical to cable television and IPTV. Services that are not technologically identical nevertheless warrant placement in the same regulatory fee category, e.g., ITSP includes a range of carriers that may not be regulated identically but must pay fees on the same basis.[92] When interconnected Voice over Internet Protocol (VoIP) providers were added to the ITSP category in a permitted amendment the Commission observed that "the costs and benefits associated with our regulation of interconnected VoIP providers are not identical as those associated with regulating interstate telecommunications service and CMRS."[93] Indeed, IPTV is not regulated in all the same ways as cable television, and yet the Commission requires them to pay fees on the same basis.[94] We recognize that DBS is not identical to cable, but the Media Bureau FTEs work on MVPD issues that include DBS. Although DBS is not identical to cable television and IPTV, the services all receive oversight and regulation as a result of the work of Media Bureau FTEs on MVPD issues, and the burden imposed on the Commission is similar.

25. After considering the comments filed in this proceeding, we conclude that moving the DBS rate is supported by the data and analysis, and therefore adopt a regulatory fee rate of 38 cents, per subscriber, per year for FY 2017.

C. Radio Broadcaster Regulatory Fees

26. In the *FY 2017 NPRM*, the Commission proposed to revise the table for AM and FM broadcasters.[95] The proposed table had revised ratios so that the difference between each tier would be proportional. We also sought comment on whether the regulatory fees should be reduced further for the AM and FM broadcasters in the two lowest tiers.

27. We received two comments on this issue. CRC, an AM station licensee, contends that the proposed fees for AM stations are too high.[96] CRC observes that small AM stations must compete against FM stations and other media and they generate significantly less revenue than FM stations.[97]

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[89] ACA observes, "the DBS providers misconceive the nature of the Commission's fee setting exercise, as it is not required to calculate fee levels with scientific precision." *See* ACA Reply Comments at 6.

[90] *FY 2015 NPRM*, 30 FCC Rcd at 5369, para. 33.

[91] DISH and AT&T Comments at 7-8.

[92] ITSP, regulated by the Wireline Competition Bureau, includes interexchange carriers (IXCs), incumbent local exchange carriers (LECs), toll resellers, Voice over Internet Providers (VoIP), and other service providers, all of which involve different degrees of regulatory oversight.

[93] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15712, 15719, para. 19 (2007) (*FY 2007 Report and Order*).

[94] *FY 2013 Report and* Order, 28 FCC Rcd at 12362, para. 32 ("IPTV providers should be subject to the same regulatory fee as cable providers.").

[95] *FY 2017 NPRM*, 32 FCC Rcd at 4533, para. 19.

[96] CRC Comments at 1.

[97] CRC Comments at 1.

CRC argues that the economic disparities between AM and FM facilities should be reflected in the regulatory fee schedules, particularly in the top tiers where the disparity in revenues is much greater than in the smaller markets.[98] Arso contends that the *FY 2017 NPRM* does not go far enough in alleviating the hardship imposed on small broadcasters and urges the Commission to adopt a fast track waiver process for stations in economically depressed areas, such as Puerto Rico.[99]

28. We agree with the commenters that small independent broadcasters face hardship today. As the Commission explained in the *FY 2016 Report and Order*, "[e]xtending some relief to these small radio broadcasters may facilitate their continued ability to stay in business and serve their small and rural communities."[100] After reviewing the record, and due to the economic hardship faced by many small rural independent radio stations, we are adopting a revised version of the proposed table in the *FY 2017 NPRM* and reducing the regulatory fees in the two lowest population tiers for AM and FM broadcasters from the amounts proposed. In FY 2018, we will again review the status of these small radio broadcast stations to see if further relief is warranted. Below is the table we adopt today:

FY 2017 RADIO STATION REGULATORY FEES						
Population Served	**AM Class A**	**AM Class B**	**AM Class C**	**AM Class D**	**FM Classes A, B1 & C3**	**FM Classes B, C, C0, C1 & C2**
<=25,000	$895	$640	$555	$610	$980	$1,100
25,001 – 75,000	$1,350	$955	$830	$915	$1,475	$1,650
75,001 – 150,000	$2,375	$1,700	$1,475	$1,600	$2,600	$2,925
150,001 – 500,000	$3,550	$2,525	$2,200	$2,425	$3,875	$4,400
500,001 – 1,200,000	$5,325	$3,800	$3,300	$3,625	$5,825	$6,575
1,200,001 – 3,000,00	$7,975	$5,700	$4,950	$5,425	$8,750	$9,875
3,000,001 – 6,000,00	$11,950	$8,550	$7,400	$8,150	$13,100	$14,800
>6,000,000	$17,950	$12,825	$11,100	$12,225	$19,650	$22,225

D. Broadcast Television Satellite

29. Broadcast television satellite stations pay a lower regulatory fee than standalone full service broadcast television stations, and some of these stations are designated as such pursuant to note 5 to section 73.3555 of the Commission's rules.[101] For purposes of regulatory fees, we historically have identified as satellite stations those so listed in the Media Bureau's Consolidated Data Base System (CDBS), the Television and Cable Factbook, or BIA/Kelsey MEDIA Access Pro.[102] In the *FY 2017 NPRM*, the Commission sought comment on basing the categorization of television satellite stations for regulatory fee payments on authorization under note 5 of section 73.3555 of the Commission's rules, and noted that the Television and Cable Factbook may identify some stations as satellite stations that are not

[98] CRC Comments at 2.

[99] Arso Comments at 1-2.

[100] *FY 2016 Report and Order*, 31 FCC Rcd at 10351, para. 33.

[101] *FY 2017 NPRM*, 31 FCC Rcd at 4534, para. 20.

[102] *Id.*, 31 FCC Rcd at 4535, para. 21.

listed in the Media Bureau's records.[103] We received limited comments on the issue and do not have adequate support to change the methodology for determining which stations are satellites at this time. We recognize that regulatees rely on consistency of treatment. Therefore, for FY 2017 regulatory fees we treat broadcast television satellite stations as satellite stations that are listed as such in CDBS, the 2017 Television and Cable Factbook, or BIA/Kelsey MEDIA Access Pro, or paid regulatory fees as a satellite station in FY 2016.[104] In the future, we intend to continue examining the appropriate methodology for categorizing when a station should only be assessed regulatory fees at the satellite station level. In doing so, as with other fee reforms, the Commission will work to ensure that any proposed changes to our fee structure are equitable, administrable, and sustainable.[105]

E. Submarine Cable Regulatory Fees

30. The Coalition, a group of submarine cable operators, objects to the proposed FY 2017 regulatory fees for the submarine cable industry, observing that the total amount the Commission is collecting for FY 2017 ($356,710,992) is less than the amount collected for FY 2016 ($384,012,497, of which $44,168,497 was to offset facilities reduction costs), yet the regulatory fee for the highest tier submarine cable system was $133,200 for FY 2016 and the rate proposed for FY 2017, for the highest tier, is $135,700.[106] The Coalition states that the *FY 2017 NPRM* does not adequately justify the proposed increase in fees for submarine cable systems.[107] The Coalition argues that the FY 2016 rate included a one-time facilities reduction charge and the FY 2017 rate should be less than the FY 2016 rate because the number of payment units are the same.[108] The Coalition contends that the Commission is subsidizing unrelated activities to the detriment of the submarine cable operators.[109]

31. We disagree with the Coalition's argument. The increase in regulatory fee rates for the International Bureau regulatees is due to the reallocation of 38 Wireline Competition Bureau direct FTEs as indirect in FY 2017, as discussed above. Although the amount collected overall is less in FY 2017 than in FY 2016, the allocation percentage of regulatory fees for the International Bureau increased from 5.6 percent in FY 2016[110] to 6.22 percent for FY 2017,[111] due to the increase in indirect FTEs. We also note that the regulatory fees paid by the submarine cable operators cover, in addition to the services that the International Bureau provides to submarine cable operators, the services provided to common carriers using submarine cable circuits.[112] The International Bureau provides many services on behalf of common carriers using submarine cable circuits, such as benchmarks enforcement,[113] protection from anticompetitive actions by foreign carriers, section 310(b) foreign ownership rulings, international section 214 authorizations, and representation of U.S. interests at bilateral and multilateral negotiations and

[103] *Id.*, 31 FCC Rcd at 4535, para. 20.

[104] For purposes of determining whether a licensee qualifies as a satellite station for regulatory fee purposes, it must be so characterized in one of these sources as of the date of this Report and Order.

[105] *See FY 2013 NPRM*, 28 FCC Rcd at 7798-7807, paras. 17-40.

[106] Coalition Comments at 3.

[107] Coalition Comments at 3.

[108] Coalition Comments at 5-6.

[109] Coalition Comments at 8.

[110] *FY 2016 Report and Order*, 31 FCC Rcd at 10347-350, para. 6.

[111] *FY 2017 NPRM*, 32 FCC Rcd at 4529, para. 8.

[112] *See FY 2015 Report and Order*, 30 FCC Rcd 10273, para. 12.

[113] *See, e.g.*, *International Settlement Rates*, IB Docket No. 96-261, Report and Order, 12 FCC Rcd 19806 (1997), Report and Order on Reconsideration and Order Lifting Stay, 14 FCC Rcd 9256 (1999), *aff'd sub nom. Cable & Wireless*, 166 F.3d 1224.

international organizations.[114] After reviewing the record, including the comments from the submarine cable industry, we are adopting the fee proposed in the *FY 2017 NPRM* for submarine cable systems.

F. International Bearer Circuits

32. In 2009,[115] the Commission adopted a new methodology for calculating submarine cable international bearer circuits regulatory fees by: (i) eliminating the distinction between common carriers and non-common carriers[116] and (ii) assessing a flat per cable landing license fee[117] for all submarine cable systems with higher fees for larger submarine cable systems and lower fees for smaller systems.[118] The Commission concluded that the new methodology would be more equitable and would encourage better compliance with the regulatory fee requirements.[119] The Commission did not revise the terrestrial and satellite IBC regulatory fee methodology at that time because of the "complexity of the legal, policy and equity issues involved."[120]

33. In the *FY 2016 NPRM*, the Commission revisited the disparate treatment of terrestrial and satellite IBCs vis-à-vis submarine IBCs,[121] but subsequently decided that the record was insufficient to change the fee methodology.[122] In the *FY 2017 NPRM*, the Commission again sought comment on how to update and improve the regulatory fee assessment for terrestrial and satellite IBCs. Specifically, the Commission sought comment on several issues raised by Level 3:[123] adopting a flat, per-provider fee, similar to the submarine cable regulatory fee methodology, based on capacity[124] and including all terrestrial IBCs, i.e., both common carrier and non-common carrier, for regulatory fee purposes.[125] We also sought comment on eliminating the IBC regulatory fee for satellite IBCs and whether we should continue to assess regulatory fees based on IBCs that were active as of December 31 of the prior year.[126]

1. Including non-common carrier IBCs

34. We agree with the commenters, Level 3 and AT&T, that a methodology for terrestrial and satellite IBC regulatory fees based on circuits should be consistent with the submarine cable methodology and include common carrier and non-common carrier terrestrial IBCs. Level 3 explains that including non-common carrier IBCs will "eliminate a major incentive and opportunity providers currently

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[114] *See FY 2015 Report and Order*, 30 FCC Rcd 10273, para. 12.

[115] *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Second Report and Order, 24 FCC Rcd 4208, 4214-16, paras. 13-17 (2009) (*Submarine Cable Order*).

[116] *Submarine Cable Order*, 24 FCC Rcd at 4213, para. 9.

[117] The prior rule assessed regulatory fees based on the number of active circuits on the previous December 31.

[118] *Submarine Cable Order*, 24 FCC Rcd at 4214–16, paras. 13–17.

[119] *Id.*, 24 FCC Rcd at 4208-4209, para. 1.

[120] *Assessment and Collection of Regulatory Fees for Fiscal Year 2009*, Report and Order, 24 FCC Rcd 10301, 10306–07, paras. 16–17 (2009).

[121] *FY 2016 NPRM*, 31 FCC Rcd at 5764-65, paras. 15-16.

[122] *FY 2016 Report and Order*, 31 FCC Rcd at 10343, para. 11. Level 3 had initially proposed the flat fee methodology, for common carrier and non-common carrier providers, assessed based on the total capacity in Gbps. *See* Level 3 Comments, filed in MD Docket No. 16-166 (filed June 23, 2016), at 3-5.

[123] Level 3 Comments, filed in MD Docket No. 16-166 (filed June 23, 2016).

[124] The submarine cable fee is based on capacity per system; the proposed terrestrial and satellite fee would be based on overall capacity, but not on a per system basis.

[125] *FY 2017 NPRM*, 32 FCC Rcd at 4536-38, paras. 23-27.

[126] 47 CFR § 43.62(a)(1). Commenters support continuing to assess regulatory fees based on IBCs that were active as of December 31 of the prior year and we see no reason to change this methodology at this time.

have to underreport the number of IBCs they have in service."[127] As AT&T observes, such an approach treats all terrestrial IBC providers equitably and reduces fees by increasing the payment units.[128] For these reasons, we find no reason to continue excluding non-common carrier terrestrial IBCs from regulatory fees and adopt our proposal to include both common carrier and non-common carrier terrestrial IBCs, consistent with the submarine cable regulatory fee methodology.

35. Adding non-common carrier terrestrial IBCs to the regulatory fee schedule is a permitted amendment, as defined in section 9(b)(3) of the Act,[129] and pursuant to section 9(b)(4)(B),[130] must be submitted to Congress at least 90 days before it will be effective. For that reason, this new fee will be included in the regulatory fee proceeding for FY 2018. We also seek further comment on implementation of this new methodology in the Further Notice of Proposed Rulemaking below.

2. Satellite IBCs

36. In the *FY 2017 NPRM*, we sought comment on whether to eliminate the IBC regulatory fee for satellite providers of IBCs.[131] SIA contends that the fee should be eliminated because it does not correspond with substantive work by the Commission and is overly burdensome for satellite operators to calculate.[132] According to SIA, calculating the number of circuits takes at least ten hours for in-house counsel and additional personnel in other departments are responsible for collecting data for this calculation.[133] In our Further Notice of Proposed Rulemaking below we seek comment on a flat fee methodology for terrestrial and satellite IBCs. The flat fee methodology for terrestrial and satellite IBCs should significantly reduce any burden of collecting data described by SIA. After reviewing the record, we do not see any reason to eliminate this fee category. Instead, we are moving toward a more consistent regulatory fee methodology for all IBCs and a less burdensome process for all regulatees.

3. Fee Based on Circuits as of December 31

37. In the *FY 2017 NPRM*, we sought comment on whether to assess the number of active circuits on systems active as of December 31 of the prior year or assess fees on IBCs that were active at any point during the preceding calendar year.[134] Level 3 and AT&T argue that the Commission should continue to assess regulatory fees based on IBCs that were active as of December 31 of the prior year because it is significantly less burdensome for carriers to identify circuits that are active at a fixed point in time as opposed to at any point during the preceding year.[135] We agree that the burdens associated with requiring providers to count the number of active circuits at any point during the preceding year does not outweigh the benefits. Therefore, we will retain the current requirement of assessing fees on systems active as of December 31 of the prior year.

G. Increasing the De Minimis Threshold

38. Under the Commission's current de minimis rule for regulatory fee payments, a regulatee is exempt from paying regulatory fees if the sum total of all of its regulatory fee liabilities for annual

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[127] Level 3 June 29, 2017 ex parte at 1.

[128] AT&T Comments at 2 & Reply Comments at 1.

[129] 47 U.S.C. § 159(b)(3).

[130] 47 U.S.C. § 159(b)(4)(B).

[131] *FY 2017 NPRM*, 32 FCC Rcd at 4537-38, para. 26.

[132] SIA Comments at 4-5.

[133] SIA Comments at 5, note 18.

[134] *FY 2017 NPRM*, 32 FCC Rcd at 4538, para. 26.

[135] Level 3 Comments at 2; AT&T Reply Comments at 5-6.

regulatory fees is $500 or less for the fiscal year.[136] The Commission increased the de minimis threshold from $10 to $500 in the *FY 2014 Report and Order*.[137] The higher threshold reflected the estimated costs of collecting an unpaid regulatory fee, i.e., at least $350 in direct costs. The Commission's estimate of approximately $350 per unpaid fee excluded overhead or other costs involved in regulatory fee collection.[138] In addition, the Commission observed that setting the de minimis threshold at $500 was unlikely to reduce fee collections to an amount below the full amount of the Commission's annual appropriation.[139]

39. In the FY 2014 regulatory fee proceeding, commenters had argued the threshold should be increased to $750 or $1,000.[140] In response, the Commission adopted a new threshold of $500 for annual regulatory fee and committed to further monitor the de minimis threshold and consider whether to increase the threshold or revise on some other basis.[141] In the *FY 2017 NPRM*, we sought comment on increasing the de minimis threshold to $1,000 to improve the cost effectiveness of the Commission's collection of regulatory fees.[142] Commenters support an increase in the de minimis threshold.[143]

40. In general, we believe the Commission's operational costs associated with processing and collecting these smaller fees, outweigh the benefits of such payments. For example, payors between $500 and $1,000 account for less than one percent of all regulatory fee payments. And yet processing and collecting these fees generates a disproportionate amount of work for Commission staff. Specifically, the cost of researching, creating a bill to send to a non-payor, and completing all follow-up discussion and correspondence has increased since 2014's $350 estimate, and that does not even include the cost of overhead and administering the regulatory fee program.[144] The Commission has found that smaller entities with regulatory fees that fall within this range are less likely to pay on a timely basis and consequently use more Commission resources for fee collection.[145] Nonpayment by these small entities then often results in the escalation of the Commission's administrative costs and a disproportionate use of FTE resources. As such, the marginal benefit to Commission operations of assessing, billing, and collecting regulatory fees on regulatees that would owe less than $1,000 is minute. In addition, setting the threshold at $1,000 is unlikely to reduce fee collections to an amount below the full amount of the Commission's annual appropriation because the additional amount that would no longer be collected is relatively small. We conclude that raising the de minimis threshold to $1,000 is justified by reducing the Commission's cost in collection of regulatory fees, thus allowing a more efficient allocation of Commission resources.

41. We also sought comment on whether we should include multi-year wireless licenses in the de minimis threshold. EWA explains, and we agree, that it would be difficult to administer a de minimis threshold for multi-year licenses.[146] ACA proposes that we adopt a de minimis threshold for

[136] *FY 2014 Report and Order,* 29 FCC Rcd at 10774-76, paras. 18-21.

[137] *Id*.

[138] *Id.*, 29 FCC Rcd at 10775, para. 20 & n. 62.

[139] *Id*.

[140] *Id*.

[141] *Id*., 29 FCC Rcd at 10775, para. 20.

[142] *Id.* (observing that many small entities "are subject to little Commission oversight and regulation which serves to further exacerbate this inequity [of the administrative burden].").

[143] ACA Comments at 7-10; CMA Comments at 4; EWA Comments at 2; NAB Comments at 1-2; Romar Reply Comments at 2-3.

[144] *Id*.

[145] *Id*.

[146] EWA Comments at 2-4.

small cable and IPTV operators of 1000 or fewer subscribers.[147] After analyzing this issue we conclude that it would be administratively difficult to have both a per subscriber de minimis threshold and a $1000 de minimis threshold at the same time. Many cable operators also have CARS licenses and offer other services, such as VoIP, and it would be difficult to calculate if they exceed the de minimis threshold with two different thresholds.

42. Accordingly, the de minimis threshold we adopt today applies only to filers of annual regulatory fees for FY 2017 and not multi-year filings.[148] This de minimis exemption from the payment of regulatory fees applies to the sum of all annual regulatory fee obligations that a regulatee has for all applicable fee categories; not to individual payments for each category separately. The Commission will implement the de minimis threshold of $1,000 beginning immediately. The de minimis status is not a permanent exemption from regulatory fees. Rather, each regulatee will need to reevaluate annually to determine whether its total liability for annual regulatory fees falls at or below the threshold given any changes that the Commission may make in its regulatory fees from year to year.

IV. FURTHER NOTICE OF PROPOSED RULEMAKING

43. In this Further Notice of Proposed Rulemaking, we seek further comment on the appropriate tiers for calculating terrestrial and satellite international bearer circuit fees raised in the *FY 2016 NPRM* and the *FY 2017 NPRM* and the methodology for calculating cable television subscribers in multiple dwelling units (MDUs) raised in the *FY 2008 FNPRM*.[149]

A. International Bearer Circuits

44. We seek further comment on this issue to have a more comprehensive record for adopting a new flat rate methodology for terrestrial and satellite IBCs and to revise the tiers for submarine cable systems. We also seek comment on the proposal to adopt a regulatory fee for all holders of section 214 international authorizations.

45. In the *Submarine Cable Order*, the Commission adopted a tiered system using gigabits per second (Gbps) increments (instead of 64 kbps[150]). The tiers adopted for submarine cable systems at that time were as follows: "large" systems, 20 Gbps or more, paying one payment unit each; systems with capacity equal to or greater than 10 Gbps but less than 20 Gbps, paying 50 percent of a payment unit; systems with capacity equal to or greater than 5 Gbps but less than 10 Gbps, paying 25 percent of a payment unit; systems with capacity equal to or greater than 2.5 Gbps but less than 5 Gbps, paying 12.5 percent of a payment unit; and systems with capacity below 2.5 Gbps paying 6.25 percent of a payment unit.[151]

46. We propose revising the tiers for submarine cable systems. We recognize that since we adopted the current tiers for submarine cable systems, the subsequent growth in the industry has moved all but two systems to the highest tier. We seek comment on whether we should revise the tiers. For example, we could adopt the following: systems with capacity of 10,000 Gbps or more, paying 16 payment units each; systems with capacity equal to or greater than 5,000 Gbps but less than 10,000 Gbps, paying eight payment units; systems with capacity equal to or greater than 2,500 Gbps but less than 5,000 Gbps, paying four payment units; systems with capacity equal to or greater than 1,000 Gbps but less than

[147] ACA Comments at 9 (explaining that the small operators may also provide VoIP services and may not be de minimis under the $1000 threshold proposed).

[148] *See FY 2014 Report and Order*, 29 FCC Rcd at 10775, para. 21 (explaining how to calculate the regulatory fee total to determine if it is below the de minimis threshold).

[149] *FY 2008 FNPRM*, 24 FCC Rcd at 6407-6408, paras. 51-52.

[150] Sixty-four Kbps is the unit of measurement for voice grade circuits; submarine cable, terrestrial, and satellite international bearer circuits are now largely used for data.

[151] *Submarine Cable Order*, 24 FCC Rcd at 4215-16, para. 16.

2,500 Gbps, paying two payment units; and systems with capacity below 1,000 Gbps paying one payment unit. We seek comment on this proposal.

47. We also propose adopting, for terrestrial and satellite IBCs, the same five tiers used for submarine cable systems. Level 3 contends that two tiers would be sufficient for terrestrial and satellite IBCs to ensure that larger carriers pay a fair amount and to avoid being a barrier to entry for new providers.[152] AT&T opposes a two-tiered approach, contending that the disparities between the volumes of circuits held by different operators may be too large to structure a reasonable and fair system.[153] We seek comment on whether we should adopt the same tiers for common carrier and non-common carrier terrestrial and satellite IBCs. Commenters proposing different tiers, including fewer or greater numbers of tiers, should explain how their proposals would be more equitable.

48. In its comments, the Coalition suggested that the Commission should adopt a fee methodology based on flat fee from every holder of an international section 214 authorization.[154] We seek further comment on this approach. Should a flat fee based on holding an international section 214 authorization replace only the terrestrial and satellite IBCs regulatory fees, with submarine cable IBCs continuing to be assessed on holding a cable landing license, or should it replace all IBC regulatory fees (i.e., terrestrial, satellite and submarine cable)? Would a flat fee on an international section 214 authorization reduce administrative burdens in collecting the IBC fee? The Coalition states that there are approximately 7,000 current international section 214 authorizations,[155] but CTIA notes that many of those are held by companies that do not actually provide international service and many companies hold multiple authorizations.[156] We seek comment on whether a fee should be applied to every holder of an international section 214 authorization regardless of the number of international section 214 authorizations held. Alternatively, should a set fee be applied to every international section 214 authorization? We also seek comment on whether there should be a different fee based on whether the international section 214 authorization is for resale only or for facilities-based services. We seek comment on whether a fee based on international section 214 authorizations should be calibrated based on size. For example, should there be one fee for resale, another up to a certain number of circuits, and a larger fee for any circuits above that amount? We seek comment on CITA's assertion that there are no additional, ongoing costs associated with international section 214 authorizations that are not already covered by the application fees.[157] We seek comment on whether a fee applied to each section 214 authorization holder would capture most carriers that provide non-common carrier services or are there a number of carriers that provide only non-common carrier international services?

B. Cable Television Services – Calculation of Number of Subscribers

49. In the *FY 2008 FNPRM*, the Commission sought comment on the bulk rate calculation for determining the number of subscribers in a multiple dwelling unit or MDU.[158] The methodology for calculating the number of cable subscribers has since been the following:

> Cable television system operators should compute their number of basic subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers = Total annual bulk-rate

[152] Level 3 June 29, 2017 ex parte at 1.

[153] AT&T Reply Comments at 3.

[154] Coalition Comments at 8-10.

[155] Coalition Comments at 9.

[156] CTIA Reply at 8.

[157] CTIA Reply at 9.

[158] *FY 2008 FNPRM*, 24 FCC Rcd at 6407-6408, paras. 51-52.

charge divided by basic annual subscription rate for individual households. Operators may base their count on "a typical day in the last full week" of December [year], rather than on a count as of December 31, [year].[159]

50. We recognize that the cable television industry has evolved significantly and the bulk rate calculation may not be reasonable or feasible today because of the many services offered today by cable providers. Specifically, with offerings of different packages and bundles, it may no longer be feasible to use a bulk rate calculation. Commenters should discuss if they use the bulk rate calculation or if they separately count each subscriber, even those living in MDUs.

51. We seek comment on whether we should keep the bulk rate calculation, or alternatively, whether we should modify the methodology to more accurately calculate the numbers of subscribers in a MDU. We seek comment on whether we should eliminate the bulk rate calculation due to changes in today's cable market.

V. PROCEDURAL MATTERS

A. Payment of Regulatory Fees

1. Checks Will Not Be Accepted for Payment of Annual Regulatory Fees

52. Pursuant to an Office of Management and Budget (OMB) directive,[160] the Commission is moving towards a paperless environment, extending to disbursement and collection of select federal government payments and receipts.[161] In 2015, the Commission stopped accepting checks (including cashier's checks and money orders) and the accompanying hardcopy forms (e.g., Forms 159, 159-B, 159-E, 159-W) for the payment of regulatory fees.[162] All regulatory fee payments must be made by online Automated Clearing House (ACH) payment, online credit card, or wire transfer. Any other form of payment (e.g., checks, cashier's checks, or money orders) will be rejected. For payments by wire, a Form 159-E should still be transmitted via fax so that the Commission can associate the wire payment with the correct regulatory fee information.

2. Credit Card Transaction Levels

53. Since June 1, 2015, in accordance with U.S. Treasury Announcement No. A-2014-04 (July 2014), the amount that can be charged on a credit card for transactions with federal agencies has been limited to $24,999.99.[163] Transactions greater than $24,999.99 will be rejected. This limit applies to single payments or bundled payments of more than one bill. Multiple transactions to a single agency in one day may be aggregated and treated as a single transaction subject to the $24,999.99 limit. Customers who wish to pay an amount greater than $24,999.99 should consider available electronic alternatives such as Visa or MasterCard debit cards, ACH debits from a bank account, and wire transfers. Each of these payment options is available after filing regulatory fee information in Fee Filer.

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[159] This is essentially the same methodology we sought comment on in the *FY 2008 FNPRM*.

[160] Office of Management and Budget (OMB) Memorandum M-10-06, Open Government Directive, Dec. 8, 2009; *see also* http://www.whitehouse.gov/the-press-office/2011/06/13/executive-order-13576-delivering-efficient-effective-and-accountable-gov.

[161] *See* U.S. Department of the Treasury, Open Government Plan 2.1, Sept. 2012.

[162] *FY 2015 Report and Order*, 30 FCC Rcd at 10282-83, para. 35.

[163] Customers who owe an amount on a bill, debt, or other obligation due to the federal government are prohibited from splitting the total amount due into multiple payments. Splitting an amount owed into several payment transactions violates the credit card network and Fiscal Service rules. An amount owed that exceeds the Fiscal Service maximum dollar amount, $24,999.99, may not be split into two or more payment transactions in the same day by using one or multiple cards. Also, an amount owed that exceeds the Fiscal Service maximum dollar amount may not be split into two or more transactions over multiple days by using one or more cards.

3. Payment Methods

54. During the fee season for collecting FY 2017 regulatory fees, regulatees can pay their fees by credit card through Pay.gov,[164] ACH, debit card,[165] or by wire transfer. Additional payment instructions are posted at http://transition.fcc.gov/fees/regfees.html. The receiving bank for all wire payments is the U.S. Treasury, New York, New York. When making a wire transfer, regulatees must fax a copy of their Fee Filer generated Form 159-E to the Federal Communications Commission at (202) 418-2843 at least one hour before initiating the wire transfer (but on the same business day) so as not to delay crediting their account. Regulatees should discuss arrangements (including bank closing schedules) with their bankers several days before they plan to make the wire transfer to allow sufficient time for the transfer to be initiated and completed before the deadline. Complete instructions for making wire payments are posted at http://transition.fcc.gov/fees/wiretran.html.

4. De Minimis Regulatory Fees

55. Regulatees whose total FY 2017 annual regulatory fee liability, including all categories of fees for which payment is due, is $1,000 or less are exempt from payment of FY 2017 regulatory fees. The de minimis threshold applies only to filers of annual regulatory fees (not regulatory fees paid through multi-year filings), and is not a permanent exemption. Regulatees will need to reevaluate their total fee liability each fiscal year to determine whether they meet the de minimis exemption.

5. Standard Fee Calculations and Payment Dates

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

- *Media Services*: Regulatory fees must be paid for initial construction permits that were granted on or before October 1, 2016 for AM/FM radio stations, VHF/UHF full service television stations, and satellite television stations. Regulatory fees must be paid for all broadcast facility licenses granted on or before October 1, 2016.
- *Wireline (Common Carrier) Services*: Regulatory fees must be paid for authorizations that were granted on or before October 1, 2016. In instances where a permit or license is transferred or assigned after October 1, 2016, responsibility for payment rests with the holder of the permit or license as of the fee due date. Audio bridging service providers are included in this category.[166] For Responsible Organizations (RespOrgs) that manage Toll Free Numbers (TFN), regulatory fees should be paid on all working, assigned, and reserved toll free numbers, as well as toll free numbers that are in any other status as defined in section 52.103 of the Commission's rules.[167] The unit count should be based on toll free numbers managed by RespOrgs on or about December 31, 2016.
- *Wireless Services*: CMRS cellular, mobile, and messaging services (fees based on number of subscribers or telephone number count): Regulatory fees must be paid for authorizations that were granted on or before October 1, 2016. The number of subscribers, units, or telephone numbers on December 31, 2016 will be used as the basis from which to calculate the fee payment. In instances where a permit or license is transferred or assigned after October 1, 2016,

[164] In accordance with U.S. Treasury Financial Manual Announcement No. A-2014-04 (July 2014), the amount that may be charged on a credit card for transactions with federal agencies has been reduced to $24,999.99.

[165] In accordance with U.S. Treasury Financial Manual Announcement No. A-2012-02, the maximum dollar-value limit for debit card transactions is eliminated. Only Visa and MasterCard branded debit cards are accepted by Pay.gov.

[166] Audio bridging services are toll teleconferencing services.

[167] 47 CFR § 52.103.

responsibility for payment rests with the holder of the permit or license as of the fee due date.

- *Wireless Services, Multi-year fees*: The first eight regulatory fee categories in our Schedule of Regulatory Fees pay "small multi-year wireless regulatory fees." Entities pay these regulatory fees in advance for the entire amount period covered by the five-year or ten-year terms of their initial licenses, and pay regulatory fees again only when the license is renewed or a new license is obtained. We include these fee categories in our rulemaking to publicize our estimates of the number of "small multi-year wireless" licenses that will be renewed or newly obtained in FY 2017.
- *Multichannel Video Programming Distributor Services (cable television operators, CARS licensees, DBS, and IPTV)*: Regulatory fees must be paid for the number of basic cable television subscribers as of December 31, 2016.[168] Regulatory fees also must be paid for CARS licenses that were granted on or before October 1, 2016. In instances where a permit or license is transferred or assigned after October 1, 2016, responsibility for payment rests with the holder of the permit or license as of the fee due date. For providers of DBS service and IPTV-based MVPDs, regulatory fees should be paid based on a subscriber count on or about December 31, 2016. In instances where a permit or license is transferred or assigned after October 31, 2016, responsibility for payment rests with the holder of the permit or license as of the due date.
- *International Services:* Regulatory fees must be paid for (1) earth stations and (2) geostationary orbit space stations and non-geostationary orbit satellite systems that were licensed and operational on or before October 1, 2016. In instances where a permit or license is transferred or assigned after October 1, 2016, responsibility for payment rests with the holder of the permit or license as of the fee due date.
- *International Services:* (*Submarine Cable Systems*)*:* Regulatory fees for submarine cable systems are to be paid on a per cable landing license basis based on circuit capacity as of December 31, 2016. In instances where a license is transferred or assigned after October 1, 2016, responsibility for payment rests with the holder of the license as of the fee due date. For regulatory fee purposes, the allocation in FY 2017 will remain at 87.6 percent for submarine cable and 12.4 percent for satellite/terrestrial facilities.
- *International Services:* (*Terrestrial and Satellite Services*): Regulatory fees for Terrestrial and Satellite International Bearer Circuits are to be paid by facilities-based common carriers that have active (used or leased) international bearer circuits as of December 31, 2016 in any terrestrial or satellite transmission facility for the provision of service to an end user or resale carrier. When calculating the number of such active circuits, the facilities-based common carriers must include circuits used by themselves or their affiliates. In addition, non-common carrier satellite operators must pay a fee for each circuit they and their affiliates hold and each circuit sold or leased to any customer, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. For these purposes, "active circuits" include backup and redundant circuits as of December 31, 2016. Whether circuits are used specifically for voice or data is not relevant for purposes of determining that

[168] Cable television system operators should compute their number of basic subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Operators may base their count on "a typical day in the last full week" of December 2016, rather than on a count as of December 31, 2016.

they are active circuits.[169] In instances where a permit or license is transferred or assigned after October 1, 2016, responsibility for payment rests with the holder of the permit or license as of the fee due date. For regulatory fee purposes, the allocation in FY 2017 will remain at 87.6 percent for submarine cable and 12.4 percent for satellite/terrestrial facilities.[170]

B. Commercial Mobile Radio Service (CMRS) Cellular and Mobile Services Assessments

57. The Commission will compile data from the Numbering Resource Utilization Forecast (NRUF) report that is based on "assigned" telephone number (subscriber) counts that have been adjusted for porting to net Type 0 ports ("in" and "out").[171] This information of telephone numbers (subscriber count) will be posted on the Commission's electronic filing and payment system (Fee Filer) along with the carrier's Operating Company Numbers (OCNs).

58. A carrier wishing to revise its telephone number (subscriber) count can do so by accessing Fee Filer and follow the prompts to revise their telephone number counts. Any revisions to the telephone number counts should be accompanied by an explanation or supporting documentation.[172] The Commission will then review the revised count and supporting documentation and either approve or disapprove the submission in Fee Filer. If the submission is disapproved, the Commission will contact the provider to afford the provider an opportunity to discuss its revised subscriber count and/or provide additional supporting documentation. If we receive no response from the provider, or we do not reverse our initial disapproval of the provider's revised count submission, the fee payment must be based on the number of subscribers listed initially in Fee Filer. Once the timeframe for revision has passed, the telephone number counts are final and are the basis upon which CMRS regulatory fees are to be paid. Providers can view their final telephone counts online in Fee Filer. A final CMRS assessment letter will not be mailed out.

59. Because some carriers do not file the NRUF report, they may not see their telephone number counts in Fee Filer. In these instances, the carriers should compute their fee payment using the standard methodology that is currently in place for CMRS Wireless services (i.e., compute their telephone number counts as of December 31, 2016), and submit their fee payment accordingly. Whether a carrier reviews its telephone number counts in Fee Filer or not, the Commission reserves the right to audit the number of telephone numbers for which regulatory fees are paid. In the event that the Commission determines that the number of telephone numbers that are paid is inaccurate, the Commission will bill the carrier for the difference between what was paid and what should have been paid.

C. Enforcement

60. To be considered timely, regulatory fee payments must be made electronically by the payment due date for regulatory fees. Section 9(c) of the Act requires us to impose a late payment penalty of 25 percent of the unpaid amount to be assessed on the first day following the deadline for filing these fees.[173] Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions,

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[169] We encourage terrestrial and satellite service providers to seek guidance from the International Bureau's Telecommunications and Analysis Division to verify their IBC reporting processes to ensure that their calculation methods comply with our rules.

[170] We remind facilities-based common carriers to review their reporting processes to ensure that they accurately calculate and report IBCs.

[171] *See FY 2005 Report and Order,* 20 FCC Rcd at 12264, paras. 38-44.

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

[173] 47 U.S.C. § 159(c).

including those set forth in section 1.1910 of the Commission's rules,[174] which generally requires the Commission to withhold action on "applications, including on a petition for reconsideration or any application for review of a fee determination, or requests for authorization by any entity found to be delinquent in its debt to the Commission" and in the DCIA.[175] We also assess administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the debt pursuant to the DCIA and section 1.1940(d) of the Commission's rules.[176] These administrative processing charges will be assessed on any delinquent regulatory fee, in addition to the 25 percent late charge penalty. In the case of partial payments (underpayments) of regulatory fees, the payor will be given credit for the amount paid, but if it is later determined that the fee paid is incorrect or not timely paid, then the 25 percent late charge penalty (and other charges and/or sanctions, as appropriate) will be assessed on the portion that is not paid in a timely manner.

61. Pursuant to the "red light rule," we will withhold action on any applications or other requests for benefits filed by anyone who is delinquent in any non-tax debts owed to the Commission (including regulatory fees) and will ultimately dismiss those applications or other requests if payment of the delinquent debt or other satisfactory arrangement for payment is not made.[177] Failure to pay regulatory fees can also result in the initiation of a proceeding to revoke any and all authorizations held by the entity responsible for paying the delinquent fee(s).[178] Pursuant to a pilot program, we have initiated procedures to transfer debt to the Centralized Receivables Service at the U.S. Treasury, as described below.

D. Transfers of Unpaid Debt to Centralized Receivables Service (CRS), U.S. Treasury

62. Under section 9 of the Act, Commission rules, and federal debt collection laws, a licensee's regulatory fee is due on the first day of the fiscal year and payable at a date established in the Commission's annual regulatory fee Report and Order. In October 2015, the Commission, under revised procedures, began transferring unpaid regulatory fee receivables directly to the CRS at the U.S. Treasury rather than trying to collect the debt itself and then transferring the remaining unpaid debts to Treasury. Under revised procedures, the Commission can transfer delinquent debt to Treasury for further collection action within 120 days after the date of delinquency.[179] However, regulatees will not likely see any substantial change in the current procedures of how past due debts are to be paid, except that the debts will be handled by CRS (U.S. Treasury) rather than by the Commission

E. Effective Date

63. Providing a 30-day period after Federal Register publication before this Report and Order becomes effective as required by 5 U.S.C. § 553(d) will not allow sufficient time to collect the FY 2017 fees before FY 2017 ends on September 30, 2017. For this reason, pursuant to 5 U.S.C. § 553(d)(3), we find there is good cause to waive the requirements of section 553(d), and this Report and Order will become effective upon publication in the Federal Register. Because payments of the regulatory fees will not actually be due until late September, persons affected by this Report and Order will still have a

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[174] *See* 47 CFR § 1.1910.

[175] Delinquent debt owed to the Commission triggers the "red light rule," which places a hold on the processing of pending applications, fee offsets, and pending disbursement payments. 47 CFR §§ 1.1910, 1.1911, 1.1912. In 2004, the Commission adopted rules implementing the requirements of the DCIA. *See Amendment of Parts 0 and 1 of the Commission's Rules*, MD Docket No. 02-339, Report and Order, 19 FCC Rcd 6540 (2004); 47 CFR Part 1, Subpart O, Collection of Claims Owed the United States.

[176] 47 CFR § 1.1940(d).

[177] *See* 47 CFR §§ 1.1161(c), 1.1164(f)(5), and 1.1910.

[178] 47 U.S.C. § 159.

[179] *See* 31 U.S.C. § 3711(g); 31 CFR § 285.12; 47 CFR § 1.1917.

reasonable period in which to make their payments and thereby comply with the rules established herein.

F. Final Regulatory Flexibility Analysis

64. As required by the Regulatory Flexibility Act of 1980 (RFA),[180] the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this Report and Order. The FRFA is contained in Appendix H.

G. Paperwork Reduction Act of 1995 Analysis

65. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

H. Initial Regulatory Flexibility Analysis

66. An initial regulatory flexibility analysis (IRFA) is contained in Appendix G. Comments to the IRFA must be identified as responses to the IRFA and filed by the deadlines for comments on the Further Notice of Proposed Rulemaking. The Commission will send a copy of the Further Notice of Proposed Rulemaking, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

I. Filing Instructions

67. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
    - Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
    - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
    - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
    - U.S. Postal Service first-class, Express, and Priority mail must be addressed to

[180] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

445 12th Street, SW, Washington, DC 20554.

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

J. Ex Parte Information

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

K. Congressional Review Act.

70. The Commission will send a copy of this Report and Order and Further Notice of Proposed Rulemaking to Congress and the Government Accountability Office pursuant to the Congressional Review Act. 5 U.S.C. 801(a)(1)(A).

VI. ORDERING CLAUSES

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

72. **IT IS FURTHER ORDERED** that this Report and Order **SHALL BE EFFECTIVE** upon publication in the Federal Register.

73. **IT IS FURTHER ORDERED** that this Further Notice of Proposed Rulemaking **SHALL BE EFFECTIVE** upon publication in the Federal Register.

74. **IT IS FURTHER ORDERED** that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this Report and Order and Further Notice of Proposed Rulemaking, including the Final Regulatory Flexibility Analysis in Appendix H, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Commenters—Initial Comments

Commenter	Abbreviation
American Cable Association	ACA
Arso Radio Corporation	Arso
AT&T Services, Inc.	AT&T
CenturyLink, Inc.	CenturyLink
CRC Broadcasting Company, Inc.	CRC
Critical Messaging Association	CMA
DISH Network, L.L.C. and AT&T Services, Inc.	DISH and AT&T
Enterprise Wireless Alliance	EWA
Frontier Communications Corporation	Frontier
ITTA—The Voice of America's Broadband Providers	ITTA
Level 3 Communications, LLC	Level 3
National Association of Broadcasters	NAB
NCTA—The Internet and Television Association	NCTA
Quincy Media, Inc.	QMI
Ramar Communications, Inc.	Ramar
Satellite Industry Association	SIA
Submarine Cable Coalition	Coalition

Commenters—Reply Comments

Commenter	Abbreviation
American Cable Association	ACA
AT&T Services, Inc.	AT&T
CenturyLink, Inc.	CenturyLink
CTIA®	CTIA
Level 3 Communications, LLC	Level 3
Romar Communications, Inc.	Romar

Ex Parte Filings

Commenter and date filed	Abbreviation
American Cable Association (Aug. 30, 2017)	ACA
AT&T Services, Inc. (July 27, 2017)	AT&T
DISH Network, L.L.C. (Aug. 22, 2017)	DISH
Level 3 Communications, LLC (June 29, July 24, 2017)	Level 3
Ramar Communications, Inc. (July 21, Aug. 15, 21, 22, 2017)	Ramar

APPENDIX B

Calculation of FY 2017 Revenue Requirements and Pro-Rata Fees

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

Fee Category	FY 2017 Payment Units	Yrs	FY 2016 Revenue Estimate	Pro-Rated FY 2017 Revenue Requirement	Computed FY 2017 Regulatory Fee	Rounded FY 2017 Reg. Fee	Expected FY 2017 Revenue
PLMRS (Exclusive Use)	1,300	10	625,000	325,000	25	25	325,000
PLMRS (Shared use)	16,000	10	3,110,000	1,600,000	10	10	1,600,000
Microwave	11,800	10	3,125,000	2,950,000	25	25	2,950,000
Marine (Ship)	8,100	10	1,035,000	1,215,000	15	15	1,215,000
Aviation (Aircraft)	4,200	10	470,000	420,000	10	10	420,000
Marine (Coast)	150	10	192,500	60,000	40	40	60,000
Aviation (Ground)	1,100	10	220,000	220,000	20	20	220,000
AM Class A[4]	65	1	313,500	305,500	4,699	4,700	305,500
AM Class B[4]	1,523	1	3,875,875	3,807,500	2,488	2,500	3,807,500
AM Class C[4]	870	1	1,400,175	1,348,500	1,559	1,550	1,348,500
AM Class D[4]	1,492	1	4,587,900	4,476,000	3,004	3,000	4,476,000
FM Classes A, B1 & C3[4]	3,150	1	9,678,200	9,371,250	2,987	2,975	9,371,250
FM Classes B, C, C0, C1 & C2[4]	3,114	1	11,849,725	11,521,800	3,703	3,700	11,521,800
AM Construction Permits [1]	10	1	9,300	5,550	555	555	5,550
FM Construction Permits[1]	113	1	192,425	110,740	980	980	110,740
Satellite TV	126	1	224,000	217,350	1,722	1,725	217,350
Digital TV Markets 1-10	139	1	8,433,825	8,305,250	59,748	59,750	8,305,250
Digital TV Markets 11-25	131	1	6,348,825	5,898,275	45,013	45,025	5,898,275
Digital TV Markets 26-50	181	1	5,525,025	5,439,050	30,049	30,050	5,439,050
Digital TV Markets 51-100	285	1	4,301,600	4,289,250	14,976	14,975	4,267,875
Digital TV Remaining Markets	367	1	1,825,000	1,807,475	4,924	4,925	1,807,475
Digital TV Construction Permits[1]	3	1	15,000	14,775	4,925	4,925	14,775
LPTV/Translators/ Boosters/Class A TV	4,051	1	1,785,420	1,741,930	428	430	1,741,930
CARS Stations	230	1	220,875	215,050	935	935	215,050

Fee Category	FY 2017 Payment Units	Yrs	FY 2016 Revenue Estimate	Pro-Rated FY 2017 Revenue Requirement	Computed FY 2017 Regulatory Fee	Rounded FY 2017 Reg. Fee	Expected FY 2017 Revenue
Cable TV Systems, including IPTV	62,000,000	1	64,200,000	58,900,000	.9529	.95	58,900,000
Direct Broadcast Satellite (DBS)	32,500,000	1	9,180,000	12,350,000	.3800	.38	12,350,000
Interstate Telecommunication Service Providers	$37,000,000,000	1	142,722,000	111,740,000	0.00302	0.00302	111,740,000
Toll Free Numbers	32,700,000	1	4,745,000	3,924,000	0.1174	0.12	3,924,000
CMRS Mobile Services (Cellular/Public Mobile)	393,000,000	1	73,200,000	82,530,000	0.210	0.21	82,530,000
CMRS Messag. Services	2,100,000	1	184,000	168,000	0.0800	0.080	168,000
BRS[2] LMDS	870 395	1 1	645,250 286,375	558,050 454,250	800 800	800 800	696,000 316,000
Per 64 kbps Int'l Bearer Circuits Terrestrial (Common) & Satellite (Common & Non-Common)	30,056,000	1	638,000	801,295	.0267	.03	901,680
Submarine Cable Providers (see chart in Appendix C)[3]	41.19	1	5,486,242	5,660,765	137,437	137,425	5,660,261
Earth Stations	3,400	1	1,173,000	1,224,000	360	360	1,224,000
Space Stations (Geostationary)	97	1	13,155,125	13,669,725	140,924	140,925	13,669,725
Space Stations (Non-Geostationary)	7	1	911,700	947,450	135,343	135,350	947,450
****** Total Estimated Revenue to be Collected			384,890,362	358,571,405			358,670,986
****** Total Revenue Requirement			384,012,497	356,710,992			356,710,992
Difference			877,865	1,860,413			1,959,994

Notes on Appendix B

[1] The AM and FM Construction Permit revenues and the Digital (VHF/UHF) Construction Permit revenues were adjusted, respectively, to set the regulatory fee to an amount no higher than the lowest licensed fee for that class of service. Reductions in the Digital (VHF/UHF) Construction Permit revenues, and in the AM and FM Construction Permit revenues, were offset by increases in the revenue totals for Digital television stations by market size, and in the AM and FM radio stations by class size and population served, respectively.

[2] MDS/MMDS category was renamed Broadband Radio Service (BRS). *See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Report & Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165, 14169, para. 6 (2004).

[3] The chart at the end of Appendix B lists the submarine cable bearer circuit regulatory fees (common and non-common carrier basis) that resulted from the adoption of the *Assessment and Collection of Regulatory Fees for Fiscal Year 2008,* Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6388 (2008) and *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Second Report and Order, 24 FCC Rcd 4208 (2009).

[4] The fee amounts listed in the column entitled "Rounded New FY 2017 Regulatory Fee" constitute a weighted average broadcast regulatory fee by class of service. The actual FY 2017 regulatory fees for AM/FM radio station are listed on a grid located at the end of Appendix C.

APPENDIX C

FY 2017 Schedule of Regulatory Fees

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

Fee Category	Annual Regulatory Fee (U.S. $s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	25
Microwave (per license) (47 CFR part 101)	25
Marine (Ship) (per station) (47 CFR part 80)	15
Marine (Coast) (per license) (47 CFR part 80)	40
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	10
PLMRS (Shared Use) (per license) (47 CFR part 90)	10
Aviation (Aircraft) (per station) (47 CFR part 87)	10
Aviation (Ground) (per license) (47 CFR part 87)	20
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.21
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08
Broadband Radio Service (formerly MMDS/ MDS) (per license) (47 CFR part 27) Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	800 800
AM Radio Construction Permits	555
FM Radio Construction Permits	980
Digital TV (47 CFR part 73) VHF and UHF Commercial	
Markets 1-10	59,750
Markets 11-25	45,025
Markets 26-50	30,050
Markets 51-100	14,975
Remaining Markets	4,925
Construction Permits	4,925
Satellite Television Stations (All Markets)	1,725
Low Power TV, Class A TV, TV/FM Translators & Boosters (47 CFR part 74)	430
CARS (47 CFR part 78)	935
Cable Television Systems (per subscriber) (47 CFR part 76), Including IPTV	.95

Fee Category	Annual Regulatory Fee (U.S. $s)
Direct Broadcast Service (DBS) (per subscriber) (as defined by section 602(13) of the Act)	.38
Interstate Telecommunication Service Providers (per revenue dollar)	.00302
Toll Free (per toll free subscriber) (47 C.F.R. section 52.101 (f) of the rules)	.12
Earth Stations (47 CFR part 25)	360
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100)	140,925
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	135,350
International Bearer Circuits - Terrestrial/Satellites (per 64KB circuit)	.03
Submarine Cable Landing Licenses Fee (per cable system)	See Table Below

FY 2017 RADIO STATION REGULATORY FEES						
Population Served	**AM Class A**	**AM Class B**	**AM Class C**	**AM Class D**	**FM Classes A, B1 & C3**	**FM Classes B, C, C0, C1 & C2**
<=25,000	$895	$640	$555	$610	$980	$1,100
25,001 – 75,000	$1,350	$955	$830	$915	$1,475	$1,650
75,001 – 150,000	$2,375	$1,700	$1,475	$1,600	$2,600	$2,925
150,001 – 500,000	$3,550	$2,525	$2,200	$2,425	$3,875	$4,400
500,001 – 1,200,000	$5,325	$3,800	$3,300	$3,625	$5,825	$6,575
1,200,001 – 3,000,00	$7,975	$5,700	$4,950	$5,425	$8,750	$9,875
3,000,001 – 6,000,00	$11,950	$8,550	$7,400	$8,150	$13,100	$14,800
>6,000,000	$17,950	$12,825	$11,100	$12,225	$19,650	$22,225

International Bearer Circuits - Submarine Cable

Submarine Cable Systems (capacity as of December 31, 2016)	Fee amount
< 2.5 Gbps	$8,600
2.5 Gbps or greater, but less than 5 Gbps	$17,175
5 Gbps or greater, but less than 10 Gbps	$34,350
10 Gbps or greater, but less than 20 Gbps	$68,725
20 Gbps or greater	$137,425

APPENDIX D

Sources of Payment Unit Estimates for FY 2017

In order to calculate individual service fees for FY 2017, we adjusted FY 2016 payment units for each service to more accurately reflect expected FY 2017 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections when available. The databases we consulted include our Universal Licensing System (ULS), International Bureau Filing System (IBFS), Consolidated Database System (CDBS) and Cable Operations and Licensing System (COALS), as well as reports generated within the Commission such as the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast*.

We sought verification for these estimates from multiple sources and, in all cases, we compared FY 2017 estimates with actual FY 2016 payment units to ensure that our revised estimates were reasonable. Where appropriate, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated with sufficient accuracy. These include an unknown number of waivers and/or exemptions that may occur in FY 2017 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical, or other reasons. When we note, for example, that our estimated FY 2017 payment units are based on FY 2016 actual payment units, it does not necessarily mean that our FY 2017 projection is the same number as in FY 2016. We have either rounded the FY 2017 number or adjusted it slightly to account for these variables.

FEE CATEGORY	SOURCES OF PAYMENT UNIT ESTIMATES
Land Mobile (All), Microwave, Marine (Ship & Coast), Aviation (Aircraft & Ground), Domestic Public Fixed	Based on Wireless Telecommunications Bureau (WTB) projections of new applications and renewals taking into consideration existing Commission licensee data bases. Aviation (Aircraft) and Marine (Ship) estimates have been adjusted to take into consideration the licensing of portions of these services on a voluntary basis.
CMRS Cellular/Mobile Services	Based on WTB projection reports, and FY 16 payment data.
CMRS Messaging Services	Based on WTB reports, and FY 16 payment data.
AM/FM Radio Stations	Based on CDBS data, adjusted for exemptions, and actual FY 2016 payment units.
Digital TV Stations (Combined VHF/UHF units)	Based on CDBS data, adjusted for exemptions, and actual FY 2016 payment units.
AM/FM/TV Construction Permits	Based on CDBS data, adjusted for exemptions, and actual FY 2016 payment units.
LPTV, Translators and Boosters, Class A Television	Based on CDBS data, adjusted for exemptions, and actual FY 2016 payment units.
BRS (formerly MDS/MMDS) LMDS	Based on WTB reports and actual FY 2016 payment units. Based on WTB reports and actual FY 2016 payment units.
Cable Television Relay Service (CARS) Stations	Based on data from Media Bureau's COALS database and actual FY 2016 payment units.
Cable Television System Subscribers, Including IPTV	Based on publicly available data sources for estimated subscriber counts and actual FY 2016 payment units.

Subscribers	
Interstate Telecommunication Service Providers	Based on FCC Form 499-Q data for the four quarters of calendar year 2016, the Wireline Competition Bureau projected the amount of calendar year 2016 revenue that will be reported on 2017 FCC Form 499-A worksheets due in April, 2017.
Earth Stations	Based on International Bureau ("IB") licensing data and actual FY 2016 payment units.
Space Stations (GSOs & NGSOs)	Based on IB data reports and actual FY 2016 payment units.
International Bearer Circuits	Based on IB reports and submissions by licensees, adjusted as necessary.
Submarine Cable Licenses	Based on IB license information.

APPENDIX E

Factors, Measurements, and Calculations that Determine Station Signal Contours and Associated Population Coverages

AM Stations

For stations with nondirectional daytime antennas, the theoretical radiation was used at all azimuths. For stations with directional daytime antennas, specific information on each day tower, including field ratio, phase, spacing, and orientation was retrieved, as well as the theoretical pattern root-mean-square of the radiation in all directions in the horizontal plane (RMS) figure (milliVolt per meter (mV/m) @ 1 km) for the antenna system. The standard, or augmented standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in sections 73.150 and 73.152 of the Commission's rules. Radiation values were calculated for each of 360 radials around the transmitter site. Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure R3. Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the principal community (5 mV/m) contour was predicted for each of the 360 radials. The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2010 block centroids were contained in the polygon. (A block centroid is the center point of a small area containing population as computed by the U.S. Census Bureau.) The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

FM Stations

The greater of the horizontal or vertical effective radiated power (ERP) (kW) and respective height above average terrain (HAAT) (m) combination was used. Where the antenna height above mean sea level (HAMSL) was available, it was used in lieu of the average HAAT figure to calculate specific HAAT figures for each of 360 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the Field Strength (50-50) propagation curves specified in 47 CFR § 73.313 of the Commission's rules to predict the distance to the principal community (70 dBu (decibel above 1 microVolt per meter) or 3.17 mV/m) contour for each of the 360 radials. The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2010 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

APPENDIX F

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[181] the Commission prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the Further Notice of Proposed Rulemaking (*Further Notice*). Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadline for comments on this *Further Notice*. The Commission will send a copy of the *Further Notice*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[182] In addition, the *Further Notice* and IRFA (or summaries thereof) will be published in the Federal Register.[183]

A. Need for, and Objectives of, the Further Notice

2. The *Further Notice* seeks comment regarding (1) adopting a new five-tiered flat rate methodology for assessing regulatory fees for terrestrial and satellite international bearer circuits (IBCs), revising the tiers for submarine cable systems, and adopting a new fee category for all holders of section 214 international authority and (2) revising the calculation for cable television "Bulk Rate Customers."

B. Legal Basis

3. This action, including publication of proposed rules, is authorized under sections (4)(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended.[184]

A. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

4. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.[185] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[186] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[187] A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[188]

5. **Small Entities.** Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive small entity size

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[181] 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612 has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996).

[182] 5 U.S.C. § 603(a).

[183] *Id.*

[184] 47 U.S.C. §§ 154(i) and (j), 159, and 303(r).

[185] 5 U.S.C. § 603(b)(3).

[186] 5 U.S.C. § 601(6).

[187] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[188] 15 U.S.C. § 632.

standards that could be directly affected by the proposals under consideration.[189] As of 2009, small businesses represented 99.9 percent of the 27.5 million businesses in the United States, according to the SBA.[190] In addition, a "small organization is generally any not-for-profit enterprise which is independently owned and operated and not dominant in its field.[191] In addition, the term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[192] U.S. Census Bureau data for 2011 indicate that there were 90,056 local governmental jurisdictions in the United States.[193] We estimate that, of this total, as many as 89,327 entities may qualify as "small governmental jurisdictions."[194] Thus, we estimate that most local government jurisdictions are small.

6. **Wired Telecommunications Carriers**. The U.S. Census Bureau defines this industry as "establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry."[195] The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.[196] Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.[197] Thus, under this size standard, the majority of firms in this industry can be considered small.

7. **Local Exchange Carriers (LECs)**. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS code category is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[198] According to census data from 2012, there were 3,117 establishments that operated that year. Of this total, 3,083 operated with fewer than 1,000

[189] *See* 5 U.S.C. § 601(3)-(6).

[190] *See* SBA, Office of Advocacy, "Frequently Asked Questions," available at https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf.

[191] 5 U.S.C. § 601(4).

[192] 5 U.S.C. § 601(5).

[193] *See* SBA, Office of Advocacy, "Frequently Asked Questions," available at https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf.

[194] The 2011 U.S. Census Data for small governmental organizations are not presented based on the size of the population in each organization. As stated above, there were 90,056 local governmental organizations in 2011. As a basis for estimating how many of these 90,056 local governmental organizations were small, we note that there were a total of 729 cities and towns (incorporated places and civil divisions) with populations over 50,000. *See* http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table. If we subtract the 729 cities and towns that exceed the 50,000 population threshold, we conclude that approximately 789,237 are small.

[195] *See* http://www.census.gov/cgi-bin/sssd/naics/naicsrch.

[196] *See* 13 CFR § 120.201, NAICS code 517110.

[197] http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5 &prodType= table.

[198] 13 CFR § 121.201, NAICS code 517110.

employees.[199] The Commission estimates that most providers of local exchange service are small entities that may be affected by the rules proposed in the *Further Notice*.

8. **Incumbent LECs.** Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS code category is Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[200] According to census data from 2012, 3,117 firms operated in that year. Of this total, 3,083 operated with fewer than 1,000 employees.[201] According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers.[202] Of this total of 1,307 incumbent local exchange service providers, an estimated 1,006 operated with 1,500 or fewer employees.[203] Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules proposed in this *Further Notice*.

9. **Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers**. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS code category is Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[204] U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.[205] Based on this data, the Commission concludes that the majority of Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers are small entities. According to the Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.[206] Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.[207] Also, 72 carriers have reported that they are Other Local Service Providers.[208] Of this total, 70 have 1,500 or fewer employees.[209] Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules proposed in this *Further Notice*.

10. **Interexchange Carriers (IXCs)**. Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS code category is Wired Telecommunications Carriers as defined in paragraph 6 of this IRFA. The applicable size standard under SBA rules is that

[199] http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5 &prodType= table.

[200] 13 CFR § 121.201, NAICS code 517110.

[201] http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5 &prodType= table.

[202] *See Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

[203] *See id.*

[204] 13 CFR § 121.201, NAICS code 517110.

[205] http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

[206] *See Trends in Telephone Service,* at tbl. 5.3.

[207] *Id.*

[208] *Id.*

[209] *Id.*

such a business is small if it has 1,500 or fewer employees.[210] U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.[211] According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.[212] Of this total, an estimated 317 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules proposed in this *Further Notice*.

11. **Prepaid Calling Card Providers.** Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate NAICS code category for prepaid calling card providers is Telecommunications Resellers. This industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual networks operators (MVNOs) are included in this industry.[213] Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.[214] U.S. Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees.[215] Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards.[216] All 193 carriers have 1,500 or fewer employees.[217] Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules proposed in this *Further Notice*.

12. **Local Resellers**. Neither the Commission nor the SBA has developed a small business size standard specifically for Local Resellers. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[218] Census data for 2012 show that 1,341 firms provided resale services during that year.[219] Of that number, 1,341 operated with fewer than 1,000 employees.[220] Under this category and the associated small business size standard, the majority of these local resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.[221] Of this total, an estimated 211 have 1,500 or fewer employees.[222]

[210] 13 CFR § 121.201, NAICS code 517110.

[211] http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

[212] *See Trends in Telephone Service,* at tbl. 5.3.

[213] http://www.census.gov/cgi-bin/ssd/naics/naicsrch.

[214] 13 CFR § 121.201, NAICS code 517911.

[215] http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

[216] *See Trends in Telephone Service,* at tbl. 5.3.

[217] *Id.*

[218] 13 CFR § 121.201, NAICS code 517911.

[219] http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

[220] http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

[221] *See Trends in Telephone Service,* at tbl. 5.3.

Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules proposed in this *Further Notice*.

13. **Toll Resellers**. The Commission has not developed a definition for Toll Resellers. The closest NAICS code Category is Telecommunications Resellers, and the SBA has developed a small business size standard for the category of Telecommunications Resellers.[223] Under that size standard, such a business is small if it has 1,500 or fewer employees.[224] Census data for 2012 show that 1,341 firms provided resale services during that year.[225] Of that number, 1,341 operated with fewer than 1,000 employees.[226] Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.[227] Of this total, an estimated 857 have 1,500 or fewer employees.[228] Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by the rules proposed in the *Further Notice*.

14. **Other Toll Carriers.** Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable NAICS code category is for Wired Telecommunications Carriers, as defined in paragraph 6 of this IRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.[229] Census data for 2012 shows that there were 3,117 firms that operated that year.[230] Of this total, 3,083 operated with fewer than 1,000 employees.[231] Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.[232] Of these, an estimated 279 have 1,500 or fewer employees.[233] Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules proposed in the *Further Notice*.

15. **Wireless Telecommunications Carriers (except Satellite).** This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.[234] The appropriate size standard under SBA rules is that such a business is small

(Continued from previous page)
[222] *Id.*

[223] 13 CFR § 121.201, NAICS code 517911.

[224] *Id.*

[225] http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

[226] *Id.*

[227] *Trends in Telephone Service*, at tbl. 5.3.

[228] *Id.*

[229] 13 CFR § 121.201, NAICS code 517110.

[230] http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

[231] *Id.*

[232] *Trends in Telephone Service*, at tbl. 5.3.

[233] *Id.*

[234] NAICS code 517210. *See* http://www.census.gov/cgi-bin/ssd/naics/naiscsrch.

if it has 1,500 or fewer employees. For this industry, Census Data for 2012 show that there were 967 firms that operated for the entire year.[235] Of this total, 955 firms had fewer than 1,000 employees.[236] Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) services.[237] Of this total, an estimated 261 have 1,500 or fewer employees.[238] Thus, using available data, we estimate that the majority of wireless firms can be considered small and may be affected by rules proposed in this *Further Notice*.

16. **Television Broadcasting**. This Economic Census category "comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public."[239] These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for Television Broadcasting firms: those having $38.5 million or less in annual receipts.[240] The 2012 Economic Census reports that 751 television broadcasting firms operated during that year. Of that number, 656 had annual receipts of less than $25 million per year. Based on that Census data we conclude that a majority of firms that operate television stations are small. The Commission has estimated the number of licensed commercial television stations to be 1,383.[241] In addition, according to Commission staff review of the BIA Advisory Services, LLC's *Media Access Pro Television Database* on March 28, 2012, about 950 of an estimated 1,300 commercial television stations (or approximately 73 percent) had revenues of $14 million or less.[242] We therefore estimate that the majority of commercial television broadcasters are small entities.

17. In assessing whether a business concern qualifies as small under the above definition, business (control) affiliations[243] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

[235] http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

[236] http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

[237] *Trends in Telephone Service*, at tbl. 5.3.

[238] *Id.*

[239] U.S. Census Bureau, 2012 NAICS code Economic Definitions, http://www.census.gov.cgi-bin/sssd/naics/naicsrch.

[240] 13 CFR § 121.201, NAICS code 515120.

[241] *See FCC News Release*, "Broadcast Station Totals as of March 31, 2017," April 11, 2017; https://apps.fcc.gov/edocs_public/attachmatch/DOC-344256A1.pdf.

[242] We recognize that BIA's estimate differs slightly from the FCC total given *supra*.

[243] "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both." 13 CFR § 21.103(a)(1).

18. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 396.[244] These stations are non-profit, and therefore considered to be small entities.[245] There are also 2,528 low power television stations, including Class A stations (LPTV).[246] Given the nature of these services, we will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

19. **Radio Broadcasting**. This Economic Census category "comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources."[247] The SBA has established a small business size standard for this category, which is: such firms having $38.5 million or less in annual receipts.[248] U.S. Census data for 2012 show that 2,849 radio station firms operated during that year.[249] Of that number, 2,806 operated with annual receipts of less than $25 million per year.[250] According to Commission staff review of BIA Advisory Services, LLC's *Media Access Pro Radio Database* on March 28, 2012, about 10,759 (97%) of 11,102 commercial radio stations had revenues of $38.5 million or less. Therefore, the majority of such entities are small entities.

20. In assessing whether a business concern qualifies as small under the above size standard, business affiliations must be included.[251] In addition, to be determined to be a "small business," the entity may not be dominant in its field of operation.[252] It is difficult at times to assess these criteria in the context of media entities, and our estimate of small businesses may therefore be over-inclusive.

21. **Cable Television and other Subscription Programming.** This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature, e.g., limited format, such as news, sports, education, or youth-oriented. These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.[253] The SBA has established a size standard for this industry of $38.5 million or less. Census data for 2012 shows that there were 367 firms that operated that year.[254] Of this total, 319

[244] *See FCC News Release*, "Broadcast Station Totals as of March 31, 2017," April 11, 2017; https://apps.fcc.gov/edocs_public/attachmatch/DOC-344256A1.pdf.

[245] *See generally* 5 U.S.C. §§ 601(4), (6).

[246] *See FCC News Release*, "Broadcast Station Totals as of March 31, 2017," April 11, 2017; https://apps.fcc.gov/edocs_public/attachmatch/DOC-344256A1.pdf.

[247] http://www.census.gov.cgi-bin/sssd/naics/naicsrch.

[248] 13 CFR § 121.201, NAICS code 515112.

[249] http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

[250] http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

[251] "Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists." 13 CFR § 121.103(a)(1) (an SBA regulation).

[252] 13 CFR § 121.102(b) (an SBA regulation).

[253] https://www.census.gov.cgi-bin/sssd/naics/naicsrch.

[254] http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

operated with annual receipts of less than $25 million.[255] Thus under this size standard, the majority of firms offering cable and other program distribution services can be considered small and may be affected by rules proposed in this *Further Notice*.

22. **Cable Companies and Systems**. The Commission has developed its own small business size standards for cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.[256] Industry data indicate that there are currently 4,413 active cable systems in the United States.[257] Of this total, all but ten cable operators nationwide are small under the 400,000-subscriber size standard.[258] In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[259] Current Commission records show 4,413 cable systems nationwide.[260] Of this total, 3,900 cable systems have less than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records.[261] Thus, under this standard as well, the Commission estimates that most cable systems are small entities.

23. **Cable System Operators (Telecom Act Standard).** The Communications Act also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[262] There are approximately 53 million cable video subscribers in the United States today.[263] Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[264] Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard.[265] The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million.[266] Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

24. **Direct Broadcast Satellite (DBS) Service.** DBS Service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic dish

[255] http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US-51SSSZ5&prodType=Table.

[256] 47 CFR § 76.901(e).

[257] *See Eighteenth Competition Report*, 32 FCC Rcd at 584, para. 39 (citing the Commission's Cable Operations and Licensing Systems (COALS) database).

[258] *See* https://www.snl.com/web/client?auth=inherit#industry/topCableMSOs (last visited July 18, 2017).

[259] 47 CFR § 76.901(c).

[260] *See* footnote 2, *supra*.

[261] August 5, 2015 report from the Media Bureau based on its research in COALS. *See* www.fcc.gov/coals.

[262] 47 CFR § 76.901 (f) and notes ff. 1, 2, and 3.

[263] *See* NCTA Industry Data, Cable's Customer Base, available at https://www.ncta.com/industry-data (last visited July 6, 2017).

[264] 47 CFR § 76.901(f) and notes ff. 1, 2, and 3.

[265] *See* https://www.snl.com/web/client?auth=inherit#industry/topCableMSOs (last visited July 18, 2017).

[266] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to 47 CFR § 76.901(f) of the Commission's rules. *See* 47 CFR § 76.901(f).

antenna at the subscriber's location. DBS is now included in SBA's economic census category "Wired Telecommunications Carriers." The Wired Telecommunications Carriers industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VOIP services, wired (cable) audio and video programming distribution; and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.[267] The SBA determines that a wireline business is small if it has fewer than 1500 employees.[268] Census data for 2012 indicate that 3,117 wireline companies were operational during that year. Of that number, 3,083 operated with fewer than 1,000 employees.[269] Based on that data, we conclude that the majority of wireline firms are small under the applicable standard. However, only two entities provide DBS service, AT&T and DISH Network. AT&T and DISH Network each report annual revenues that are in excess of the threshold for a small business. Accordingly, we conclude that DBS service is provided only by large firms.

25. **All Other Telecommunications**. **"**All Other Telecommunications" is defined as follows: This U.S. industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or Voice over Internet Protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.[270] The SBA has developed a small business size standard for "All Other Telecommunications," which consists of all such firms with gross annual receipts of $32.5 million or less.[271] For this category, census data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than $25 million.[272] Thus, a majority of "All Other Telecommunications" firms potentially affected by the proposals in the *Notice* can be considered small.

26. **RespOrgs.** Responsible Organizations, or RespOrgs, are entities chosen by toll free subscribers to manage and administer the appropriate records in the toll-free Service Management System for the toll-free subscriber.[273] Although RespOrgs are often wireline carriers, they can also include non-carrier entities. Therefore, in the definition herein of RespOrgs, two categories are presented, i.e., Carrier RespOrgs and Non-Carrier RespOrgs.

27. **Carrier RespOrgs**. Neither the Commission, the U.S. Census, nor the SBA have developed a definition for Carrier RespOrgs. Accordingly, the Commission believes that the closest NAICS code-based definitional categories for Carrier RespOrgs are Wired Telecommunications

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[267] http://www.census.gov/cgi-bin/sssd/naics/naicsrch.

[268] NAICs code 517110; 13 CFR § 121.201.

[269] http://factfinder.census.gov/faces/tableservices.jasf/pages/productview.xhtml?pid+ECN_2012_US.51SSSZ4&prodType=table.

[270] http://www.census.gov/cgi-bin/ssssd/naics/naicsrch.

[271] 13 CFR § 121.201; NAICs code 517919.

[272] http://factfinder.census.gov/faces/tableservices.jasf/pages/productview.xhtml?pid+ECN_2012_US.51SSSZ4&prodType=table.

[273] *See* 47 CFR § 52.101(b).

Carriers,[274] and Wireless Telecommunications Carriers (except satellite).[275]

28. The U.S. Census Bureau defines **Wired Telecommunications Carriers** as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.[276] The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.[277] Census data for 2012 show that there were 3,117 Wired Telecommunications Carrier firms that operated for that entire year. Of that number, 3,083 operated with less than 1,000 employees.[278] Based on that data, we conclude that most Carrier RespOrgs that operated with wireline-based technology are small.

29. The U.S. Census Bureau defines **Wireless Telecommunications Carriers (except satellite**) as establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves, such as cellular services, paging services, wireless internet access, and wireless video services.[279] The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.[280] Census data for 2012 show that 967 Wireless Telecommunications Carriers operated in that year. Of that number, 955 operated with less than 1,000 employees.[281] Based on that data, we conclude that the majority of Carrier RespOrgs that operated with wireless-based technology are small.

30. **Non-Carrier RespOrgs**. Neither the Commission, the U.S. Census, nor the SBA have developed a definition of Non-Carrier RespOrgs. Accordingly, the Commission believes that the closest NAICS code-based definitional categories for Non-Carrier RespOrgs are "Other Services Related to Advertising"[282] and "Other Management Consulting Services."[283]

31. The U.S. Census defines **Other Services Related to Advertising** as comprising establishments primarily engaged in providing advertising services (except advertising agency services, public relations agency services, media buying agency services, media representative services, display advertising services, direct mail advertising services, advertising material distribution services, and marketing consulting services).[284] The SBA has established a size standard for this industry as annual

[274] 13 CFR § 121.201, NAICS code 517110.

[275] *Id*.

[276] http://www.census,gov/cgi-bin/sssd/naics.naicsrch.

[277] 13 CFR § 120,201, NAICS code 517110.

[278] http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.

[279] http://www.census,gov/cgi-bin/sssd/naics.naicsrch.

[280] 13 CFR § 120.201, NAICS code 517120.

[281] http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.

[282] 13 CFR § 120.201, NAICS code 541890.

[283] 13 CFR § 120.201, NAICS code 541618.

[284] http://www.census,gov/cgi-bin/sssd/naics.naicsrch.

receipts of $15 million dollars or less.[285] Census data for 2012 show that 5,804 firms operated in this industry for the entire year. Of that number, 5,249 operated with annual receipts of less than $10 million.[286] Based on that data we conclude that the majority of Non-Carrier RespOrgs who provide toll-free number (TFN)-related advertising services are small.

32. The U.S. Census defines **Other Management Consulting Services** as establishments primarily engaged in providing management consulting services (except administrative and general management consulting; human resources consulting; marketing consulting; or process, physical distribution, and logistics consulting). Establishments providing telecommunications or utilities management consulting services are included in this industry.[287] The SBA has established a size standard for this industry of $15 million dollars or less.[288] Census data for 2012 show that 3,683 firms operated in this industry for that entire year. Of that number, 3,632 operated with less than $10 million in annual receipts.[289] Based on this data, we conclude that a majority of non-carrier RespOrgs who provide TFN-related management consulting services are small.[290]

33. In addition to the data contained in the four (see above) U.S. Census NAICS code categories that provide definitions of what services and functions the Carrier and Non-Carrier RespOrgs provide, Somos, the trade association that monitors RespOrg activities, compiled data showing that as of July 1, 2016, there were 23 RespOrgs operational in Canada and 436 RespOrgs operational in the United States, for a total of 459 RespOrgs currently registered with Somos.

B. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

34. This *Notice* does not propose any changes to the Commission's current information collection, reporting, recordkeeping, or compliance requirements.

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[285] 13 CFR § 120.201, NAICS code 541890.

[286] http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.

[287] http://www.census,gov/cgi-bin/sssd/naics.naicsrch.

[288] 13 CFR § 120.201, NAICS code 514618.

[289] http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.

[290] The four NAICS code-based categories selected above to provide definitions for Carrier and Non-Carrier RespOrgs were selected because as a group they refer generically and comprehensively to all RespOrgs.

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

35. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[291]

36. The *Further Notice* seeks comment regarding: (1) adopting a new five-tiered flat rate methodology for assessing regulatory fees for terrestrial and satellite international bearer circuits (IBCs), revising the current five-tiered methodology for submarine cable systems, and adopting a new fee category for all holders of section 214 international authority and (2) revising the calculation for cable television "Bulk Rate Customers." The proposals to adopt a flat five-tier methodology for terrestrial and satellite IBCs might provide relief to smaller entities that would fall into the lowest tier. The proposal to revise the calculation for Bulk Rate Customers for cable television, in multiple dwelling units (MDUs), may affect small cable operators who provide service to MDUs. We are seeking comment on this issue so that we can improve the calculation of customers in MDUs.

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

37. None.

[291] 5 U.S.C. § 603(c)(1)–(c)(4).

APPENDIX G

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[292] an Initial Regulatory Flexibility Analysis (IRFA) was included in the *Notice of Proposed Rulemaking*.[293] The Commission sought written public comment on these proposals including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the IRFA.[294]

A. Need for, and Objectives of, the Report and Order

2. In this Report and Order, we conclude the Assessment and Collection of Regulatory Fees for Fiscal Year (FY) 2017 proceeding to collect $356,710,992 in regulatory fees for FY 2017, pursuant to section 9 of the Communications Act of 1934, as amended (Communications Act or Act).[295] These regulatory fees will be due in September 2017. Under section 9 of the Communications Act, regulatory fees are mandated by Congress and collected to recover the regulatory costs associated with the Commission's enforcement, policy and rulemaking, user information, and international activities in an amount that can be reasonably expected to equal the amount of the Commission's annual appropriation.[296]

3. This *FY 2017 Report and Order* adopts a regulatory fee schedule that includes the following noteworthy changes from prior years: (1) a reallocation of 38 FTEs in the Wireline Competition Bureau from direct to indirect; (2) a reallocation of four FTEs from the Wireline Competition Bureau to the Wireless Telecommunications Bureau; (3) an updated regulatory fee for Direct Broadcast Satellite (DBS) providers, a subcategory in the cable television and Internet Protocol Television (IPTV) category; (4) adjustments to the regulatory fees on radio and television broadcasters; (5) an increase in the de minimis threshold for annual regulatory fee payments from $500 to $1,000; and (6) the elimination of the distinction between non-common carrier and common carrier terrestrial International Bearer Circuits (IBCs).

B. Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA

4. None.

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

5. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.[297] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[298] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[299] A "small

[292] 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612 has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996).

[293] *Assessment and Collection of Regulatory Fees for Fiscal Year 2017*, Notice of Proposed Rulemaking, MD Docket No. 17-134, 32 FCC Rcd 4526 (2017) (*FY 2017 NPRM*).

[294] 5 U.S.C. § 604.

[295] 47 U.S.C. § 159.

[296] 47 U.S.C. § 159(a).

[297] 5 U.S.C. § 603(b)(3).

[298] 5 U.S.C. § 601(6).

[299] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an

(continued….)

business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[300] Nationwide, there are a total of approximately 27.9 million small businesses, according to the SBA.[301]

6. **Wired Telecommunications Carriers**. The U.S. Census Bureau defines this industry as "establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry."[302] The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.[303] Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.[304] Thus, under this size standard, most firms in this industry can be considered small.

7. **Local Exchange Carriers (LECs)**. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS code category is Wired Telecommunications Carriers as defined in paragraph 6 of this FRFA. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.[305] According to Commission data, census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.[306] The Commission therefore estimates that most providers of local exchange carrier service are small entities that may be affected by the rules adopted.

8. **Incumbent LECs.** Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS code category is Wired Telecommunications Carriers as defined in paragraph 6 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.[307] According to Commission data, 3,117 firms operated in that year. Of this total, 3,083 operated with fewer than 1,000 employees.[308] Consequently, the Commission estimates that most providers of incumbent local exchange service are

(Continued from previous page)
agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[300] 15 U.S.C. § 632.

[301] *See* SBA, Office of Advocacy, "Frequently Asked Questions," https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf.

[302] http://www.census.gov/cgi-bin/sssd/naics/naicsrch.

[303] *See* 13 CFR § 120.201, NAICS code 517110.

[304] http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

[305] 13 CFR § 121.201, NAICS code 517110.

[306] http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

[307] 13 CFR § 121.201, NAICS code 517110.

[308] http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

small businesses that may be affected by the rules and policies adopted. Three hundred and seven (307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers.[309] Of this total, an estimated 1,006 have 1,500 or fewer employees.[310]

9. **Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers**. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS code category is Wired Telecommunications Carriers, as defined in paragraph 6 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.[311] U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.[312] Based on this data, the Commission concludes that most Competitive LECS, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.[313] Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees.[314] In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.[315] Also, 72 carriers have reported that they are Other Local Service Providers.[316] Of this total, 70 have 1,500 or fewer employees.[317] Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.

10. **Interexchange Carriers (IXCs)**. Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS code category is Wired Telecommunications Carriers as defined in paragraph 6 of this FRFA. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.[318] U.S. Census data for 2012 indicates that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.[319] According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.[320] Of this total, an estimated 317 have 1,500 or fewer employees.[321] Consequently, the Commission estimates that most interexchange service providers are small entities that may be affected by the rules adopted.

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[309] *See Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

[310] *Id.*

[311] 13 CFR § 121.201, NAICS code 517110.

[312] http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

[313] *See Trends in Telephone Service,* at tbl. 5.3.

[314] *Id.*

[315] *Id.*

[316] *Id.*

[317] *Id.*

[318] 13 CFR § 121.201, NAICS code 517110.

[319] http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

[320] *See Trends in Telephone Service,* at tbl. 5.3.

[321] *Id.*

11. **Prepaid Calling Card Providers.** Neither the Commission nor the SBA has developed a small business definition specifically for prepaid calling card providers. The most appropriate NAICS code-based category for defining prepaid calling card providers is Telecommunications Resellers. This industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual networks operators (MVNOs) are included in this industry.[322] Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.[323] U.S. Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees.[324] Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards.[325] All 193 carriers have 1,500 or fewer employees.[326] Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by the rules adopted.

12. **Local Resellers**. Neither the Commission nor the SBA has developed a small business size standard specifically for Local Resellers. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[327] Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees.[328] Under this category and the associated small business size standard, the majority of these local resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.[329] Of this total, an estimated 211 have 1,500 or fewer employees.[330] Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by the rules adopted.

13. **Toll Resellers**. The Commission has not developed a definition for Toll Resellers. The closest NAICS code Category is Telecommunications Resellers, and the SBA has developed a small business size standard for the category of Telecommunications Resellers.[331] Under that size standard, such a business is small if it has 1,500 or fewer employees.[332] Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees.[333] Thus, under this category and the associated small business size standard, the majority of

[322] http://www.census.gov/cgi-bin/ssd/naics/naicsrch.

[323] 13 CFR § 121.201, NAICS code 517911.

[324] http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

[325] *See Trends in Telephone Service,* at tbl. 5.3.

[326] *Id.*

[327] 13 CFR § 121.201, NAICS code 517911.

[328] http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

[329] *See Trends in Telephone Service,* at tbl. 5.3.

[330] *Id.*

[331] 13 CFR § 121.201, NAICS code 517911.

[332] http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

[333] *Id*.

these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.[334] Of this total, an estimated 857 have 1,500 or fewer employees.[335] Consequently, the Commission estimates that the majority of toll resellers are small entities.

14. **Other Toll Carriers.** Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable NAICS code category is for Wired Telecommunications Carriers as defined in paragraph 6 of this FRFA. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.[336] Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.[337] Thus, under this category and the associated small business size standard, most Other Toll Carriers can be considered small. According to internally developed Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.[338] Of these, an estimated 279 have 1,500 or fewer employees.[339] Consequently, the Commission estimates that most Other Toll Carriers are small entities.

15. **Wireless Telecommunications Carriers (except Satellite).** This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.[340] The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had fewer than 1,000 employees. Thus, under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) services.[341] Of this total, an estimated 261 have 1,500 or fewer employees.[342] Thus, using available data, we estimate that the majority of wireless firms can be considered small.

16. **Television Broadcasting**. This Economic Census category "comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public."[343] These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming

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[334] *Trends in Telephone Service*, at tbl. 5.3.

[335] *Id.*

[336] 13 CFR § 121.201, NAICS code 517110.

[337] http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

[338] *Trends in Telephone Service*, at tbl. 5.3.

[339] *Id.*

[340] NAICS code 517210. *See* http://www.census.gov/cgi-bin/ssd/naics/naiscsrch.

[341] *Trends in Telephone Service*, at tbl. 5.3.

[342] *Id.*

[343] U.S. Census Bureau, 2012 NAICS code Economic Census Definitions, http://www.census.gov.cgi-bin/sssd/naics/naicsrch.

may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for Television Broadcasting firms: those having $38.5 million or less in annual receipts.[344] The 2012 Economic Census reports that 751 television broadcasting firms operated during that year. Of that number, 656 had annual receipts of less than $25 million per year. Based on that Census data we conclude that most firms that operate television stations are small. The Commission has estimated the number of licensed commercial television stations to be 1,383.[345] In addition, according to Commission staff review of the BIA Advisory Services, LLC's Media Access Pro Television Database, on March 28, 2012, about 950 of an estimated 1,300 commercial television stations (or approximately 73 percent) had revenues of $14 million or less.[346] We therefore estimate that the majority of commercial television broadcasters are small entities.

17. In assessing whether a business concern qualifies as small under the above definition, business (control) affiliations[347] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

18. In addition, the Commission has estimated the number of licensed noncommercial educational television stations to be 394.[348] These stations are non-profit, and therefore considered to be small entities.[349] There are also 2,382 low power television stations, including Class A stations.[350] Given the nature of these services, we will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

19. **Radio Stations**. This Economic Census category "comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources."[351] The SBA has established a small business size standard for this category, which is: such firms having $38.5 million or less in annual receipts.[352] Census data for 2012 show that 2,849 radio station firms operated during that year. Of that number, 2,806 operated with annual receipts of less than $25 million per year.[353] According to Commission staff review of BIA Advisory Services, LLC's Media Access Pro Radio Database, on March

[344] 13 CFR § 121.201, NAICS code 515120.

[345] *See FCC News Release*, "Broadcast Station Totals as of March 31, 2017," April 11, 2017; https://apps.fcc.gov/edocs_public/attachmatch/DOC-344256A1.pdf.

[346] We recognize that BIA's estimate differs slightly from the FCC total.

[347] "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both." 13 CFR § 21.103(a)(1).

[348] *See FCC News Release*, "Broadcast Station Totals as of March 31, 2017," April 11, 2017; https://apps.fcc.gov/edocs_public/attachmatch/DOC-344256A1.pdf.

[349] *See generally* 5 U.S.C. §§ 601(4), (6).

[350] *See FCC News Release*, "Broadcast Station Totals as of March 31, 2017," April 11, 2017; https://apps.fcc.gov/edocs_public/attachmatch/DOC-344256A1.pdf.

[351] https://www.census.gov.cgi-bin/sssd/naics/naicsrch.

[352] 13 CFR § 121.201, NAICS code 515112.

[353] http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

28, 2012, about 10,759 (97 percent) of 11,102 commercial radio stations had revenues of $38.5 million or less. Therefore, most such entities are small entities.

20. In assessing whether a business concern qualifies as small under the above size standard, business affiliations must be included.[354] In addition, to be determined to be a "small business," the entity may not be dominant in its field of operation.[355] We note that it is difficult at times to assess these criteria in the context of media entities, and our estimate of small businesses may therefore be over-inclusive.

21. **Cable Television and Other Subscription Programming**. This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (e.g., limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.[356] The SBA has established a size standard for this industry of $38.5 million or less. Census data for 2012 shows that there were 367 firms that operated that year. Of this total, 319 operated with annual receipts of less than $25 million.[357] Thus under this size standard, most firms offering cable and other program distribution services can be considered small and may be affected by rules adopted.

22. **Cable Companies and Systems**. The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.[358] Industry data indicate that there are currently 4,413 active cable systems in the United States.[359] Of this total, all but ten cable operators nationwide are small under the 400,000-subscriber size standard.[360] In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[361] Current Commission records show 4,413 cable systems nationwide.[362] Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records.[363] Thus, under this standard as well, we estimate that most cable systems are small entities.

23. **Cable System Operators (Telecom Act Standard).** The Communications Act also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed

[354] "Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists." 13 CFR § 121.103(a)(1) (an SBA regulation).

[355] 13 CFR § 121.102(b) (an SBA regulation).

[356] https://www.census.gov.cgi-bin/sssd/naics/naicsrch.

[357] http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US-51SSSZ5&prodType=Table.

[358] 47 CFR § 76.901(e).

[359] *See Eighteenth Competition Report*, 32 FCC Rcd at 584, para. 39 (citing the Commission's Cable Operations and Licensing Systems (COALS) database).

[360] *See* https://www.snl.com/web/client?auth=inherit#industry/topCableMSOs (last visited July 18, 2017).

[361] 47 CFR § 76.901(c)

[362] *See* footnote 2, *supra*.

[363] August 5, 2015 report from the Media Bureau based on its research in COALS. *See* www.fcc.gov /coals.

$250,000,000."[364] There are approximately 53 million cable video subscribers in the United States today.[365] Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[366] Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard.[367] We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million.[368] Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

24. **Direct Broadcast Satellite (DBS) Service.** DBS Service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic dish antenna at the subscriber's location. DBS is now included in SBA's economic census category "Wired Telecommunications Carriers." The Wired Telecommunications Carriers industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution; and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.[369] The SBA determines that a wireline business is small if it has fewer than 1500 employees.[370] Census data for 2012 indicate that 3,117 wireline companies were operational during that year. Of that number, 3,083 operated with fewer than 1,000 employees.[371] Based on that data, we conclude that most wireline firms are small under the applicable standard. However, currently only two entities provide DBS service, AT&T and DISH Network. AT&T and DISH Network each report annual revenues that are in excess of the threshold for a small business. Accordingly, we conclude that DBS service is provided only by large firms.

25. **All Other Telecommunications**. **"**All Other Telecommunications" is defined as follows: This U.S. industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-

[364] 47 CFR § 76.901 (f) and notes ff. 1, 2, and 3.

[365] *See* NCTA Industry Data, Cable's Customer Base, available at https://www.ncta.com/industry-data (last visited July 6, 2017).

[366] 47 CFR § 76.901(f) and notes ff. 1, 2, and 3.

[367] *See* https://www.snl.com/web/client?auth=inherit#industry/topCableMSOs (last visited July 18, 2018).

[368] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.901(f) of the Commission's rules. *See* 47 CFR § 76.901(f).

[369] http://www.census.gov/cgi-bin/sssd/naics/naicsrch.

[370] NAICS code 517110; 13 CFR § 121.201.

[371] http://factfinder.census.gov/faces/tableservices.jasf/pages/productview.xhtml?pid+ECN_2012_US.51SSSZ4&prodType=table.

supplied telecommunications connections are also included in this industry.[372] The SBA has developed a small business size standard for "All Other Telecommunications," which consists of all such firms with gross annual receipts of $32.5 million or less.[373] For this category, census data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than $25 million.[374] Thus, most "All Other Telecommunications" firms potentially affected by the rules adopted can be considered small.

26. **RespOrgs.** RespOrgs, i.e., Responsible Organizations, are entities chosen by toll-free subscribers to manage and administer the appropriate records in the toll-free Service Management System for the toll-free subscriber.[375] Although RespOrgs are often wireline carriers, they can also include non-carrier entities. Therefore, in the definition herein of RespOrgs, two categories are presented, i.e., Carrier RespOrgs and Non-Carrier RespOrgs.

27. **Carrier RespOrgs**. Neither the Commission, the U.S. Census, nor the SBA have developed a definition for Carrier RespOrgs. Accordingly, the Commission believes that the closest NAICS code-based definitional categories for Carrier RespOrgs are Wired Telecommunications Carriers[376] and Wireless Telecommunications Carriers (except satellite).[377]

28. The U.S. Census Bureau defines **Wired Telecommunications Carriers** as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.[378] The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.[379] Census data for 2012 show that there were 3,117 Wired Telecommunications Carrier firms that operated for that entire year. Of that number, 3,083 operated with less than 1,000 employees.[380] Based on that data, we conclude that most Carrier RespOrgs that operated with wireline-based technology are small.

29. The U.S. Census Bureau defines **Wireless Telecommunications Carriers (except satellite**) as establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves, such as cellular services, paging services, wireless internet access, and wireless video services.[381] The appropriate size standard under SBA rules is that such a

[372] http://www.census.gov/cgi-bin/ssssd/naics/naicsrch.

[373] 13 CFR § 121.201; NAICS code 517919.

[374] http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.

[375] *See* 47 CFR § 52.101(b)

[376] 13 CFR § 121.201, NAICS code 517110

[377] 13 CFR § 121.201, NAICS code 517210.

[378] http://www.census,gov/cgi-bin/sssd/naics.naicsrch.

[379] 13 CFR § 120,201, NAICS code 517110.

[380] http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.

[381] http://www.census,gov/cgi-bin/sssd/naics.naicsrch.

business is small if it has 1,500 or fewer employees.[382] Census data for 2012 show that 967 Wireless Telecommunications Carriers operated in that year. Of that number, 955 operated with less than 1,000 employees.[383] Based on that data, we conclude that most Carrier RespOrgs that operated with wireless-based technology are small.

30. **Non-Carrier RespOrgs**. Neither the Commission, the Census, nor the SBA have developed a definition of Non-Carrier RespOrgs. Accordingly, the Commission believes that the closest NAICS code-based definitional categories for Non-Carrier RespOrgs are "Other Services Related To Advertising"[384] and "Other Management Consulting Services."[385]

31. The U.S. Census defines **Other Services Related to Advertising** as comprising establishments primarily engaged in providing advertising services (except advertising agency services, public relations agency services, media buying agency services, media representative services, display advertising services, direct mail advertising services, advertising material distribution services, and marketing consulting services.[386] The SBA has established a size standard for this industry as annual receipts of $15 million dollars or less.[387] Census data for 2012 show that 5,804 firms operated in this industry for the entire year. Of that number, 5,249 operated with annual receipts of less than $10 million.[388] Based on that data we conclude that most Non-Carrier RespOrgs who provide TFN-related advertising services are small.

32. The U.S. Census defines **Other Management Consulting Services** as establishments primarily engaged in providing management consulting services (except administrative and general management consulting; human resources consulting; marketing consulting; or process, physical distribution, and logistics consulting). Establishments providing telecommunications or utilities management consulting services are included in this industry.[389] The SBA has established a size standard for this industry of $15 million dollars or less.[390] Census data for 2012 show that 3,683 firms operated in this industry for that entire year. Of that number, 3,632 operated with less than $10 million in annual receipts.[391] Based on this data, we conclude that most non-carrier RespOrgs who provide TFN-related management consulting services are small.[392]

33. In addition to the data contained in the four (see above) U.S. Census NAICS code categories that provide definitions of what services and functions the Carrier and Non-Carrier RespOrgs provide,

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382 13 CFR § 120.201, NAICS code 517120.

383 http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.

384 13 CFR § 120.201, NAICS code 541890.

385 13 CFR § 120.201, NAICS code 541618.

386 http://www.census,gov/cgi-bin/sssd/naics.naicsrch.

387 13 CFR § 120.201, NAICS code 541890.

388 http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.

389 http://www.census,gov/cgi-bin/sssd/naics.naicsrch.

390 13 CFR § 120.201, NAICS code 514618.

391 http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.

392 The four NAICS code-based categories selected above to provide definitions for Carrier and Non-Carrier RespOrgs were selected because as a group they refer generically and comprehensively to all RespOrgs. Therefore, all RespOrgs, including those not identified specifically or individually, must comply with the rules adopted in the Regulatory Fees Report and Order associated with this Final Regulatory Flexibility Analysis.

Somos, the trade association that monitors RespOrg activities, compiled data showing that as of July 1, 2016, there were 23 RespOrgs operational in Canada and 436 RespOrgs operational in the United States, for a total of 459 RespOrgs currently registered with Somos.[393]

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

34. This Report and Order does not adopt any new reporting, recordkeeping, or other compliance requirements.

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

35. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[394]

36. This Report and Order does not adopt any new reporting requirements. Therefore, no adverse economic impact on small entities will be sustained based on reporting requirements.

37. In keeping with the requirements of the Regulatory Flexibility Act, we have considered certain alternative means of mitigating the effects of fee increases to a particular industry segment. For example, the Commission increased the de minimis threshold from $500 to $1,000, which will impact many small entities that pay regulatory fees. Historically, many of these small entities have been late in making their fee payments to the Commission by the due date. This increase in the de minimis threshold to $1,000 will relieve regulatees both financially and administratively. This Report and Order also adopts regulatory fees for the smaller market AM and FM broadcast radio stations at a lower amount than had been proposed. Finally, regulatees may also seek waivers or other relief on the basis of financial hardship. *See* 47 CFR §1.1166.

F. Federal Rules that May Duplicate, Overlap, or Conflict

None.

[393] Email from Jennifer Blanchard of Somos dated July 1, 2016.

[394] 5 U.S.C. § 603(c)(1)–(c)(4).

APPENDIX H

FY 2016 Schedule of Regulatory Fees

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

Fee Category	Annual Regulatory Fee (U.S. $s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	25
Microwave (per license) (47 CFR part 101)	25
Marine (Ship) (per station) (47 CFR part 80)	15
Marine (Coast) (per license) (47 CFR part 80)	40
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	10
PLMRS (Shared Use) (per license) (47 CFR part 90)	10
Aviation (Aircraft) (per station) (47 CFR part 87)	10
Aviation (Ground) (per license) (47 CFR part 87)	20
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.20
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08
Broadband Radio Service (formerly MMDS/ MDS) (per license) (47 CFR part 27) Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	725 725
AM Radio Construction Permits	620
FM Radio Construction Permits	1,075
Digital TV (47 CFR part 73) VHF and UHF Commercial	
Markets 1-10	60,675
Markets 11-25	45,675
Markets 26-50	30,525
Markets 51-100	15,200
Remaining Markets	5,000
Construction Permits	5,000
Satellite Television Stations (All Markets)	1,750
Low Power TV, Class A TV, TV/FM Translators & Boosters (47 CFR part 74)	455
CARS (47 CFR part 78)	775
Cable Television Systems (per subscriber) (47 CFR part 76), Including IPTV	1.00

Fee Category	Annual Regulatory Fee (U.S. $s)
Direct Broadcast Service (DBS) (per subscriber) (as defined by section 602(13) of the Act)	.27
Interstate Telecommunication Service Providers (per revenue dollar)	.00371
Toll Free (per toll free subscriber) (47 CFR section 52.101 (f) of the rules)	.13
Earth Stations (47 CFR part 25)	345
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100)	138,475
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	151,950
International Bearer Circuits -- Terrestrial/Satellites (per 64KB circuit)	.02
Submarine Cable Landing Licenses Fee (per cable system)	See Table Below

FY 2016 SCHEDULE OF REGULATORY FEES: (continued)

FY 2016 RADIO STATION REGULATORY FEES						
Population Served	**AM Class A**	**AM Class B**	**AM Class C**	**AM Class D**	**FM Classes A, B1 & C3**	**FM Classes B, C, C0, C1 & C2**
<=25,000	$990	$715	$620	$685	$1,075	$1,250
25,001 – 75,000	$1,475	$1,075	$925	$1,025	$1,625	$1,850
75,001 – 150,000	$2,200	$1,600	$1,375	$1,525	$2,400	$2,750
150,001 – 500,000	$3,300	$2,375	$2,075	$2,275	$3,600	$4,125
500,001 – 1,200,000	$5,500	$3,975	$3,450	$3,800	$6,000	$6,875
1,200,001 – 3,000,00	$8,250	$5,950	$5,175	$5,700	$9,000	$10,300
3,000,001 – 6,000,00	$11,000	$7,950	$6,900	$7,600	$12,000	$13,750
>6,000,000	$13,750	$9,950	$8,625	$9,500	$15,000	$17,175

FY 2016 SCHEDULE OF REGULATORY FEES

International Bearer Circuits - Submarine Cable

Submarine Cable Systems (capacity as of December 31, 2015)	Fee amount
< 2.5 Gbps	$8,325
2.5 Gbps or greater, but less than 5 Gbps	$16,650
5 Gbps or greater, but less than 10 Gbps	$33,300
10 Gbps or greater, but less than 20 Gbps	$66,600
20 Gbps or greater	$133,200

APPENDIX I

Rule Changes

Part 1 of Title 47 of the Code of Federal Regulations is amended to read as follows:

PART 1 – PRACTICE AND PROCEDURE

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

   Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 303(r), 309.

2. Section 1.1152 is revised to read as follows:

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

Exclusive use services (per license)	Fee Amount [395]
1. Land Mobile (Above 470 MHz and 220 MHz Local, Base Station & SMRS) (47 CFR part 90)	
a)New, Renew/Mod (FCC 601 & 159)	$25.00
b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	$25.00
c)Renewal Only (FCC 601 & 159)	$25.00
d)Renewal Only (Electronic Filing) (FCC 601 & 159)	$25.00
220 MHz Nationwide a)New, Renew/Mod (FCC 601 & 159)	$25.00
b)New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	$25.00

[395] Note that "small fees" are collected in advance for the entire license term. Therefore, the annual fee amount shown in this table that is a small fee (categories 1 through 5) must be multiplied by the 5-or 10-year license term, as appropriate, to arrive at the total amount of regulatory fees owed. Also, application fees may apply as detailed in §1.1102 of this chapter.

c)Renewal Only (FCC 601 & 159)	$25.00
d)Renewal Only (Electronic Filing) (FCC 601 & 159)	$25.00

2. Microwave (47 CFR Pt. 101) (Private)

a)New, Renew/Mod (FCC 601 & 159)	$25.00
b)New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	$25.00
c)Renewal Only (FCC 601 & 159)	$25.00
d)Renewal Only (Electronic Filing) (FCC 601 & 159)	$25.00

3. Shared Use Services

Land Mobile (Frequencies Below 470 MHz – except 220 MHz)

a)New, Renew/Mod (FCC 601 & 159)	$10.00
b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	$10.00
c)Renewal Only (FCC 601 & 159)	$10.00
d)Renewal Only (Electronic Filing) (FCC 601 & 159)	$10.00

Rural Radio (Part 22)

a)New, Additional Facility, Major Renew/Mod (Electronic Filing) (FCC 601 & 159)	$10.00
b)Renewal, Minor Renew/Mod (Electronic Filing) (FCC 601 & 159)	$10.00

Marine Coast

a)New Renewal/Mod (FCC 601 & 159)	$40.00
b)New, Renewal/Mod (Electronic Filing) (FCC 601 & 159)	$40.00
c)Renewal Only (FCC 601 & 159)	$40.00
d)Renewal Only (Electronic Filing) (FCC 601 & 159)	$40.00
Aviation Ground	
a)New, Renewal/Mod (FCC 601 & 159)	$20.00
b)New, Renewal/Mod (Electronic Filing) (FCC 601 & 159)	$20.00
c)Renewal Only (FCC 601 & 159)	$20.00
d)Renewal Only (Electronic Only) (FCC 601 & 159)	$20.00
Marine Ship	
a)New, Renewal/Mod (FCC 605 & 159)	$15.00
b)New, Renewal/Mod (Electronic Filing) (FCC 605 & 159)	$15.00
c)Renewal Only (FCC 605 & 159)	$15.00
d)Renewal Only (Electronic Filing) (FCC 605 & 159)	$15.00
Aviation Aircraft	

a)New, Renew/Mod (FCC 605 & 159)	$10.00
b)New, Renew/Mod (Electronic Filing) (FCC 605 & 159)	$10.00
c)Renewal Only (FCC 605 & 159)	$10.00
d)Renewal Only (Electronic Filing) (FCC 605 & 159)	$10.00
4. CMRS Cellular/Mobile Services (per unit) (FCC 159)	$ .21[396]
5. CMRS Messaging Services (per unit) (FCC 159)	$ .08[397]
6. Broadband Radio Service (formerly MMDS and MDS)	$ 800
7. Local Multipoint Distribution Service	$ 800

3. Section 1.1153 is revised to read as follows:

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

Radio [AM and FM] (47 CFR part 73)	**Fee Amount**
1. AM Class A	
<=25,000 population	$895
25,001-75,000 population	$1,350
75,001-150,000 population	$2,375
150,001-500,000 population	$3,550
500,001-1,200,000 population	$5,325
1,200,001-3,000,000 population	$7,975
3,000,001-6,000,000 population	$11,950
>6,000,000 population	$17,950
2. AM Class B	
<=25,000 population	$640

[396] These are standard fees that are to be paid in accordance with § 1.1157(b) of this chapter.

[397] These are standard fees that are to be paid in accordance with § 1.1157(b) of this chapter.

	25,001-75,000 population	$955
	75,001-150,000 population	$1,700
	150,001-500,000 population	$2,525
	500,001-1,200,000 population	$3,800
	1,200,001-3,000,000 population	$5,700
	3,000,001-6,000,000 population	$8,550
	>6,000,000 population	$12,825
3.	<u>AM Class C</u>	
	<=25,000 population	$555
	25,001-75,000 population	$830
	75,001-150,000 population	$1,475
	150,001-500,000 population	$2,200
	500,001-1,200,000 population	$3,300
	1,200,001-3,000,000 population	$4,950
	3,000,001-6,000,000 population	$7,400
	>6,000,000 population	$11,100
4.	<u>AM Class D</u>	
	<=25,000 population	$610
	25,001-75,000 population	$915
	75,001-150,000 population	$1,600
	150,001-500,000 population	$2,425
	500,001-1,200,000 population	$3,625
	1,200,001-3,000,000 population	$5,425
	3,000,001-6,000,000 population	$8,150
	>6,000,000 population	$12,225
5.	AM Construction Permit	$555
6.	<u>FM Classes A, B1 and C3</u>	
	<=25,000 population	$980
	25,001-75,000 population	$1,475
	75,001-150,000 population	$2,600
	150,001-500,000 population	$3,875
	500,001-1,200,000 population	$5,825
	1,200,001-3,000,000 population	$8,750
	3,000,001-6,000,000 population	$13,100
	>6,000,000 population	$19,650
7.	<u>FM Classes B, C, C0, C1 and C2</u>	
	<=25,000 population	$1,100
	25,001-75,000 population	$1,650
	75,001-150,000 population	$2,925
	150,001-500,000 population	$4,400
	500,001-1,200,000 population	$6,575
	1,200,001-3,000,000 population	$9,875
	3,000,001-6,000,000 population	$14,800
	>6,000,000 population	$22,225
8.	FM Construction Permits	$980

TV (47 CFR, part 73)
Digital TV (UHF and VHF Commercial Stations)

1.	Markets 1 thru 10	$59,750
2.	Markets 11 thru 25	$45,025
3.	Markets 26 thru 50	$30,050
4.	Markets 51 thru 100	$14,975
5.	Remaining Markets	$ 4,925
6.	Construction Permits	$ 4,925

Satellite UHF/VHF Commercial

1.	All Markets	$1,725

Low Power TV, Class A TV, TV/FM Translator, & TV/FM Booster (47 CFR part 74)	$ 430

4. Section 1.1154 is revised to read as follows:

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

	Radio Facilities	Fee Amount
1.	Microwave (Domestic Public Fixed) (Electronic Filing) (FCC Form 601 & 159)	$25.00

Carriers

1.	Interstate Telephone Service Providers (per interstate and international end-user revenues (see FCC Form 499-A)	$ .00302
2.	Toll Free Number Fee	$.12 per Toll Free Number

5. Section 1.1155 is revised to read as follows:

§ 1.1155 Schedule of regulatory fees for cable television services.

		Fee Amount
1.	Cable Television Relay Service	$935
2.	Cable TV System, Including IPTV (per subscriber)	$ .95
3.	Direct Broadcast Satellite (DBS)	$.38 per subscriber

6. Section 1.1156 is revised to read as follows:

§ 1.1156 Schedule of regulatory fees for international services.

a. The following schedule applies for the listed services:

Fee Category	Fee Amount
Space Stations (Geostationary Orbit)	$140,925
Space Stations (Non-Geostationary Orbit)	$135,350
Earth Stations: Transmit/Receive & Transmit only (per authorization or registration)	$360

b. *International Terrestrial and Satellite*. Regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers that have active (used or leased) international bearer circuits as of December 31 of the prior year in any terrestrial or satellite transmission facility for the provision of service to an end user or resale carrier, which includes active circuits to themselves or to their affiliates. In addition, non-common carrier satellite operators must pay a fee for each circuit sold or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. "Active circuits" for these purposes include backup and redundant circuits. In addition, whether circuits are used specifically for voice or data is not relevant in determining that they are active circuits.

The fee amount, per active 64 KB circuit or equivalent will be determined for each fiscal year.

International Terrestrial and Satellite (capacity as of December 31, 2016)	Fee Amount
Terrestrial Common Carrier Satellite Common Carrier Satellite Non-Common Carrier	$0.03 per 64 KB Circuit

c. *Submarine cable:* Regulatory fees for submarine cable systems will be paid annually, per cable landing license, for all submarine cable systems operating as of December 31 of the prior year. The fee amount will be determined by the Commission for each fiscal year.

Submarine Cable Systems (capacity as of Dec. 31, 2016)	Fee Amount
< 2.5 Gbps	$8,600

2.5 Gbps or greater, but less than 5 Gbps	$17,175
5 Gbps or greater, but less than 10 Gbps	$34,350
10 Gbps or greater, but less than 20 Gbps	$68,725
20 Gbps or greater	$137,425

STATEMENT OF COMMISSIONER MICHAEL O'RIELLY APPROVING IN PART AND DISSENTING IN PART

Re: Assessment and Collection of Regulatory Fees for Fiscal Year 2017, Report and Order and Further Notice of Proposed Rulemaking, MD Docket No. 17-134.

It is my longstanding view that the Commission's actions should be supported by facts and quantitative data (as well as the law). Such information should provide the foundation for any decision, whether justifying the adoption or elimination of rules, adjudicatory outcomes, cost-benefit analyses, or other Commission findings. The need also extends to the Commission's imposition of regulatory fees. As some of the decisions in today's item are not adequately supported by sufficient data, I must respectfully dissent in part.

The statute and Commission precedent states that the Commission shall recover the costs of its regulatory activities, and these fees should be derived by determining the full-time equivalent number of employees (FTEs) performing the various activities.[398] Under section 9, the Commission is required "to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities,"[399] and any changes to the fee schedule are supposed to be accompanied by substantial analysis demonstrating that the redistribution of fees is appropriate.[400]

Today's item, however, does not attempt to perform such a calculation or analysis to support the decision to reassign 38 FTEs for non-high-cost universal service fund (USF) regulatory activities from the Wireline Competition Bureau (WCB) to "indirect," meaning that the cost of these programs with be borne by all Commission licensees. While I understand that these activities, such as E-Rate, Lifeline, and Rural Healthcare, may now affect more than just traditional wireline entities, there is no attempt to analyze how these costs should appropriately be partitioned. For instance, it is hard to fathom why broadcasters or submarine cable authorization holders should pay these fees. I also find it hard to believe that satellite licensees should bear an equal share of these costs. While some reallocation of these FTEs may be justified, there is little support for the item's assertion that these costs should be paid by all sectors and doesn't attempt to compare the number of employees in WCB, the Wireless Telecommunications Bureau, Media Bureau, and International Bureau who are working on these issues. I would hope that we will reconsider this decision in the future.

Similarly, there is insufficient analysis supporting the changes to the AM/FM broadcast fee schedule. While I am very sympathetic to the challenges faced by small broadcasters, the statutory requirement is that the Commission generally allocate the costs of the regulations that we impose. However, today's item does not seek to determine the burdens of the past year's regulations, but instead reduces the fees for small businesses, in a year when many proceedings were rightfully initiated to review (and reduce) their burdens, as a type of small business discount. While perhaps well-intentioned, this is not consistent with the statute. As an aside, had the justification been tied to the need to right size past inequities or errors in the fees charged these entities, I could see some merit but that isn't contemplated here.

Finally, I will hesitantly support the increase in this year's DBS regulatory fees to support the work that the Media Bureau performs on behalf of all multichannel video programming distributors (MVPDs). The proceedings initiated over the last year did cover DBS activities and the amount that the

[398] *See* 47 U.S.C. § 9(a)(1), (b)(1)(A).

[399] *Id*. § 9(b)(1)(A).

[400] *See, e.g.., Assessment and Collection of Regulatory Fees for Fiscal Year 2017, Report and Order and Further Notice of Proposed Rulemaking,* MD Docket No. 16-166, Report and Order, 31 FCC Rcd 10339, 10346 ¶ 21 (2016).

DBS providers will pay this year seems in the ballpark. Going forward, however, I expect far more analysis to support any additional increases. Clearly, some believe that DBS providers should pay an equal share of the Media Bureau's costs to regulate MVPDs. The cable industry, however, is far more regulated than DBS (and more than necessary), so future increases should be accompanied by detailed analyses of all services the Media Bureau provides MVPDs and how these burdens affect both cable and DBS providers.