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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket Nos. 14-92; 15-121; 15-121; FCC 15-59]

Assessment and Collection of Regulatory Fees for Fiscal Year 2015

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) eliminates the regulatory fee components of two fee categories, the amateur radio Vanity Call Sign and the General Mobile Radio Service (GMRS); establishes a new Direct Broadcast Satellite (DBS) regulatory fee category; provides specific instructions for RespOrgs (Responsible Organizations), holders of toll free numbers that are subject to regulatory fees, and amends rule provisions to specify that debts owed to the Commission that have been delinquent for a period of 120 days shall be transferred to the Secretary of the Treasury.

DATES: Effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**

FOR FURTHER INFORMATION CONTACT: Roland Helvajian, Office of Managing Director at (202) 418-0444.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, FCC 15-59, MD Docket No. 15-121, adopted on May 20, 2015 and released May 21, 2015.

I. PROCEDURAL MATTERS

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980 (RFA),¹ the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this Report and Order.

¹ 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).

Congressional Review Act

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

Final Paperwork Reduction Act of 1995 Analysis

3. This Report and Order 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).

4. Finally, in the Order section of this document, we amend three sections of our rules² to conform to the Digital Accountability and Transparency Act (DATA Act) concerning when claims should be transferred to the Secretary of the Treasury.³ In particular, we make the ministerial change to our rules to specify that debts owed to the Commission that have been delinquent for a period of 120 days shall be transferred to the Secretary of the Treasury. The rules previously specified transfer of delinquent debt to the Treasury after 180 days.

II. INTRODUCTION

5. In the Report and Order, the Commission adopted a proposal from our FY 2014 Further Notice of Proposed Rulemaking to add a new subcategory in the existing cable television and Internet Protocol TV (IPTV) regulatory fee category for direct broadcast satellite (DBS) providers.⁴ In addition, we provide specific instructions regarding our new regulatory fee requirement for toll free numbers.⁵ We also remove amateur radio Vanity Call Signs and General Mobile Radio Service (GMRS) from the

² 47 CFR 1.1911(d), 1.1912(b)(1), 1.1917(c).

³ 31 U.S.C. 3716(c)(6).

⁴ Assessment and Collection of Regulatory Fees for Fiscal Year 2014, Report and Order and Further Notice of Proposed Rulemaking, MD Docket No. 14-92, 79 FR 63883, 63885-63886, paras. 10-15 (October 27, 2014).

⁵ In 2014, the Commission adopted a regulatory fee requirement for toll free numbers. See FY 2014 Report and Order, 79 FR 54190, 54195-54196, paras. 28-31 (September 11, 2014).

regulatory fee schedule.⁶ The addition of DBS to the cable television and IPTV category and removal of two wireless categories from the schedule are permitted amendments to the regulatory fee schedule and require Congressional notification.⁷

III. BACKGROUND

6. The Commission is required by Congress to assess regulatory fees each year in an amount that can reasonably be expected to equal the amount of its appropriation.⁸ Regulatory fees, assessed each fiscal year, 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 payer of the fee by the Commission’s activities”⁹ Regulatory fees recover direct costs, such as salary and expenses; indirect costs, such as overhead functions; and support costs, such as rent, utilities, or equipment.¹⁰ Regulatory fees also cover the costs incurred in regulating entities that are statutorily exempt from paying regulatory fees,¹¹ entities whose regulatory fees are waived,¹² and entities that provide nonregulated services. Congress sets the amount the Commission must collect each year in the Commission’s fiscal year appropriations, and section 9(a)(2) of the Communications Act of 1934, as amended (Communications Act or Act) requires the Commission to collect fees sufficient to offset the amount appropriated.¹³ To calculate regulatory fees, the Commission allocates the total collection target, as mandated by Congress each year, across all regulatory fee categories. The allocation

⁶ We sought comment on eliminating these categories in our FY 2014 NPRM. Assessment and Collection of Regulatory Fees for Fiscal Year 2014, Notice of Proposed Rulemaking, Second Further Notice of Proposed Rulemaking, and Order, MD Docket No. 14-92, 79 FR 37982, 37989, para. 38 (July 3, 2014).

⁷ 47 U.S.C. 159(b)(3)-(4)(requiring Congressional notification of permitted amendments not later than 90 days before the effective date of such amendment).

⁸ 47 U.S.C. 159(b)(1)(B).

⁹ 47 U.S.C. 159(b)(1)(A).

¹⁰ See Assessment and Collection of Regulatory Fees for Fiscal Year 2004, Report and Order, 69 FR 41028, 4103, para. 11 (July 7, 2004).

¹¹ 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.

¹² 47 CFR 1.1166.

¹³ 47 U.S.C. 159(a)(2).

of fees to fee categories is based on the Commission’s calculation of full time employees (FTEs)¹⁴ in each regulatory fee category. Historically, the Commission has classified FTEs as “direct” if the employee is in one of the four “core” bureaus; otherwise, that employee was considered an “indirect” FTE.¹⁵ The total FTEs for each fee category includes the direct FTEs associated with that category, plus a proportional allocation of the indirect FTEs.

7. Section 9 of the Communications Act requires the Commission to make certain changes (i.e., mandatory amendments) to the regulatory fee schedule if it “determines that the Schedule requires amendment to comply with the requirements” of section 9(b)(1)(A).¹⁶ In addition, the Commission must 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.”¹⁷ These “permitted amendments” require Congressional notification.¹⁸ The changes in fees resulting from both mandatory and permitted amendments are not subject to judicial review.¹⁹

8. The Commission continues to improve the regulatory fee process by ensuring a more equitable distribution of the regulatory fee burden among categories of Commission licensees under the statutory framework in section 9 of the Communications Act. For example, in 2013, the Commission

¹⁴ 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.

¹⁵ The core bureaus are the Wireline Competition Bureau (172 FTEs), Wireless Telecommunications Bureau (91 FTEs), Media Bureau (155 FTEs), and part of the International Bureau (28 FTEs), totaling 446 “direct” FTEs. The “indirect” FTEs are the employees from the following bureaus and offices: Enforcement Bureau, Consumer & Governmental Affairs Bureau, Public Safety and Homeland Security Bureau, Chairman and Commissioners’ offices, Office of the Managing Director, Office of General Counsel, Office of the Inspector General, Office of Communications Business Opportunities, Office of Engineering and Technology, Office of Legislative Affairs, Office of Strategic Planning and Policy Analysis, Office of Workplace Diversity, Office of Media Relations, and Office of Administrative Law Judges, totaling 1,037 “indirect” FTEs. These totals are as of Oct. 1, 2014 and exclude auctions FTEs.

¹⁶ 47 U.S.C. 159(b)(3).

¹⁷ 47 U.S.C. 159(b)(3).

¹⁸ 47 U.S.C. 159(b)(4)(B).

¹⁹ 47 U.S.C. 159(b)(3). But see Comsat Corp. v. FCC, 114 F.3d 223, 227 (D.C.Cir. 1997) (“Where, as here, we find that the Commission has acted outside the scope of its statutory mandate, we also find that we have jurisdiction to review the Commission’s action.”)

updated the FTE allocations to more accurately align regulatory fees with the costs of Commission oversight and regulation,²⁰ as recommended in the GAO Report, a report issued by the Government Accountability Office (GAO) in 2012.²¹ The Commission also reallocated some FTEs from the International Bureau as “indirect.”²² Subsequently, in the FY 2014 Report and Order, the Commission adopted the new toll free number regulatory fee category²³ and, in the accompanying FY 2014 Further Notice of Proposed Rulemaking, the Commission sought additional comment on a new regulatory fee category for DBS.²⁴ In this Report and Order, we now add a subcategory for DBS providers in the cable television and IPTV regulatory fee category based on our finding that Media Bureau FTEs work on issues and proceedings that include DBS as well as other multichannel video programming distributors (MVPDs).

IV. DISCUSSION

A. Report and Order

1. Eliminating Regulatory Fee Categories

9. In the FY 2014 NPRM,²⁵ we sought comment on eliminating several of the smaller regulatory fee categories such as amateur radio Vanity Call Signs²⁶ and GMRS.²⁷ In the FY 2014 Report

²⁰ Assessment and Collection of Regulatory Fees for Fiscal Year 2013, Report and Order, MD Docket No. 13-140, 78 FR 52433, 52436-52437, paras. 10-15 (August 23, 2013).

²¹ In 2012, the GAO concluded that the Commission should conduct an overall analysis of the regulatory fee categories and perform an updated FTE analysis by fee category. 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>).

²² FY 2013 Report and Order, 78 FR 52433, 52436-52438, paras. 12-21 (August 23, 2013).

²³ FY 2014 Report and Order, 79 FR 54190, 54195-54196, paras. 28-31 (September 11, 2014).

²⁴ FY 2014 Further Notice of Proposed Rulemaking, 79 FR 63883, 63885-63886, paras. 10-15 (October 27, 2014).

²⁵ FY 2014 NPRM, 79 FR 37982, 37989, para. 38 (July 3, 2014).

²⁶ Call signs assigned to newly licensed stations, *i.e.*, a sequential call sign, are assigned based on the licensee’s mailing address and class of operator license. 47 CFR 97.17(d). The licensee can request a specific unassigned but assignable call sign, known as a vanity call sign. 47 CFR 97.19. There is no fee for the sequential call sign.

²⁷ GMRS (formerly Class A of the Citizens Radio Service) is a personal radio service available for the conduct of an individual’s personal and family communications. See 47 CFR 95.1. We initially proposed eliminating regulatory fees for GMRS in the FY 2008 Report and Order and Further Notice. See Assessment and Collection of Regulatory Fees for Fiscal Year 2008, Report and Order and Further Notice of Proposed Rulemaking, 73 FR 50285, 50290-50291, para 33 (August 26, 2008) (FY 2008 Report and Order and Further Notice). The Commission has an open (continued....)

and Order, we concluded that we did not yet have adequate support to determine whether the cost of recovery and burden on small entities outweighed the collected revenue or whether eliminating the fee would adversely affect the licensing process.²⁸ We stated, however, that we would reevaluate this issue in the future. Since adoption of the FY 2014 Report and Order, Commission staff have had an opportunity to obtain and analyze support concerning the collection of fees from these regulatees.

10. The GMRS and amateur radio Vanity Call Sign regulatory fee categories comprise on average over 20,000 licenses that are newly obtained or renewed every five and 10 years, respectively. After five years, the GMRS licensee is responsible for renewing the license (or cancelling) and the Commission is responsible for maintaining accurate records of licenses coming up for renewal—an administrative burden on both GMRS users and on the Commission for renewing and maintaining records of these licenses. After analyzing the costs of processing fee payments for GMRS, we conclude that the Commission’s cost of collecting and processing this fee exceeds the payment amount of \$25. Our costs have increased over time and now that the costs exceed the amount of the regulatory fee, the increased relative administrative cost supports eliminating this regulatory fee category.

11. The Vanity Call Sign fee category has a small regulatory fee (\$21.40 in FY 2014) for a 10-year license. The Commission often receives multiple applications for the same vanity call sign, but only one applicant can be issued that call sign. In such cases, the Commission issues refunds for all the remaining applicants. In addition to staff and computer time to process payments and issue refunds, there is an additional expense to issue checks for the applicants who cannot be refunded electronically. The Commission spends more resources on processing the regulatory fees and issuing refunds than the amount of the regulatory fee payment. As our costs now exceed the regulatory fee, we are eliminating this regulatory fee category.

12. The Commission will therefore eliminate the GMRS and Vanity Call Sign regulatory fee

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proceeding to review the Part 95, Personal Radio Service rules, which include GMRS. See Review of the Commission’s Part 95 Personal Radio Services Rules, WT Docket No. 10-119, Notice of Proposed Rulemaking and Memorandum Opinion and Order on Reconsideration, 75 FR 47142, 47143-47144, para. 4 (August 4, 2010).

²⁸ FY 2014 Report and Order, 79 FR 54190, 54195, para. 26 (September 11, 2014).

categories after the required congressional notification is provided.²⁹ Once eliminated, these licensees will no longer be financially burdened with such payments and the Commission will no longer incur these administrative costs that exceed the fee payments. The revenue that the Commission would otherwise collect from these regulatory fee categories will be proportionally assessed on other wireless fee categories. This is a “permitted amendment” as defined in section 9(b)(3) of the Act, which, pursuant to section 9(b)(4)(B), must be submitted to Congress at least 90 days before it becomes effective.³⁰

2. Toll Free Numbers

13. Toll free numbers, defined in section 52.101(f) of our rules,³¹ allow callers to reach the called party without being charged for the call. Instead, the charge for the call is paid by the called party (the toll free subscriber).³² Prior to the FY 2014 Report and Order, the Commission did not assess regulatory fees on toll free numbers based on the assumption that the entities controlling the numbers—wireline and wireless common carriers—were paying regulatory fees based on either revenues or subscribers.³³ In the FY 2014 NPRM, we observed this was no longer the case because many toll free numbers are now controlled or managed by RespOrgs³⁴ that are not common carriers.³⁵ In the FY 2014 Report and Order, we adopted a regulatory fee obligation for toll free numbers beginning in FY 2015, finding that the Commission has both the legal authority and responsibility to assess regulatory fees on

²⁹ After the 90-day notification period for a permitted amendment, these two fee categories will be eliminated. We will not be issuing refunds to licensees who have paid the regulatory fee prior to the elimination of the fee.

³⁰ 47 U.S.C. 159(b)(3).

³¹ Toll free numbers are telephone numbers for which the toll charges for completed calls are paid by the toll free subscriber. See 47 CFR 52.101(f). These are 800, 888, 877, 866, 855, and 844 numbers. SMS/800 (or the 800 Service Management System) is a centralized system that performs toll free number management. For a list of RespOrgs on the SMS/800, Inc. website, see <http://www.sms800.com/Controls/NAC/Serviceprovider.aspx>.

³² 47 U.S.C. 52.101 (e), (f).

³³ FY 2014 Report and Order, 79 FR 54190, 54195, para. 28, Footnote 76 (citing Universal Service Contribution Methodology, Further Notice of Proposed Rulemaking, 77 FR 33896, 33923, para. 227 (June 7, 2012)).

³⁴ A RespOrg is a company that manages toll free telephone numbers for subscribers. RespOrgs use the SMS/800 data base to verify the availability of specific numbers and to reserve the numbers for subscribers. See 47 CFR 52.101(b).

³⁵ FY 2014 NPRM, 79 FR 37982, 37992, para. 57, Footnote 91(citing, inter alia, Telseven, LLC, Calling 10, LLC, Patrick Hines a/k/a P. Brian Hines, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 15558, 15560, para. 3 (2012) (various corporations, including non-common carrier RespOrgs, owned and controlled by Patrick Hines, controlled approximately one million toll free numbers for Hines’ “directory assistance” operation.))

toll free numbers.³⁶ This regulatory fee assessed on RespOrgs for toll free numbers managed by a RespOrg,³⁷ is payable for all toll free numbers unless calls from only other countries can be completed using those toll free numbers.³⁸ This regulatory fee is assessed on RespOrgs for each working, assigned, reserved, in transit, or any other status of toll free number as defined in section 52.103 of the Commission's rules. Interstate Telecommunications Service Providers (ITSPs) that are RespOrgs and RespOrgs that are not ITSPs will be responsible for this regulatory fee.

14. The decision in 2014 to expand the pool of regulatory fee obligations to all RespOrgs created a system in which there are now numerous entities that play a role in toll free number administration and are required to pay annual regulatory fees but are not common carriers and therefore may lack familiarity with the Commission's rules. In the FY 2014 Report and Order, we did not adopt a specific enforcement mechanism to address circumstances where RespOrgs do not make regulatory fee payments but instead, sought further comment on the additional procedures for enforcement in such instances.³⁹ Instead of adopting additional enforcement procedures at this time, however, we direct SMS/800, Inc.⁴⁰ to provide the necessary outreach to the RespOrgs, through its tariff, website, or otherwise, to advise them that: "The Federal Communications Commission (FCC) has adopted a regulatory fee category for toll free numbers, assessed for each toll free number managed by a Responsible Organization (RespOrg). This regulatory fee, assessed on RespOrgs for toll free numbers

³⁶ FY 2014 Report and Order, 79 FR 54190, 54195, para. 28-29 (September 11, 2014) (summarizing the legal rationale for adoption of a fee on toll free numbers and the FTEs involved in toll free issues) (citing Toll Free Access Codes, Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95-155, 62 FR 20126, 20127 (April 25, 1997) (Toll Free Second Report and Order) (Sections 201(b) and 251(e) of the Act "empower the Commission to ensure that toll free numbers . . . are allocated in an equitable and orderly manner that serves the public interest.")).

³⁷ The proposed fee rate for toll free numbers for FY 2015 is in Table C (FY 2015 Notice of Proposed Rulemaking).

³⁸ See FY 2014 Report and Order, 79 FR 54190, 54195-54196, para. 30 (September 11, 2014).

³⁹ FY 2014 Report and Order, 79 FR 63883, 63885, paras. 8-9 (October 27, 2014).

⁴⁰ SMS/800, Inc. provides administration and routing for all toll free numbers in North America. The Commission has the ultimate authority over numbering resources and oversees the SMS Tariff and SMS/800 Board. See 47 U.S.C. 251 (e)(1); see generally Toll Free Service Access Codes, CC Docket No. 95-155; Petition to Change the Composition of SMS/800, Inc., WC Docket No. 12-260, 28 FCC Rcd 15328 (2013) (SMS Reauthorization Order). Previously the Commission required SMS/800, Inc. to include language prohibiting toll free number hoarding and warehousing in the SMS Tariff. See Toll Free Service Access Codes, Second Report and Order and Further Notice of Proposed Rulemaking, 62 FR 20126, 20127, para. 1 (April 25, 1997).

managed by a RespOrg, is payable for all toll free numbers unless calls from only other countries can be completed using those toll free numbers. A RespOrg that fails to pay the regulatory fee assessed by the FCC will be subject to penalties.”⁴¹

15. The imposition of a regulatory fee on RespOrgs is a new rule, adopted in the FY 2014 Report and Order, and non-common carriers may be unfamiliar with our regulatory fee process and unaware that delinquencies can result in penalties imposed by SMS/800, Inc., penalties imposed by the Commission pursuant to the Debt Collection Improvement Act of 1996 (DCIA), and/or enforcement action by the Enforcement Bureau, pursuant to delegated authority, or by the Commission.⁴² As a result, OMD will coordinate with SMS/800, Inc. to ensure that all RespOrgs owing regulatory fees have sufficient information about this process and opportunity to pay the regulatory fee before the RespOrg is placed in red light status and enforcement procedures are initiated.⁴³

16. The basis for identifying the toll free number count upon which a regulatory fee will be assessed for each RespOrg will be derived from data provided by SMS/800, Inc.⁴⁴ The toll free number data will be determined by the toll free number count as of or around December 31st of each year. In addition to maintaining contact information with SMS/800, Inc., RespOrgs are also responsible for: (i)

⁴¹ See Toll Free Second Report and Order, 62 FR 20126 (April 25, 1997) (“We also may limit any RespOrg’s allocation of toll free numbers or possibly decertify it as a RespOrg under section 251(e)(1) or section 4(i) [of the Communications Act].”)

⁴² The Commission has a number of generally applicable mechanisms to ensure collection of delinquent debt which would also apply to RespOrgs. See generally FY 2014 Report and Order, 79 FR 54190, 54199, paras. 47-48 (September 11, 2014) (summarizing the late payment penalty on unpaid regulatory fees under 47 U.S.C. 159(c), the red-light rule set forth in section 1.1910 of the Commission’s rules, 47 CFR 1.1910, and additional provisions contained in the Debt Collection Improvement Act of 1996 (DCIA), 31 U.S.C. 3701 *et seq.*, See Amendment of Parts 0 and 1 of the Commission’s Rules, MD Docket No. 02-339, Report and Order, 69 FR 27843 (May 17, 2004); 47 CFR part 1, Subpart O, Collection of Claims Owed the United States).

⁴³ Hypercube Telecom contends that the consumer end-users would be affected by our enforcement action against a RespOrg. Hypercube Telecom Reply Comments at 3-5. The notifications that are part of our delinquent bill collection process will give RespOrgs multiple opportunities to pay any delinquency before enforcement action.

⁴⁴ SMS/800, Inc. observes that some of its billing and contact information may contain additional proprietary and confidential data and that it would require the Commission to ensure the confidentiality of any such information provided. See SMS/800, Inc. Comments at 6. If SMS/800, Inc. is unable to provide the necessary information without including any confidential information it should submit, along with the responsive information and/or documents, a statement in accordance with section 0.459 of the Commission’s rules. 47 CFR 0.459.

obtaining an FRN (FCC Registration Number);⁴⁵ (ii) maintaining current contact information in the Commission Registration System (CORES);⁴⁶ (iii) reviewing the Commission’s Regulatory Fees Home Page for updates on regulatory fees;⁴⁷ and (iv) making timely regulatory fee payments using the Commission’s Electronic Filing and Payment System (Fee Filer) located at: www.fcc.gov/feefiler. SMS/800, Inc. will provide the Commission with up-to-date contact information for the RespOrgs as needed to facilitate the timely payment of regulatory fees for toll free numbers. Under our bill collection procedures, delinquent RespOrgs will receive notice from the Commission before the matter is referred to the Enforcement Bureau for enforcement action and/or penalties imposed by SMS/800, Inc.

17. Any payments RespOrgs must pay SMS/800, Inc. for toll free number management and administration are unrelated to regulatory fees assessed by the Commission. Payment of regulatory fees to the Commission does not relieve a RespOrg from any payment obligations to SMS/800, Inc.

3. Direct Broadcast Satellite Providers

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. DBS providers are multichannel video programming distributors (MVPDs), as defined in section 602(13) of the Act.⁴⁸ These operators of U.S. licensed geostationary space stations, which are used to provide one-way subscription video service to consumers in the United States, currently pay a fee per U.S.-licensed satellite under the category “Space Station (Geostationary Orbit)” in the regulatory fee schedule based on the International Bureau FTEs work associated with satellite regulation. Cable television and IPTV, also MVPDs, similarly provide subscription video services to consumers in the United States. These regulated entities pay a regulatory fee per subscriber under the fee category “Cable TV System, Including IPTV.”⁴⁹

⁴⁵ Commission FRN numbers can be obtained by registering in the Commission’s Registration System (CORES) located at: <https://apps.fcc.gov/coresWeb/publicHome.do>.

⁴⁶ Commission’s Registration System (CORES) located at: <https://apps.fcc.gov/coresWeb/publicHome.do>.

⁴⁷ The Commission’s Regulatory Fees Home Page is located at: <http://www.fcc.gov/regfees>.

⁴⁸ 47 U.S.C. 522(13).

⁴⁹ In FY 2014, the regulatory fee for “Cable TV System, Including IPTV” was \$0.99 per subscriber. FY 2014 Report and Order, 79 FR 54190, 54208-54212 (September 11, 2014). Cumulatively, the Cable TV System, Including IPTV fee category paid \$64.35 million in regulatory fees for FY 2014.

In the Further Notice of Proposed Rulemaking accompanying the FY 2014 Report and Order, the Commission proposed to adopt a fee to recover the costs incurred by the Media Bureau for regulation of DBS.⁵⁰ Under our proposal, DBS providers would be subject to two regulatory fees. The first fee would recover the burden of regulation and oversight by International Bureau FTEs incurred as a result of its operation of satellites, and the other fee would recover the burden of regulation and oversight by Media Bureau FTEs as a result of DBS status as a MVPD. We conclude that DBS providers are subject to regulation and oversight of the Media Bureau and should share in the Media Bureau FTE burden attributed to MVPDs. Accordingly, pursuant to section 9(b)(3), we amend the regulatory fee schedule to replace the category “Cable TV System, Including IPTV” with the “Cable TV System, Including IPTV and DBS” category. This category will now have two rates: one for DBS (a subcategory) and another for cable television and IPTV.

19. Background. The Commission has considered the appropriate methodology for assessing regulatory fees on DBS providers on multiple occasions. The original fee schedule adopted by Congress in 1993, when the DBS service was a nascent industry,⁵¹ did not include a specific fee category for DBS providers.⁵² The Commission recognized this and declined to adopt a regulatory fee for DBS until fiscal year 1996.⁵³ In the FY 1996 NPRM, the Commission determined that including the fledgling DBS service in the regulatory fee imposed on geostationary orbit geosynchronous satellite category best

⁵⁰ FY 2014 Further Notice of Proposed Rulemaking, 79 FR 63883, 63886-63887, paras. 10-15 (October 27, 2014).

⁵¹ Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, Report and Order, 59 FR 30984, 30994, para. 85 (June 16, 1994) (FY 1994 Report and Order) (declining to adopt a regulatory fee for DBS under the Mass Media fees and noting that DBS service is not expected to be offered prior to the time for calculating fee payments for FY 1994).

⁵² In the Appendix to the FY 1994 Report and Order published in the Federal Register, the Commission noted that DBS was not included in the original fee schedule adopted by Congress and observed “that the omission of DBS and FM translators and boosters was inadvertent and that Congress did not intend to exempt all DBS permittees and licensees and licensees of FM translators and boosters from regulatory fees as these services result in the Commission incurring costs for necessary regulatory functions. . . . we intend to add regulatory fee categories for DBS licenses and for FM translators and boosters” 59 FR 30984, 31006, note 2.

⁵³ Assessment and Collection of Regulatory Fees for Fiscal Year 1996, Report and Order, 61 FR 36629, 36652, para 35 in Appendix F (July 12, 1996) (FY 1996 Report and Order) (imposing regulatory fee for the first time on DBS relying on the analysis in the FY 1996 NPRM); Assessment and Collection of Regulatory Fees for Fiscal Year 1996, Notice of Proposed Rulemaking, 61 FR 16432, 16436, para. 41(April 15, 1996) (FY 1996 NPRM) (proposing to assess DBS licensees the fee applicable to all geostationary orbit geosynchronous satellite licensees and, therefore, to include DBS for regulatory fee purposes in the Space Station fee category).

reflected the regulatory burden born by the Commission at that time.⁵⁴ In the 2005,⁵⁵ 2006,⁵⁶ and 2008⁵⁷ regulatory fee proceedings, the Commission also considered whether DBS should pay a subscriber-based regulatory fee related to Media Bureau oversight instead of being included in the geosynchronous satellite category related to International Bureau oversight. In those proceedings, the Commission either declined to adopt a change or made no decision on the issue. In the FY 2005 Report and Order, in declining to make a change, the Commission noted its FY 2005 NPRM had not contained a proposal on the issue.⁵⁸ In the FY 2006 Report and Order, the Commission decided not to change the fee. In the FY 2009 Report and Order, the Commission declined to address the issue raised in the FY 2008 Report and Order and Further Notice.⁵⁹

20. In August of 2012, the GAO Report concluded that regulatory fee reform at the Commission was long overdue.⁶⁰ The GAO Report observed, among other things, that questions had been raised by commenters regarding whether the Commission's regulatory fee analysis was based on a

⁵⁴ FY 1996 NPRM, 61 FR 16432, 16436, para.41 (April 15, 1996).

⁵⁵ Assessment and Collection of Regulatory Fees for Fiscal Year 2005, Report and Order and Order on Reconsideration, 70 FR 41967, 41969, para 11 (July 21, 2005) (FY 2005 Report and Order). In 2005, the Commission declined to adopt changes in the regulatory fee assessment methodology for DBS providers in response to the comments of the National Cable and Telecommunications Association and American Cable Association. Id. The FY 2005 NPRM did not contain a proposal on this issue. See generally, Assessment and Collection of Regulatory Fees for Fiscal Year 2005, Notice of Proposed Rulemaking, 70 FR 9575 (February 28, 2005).

⁵⁶ Assessment and Collection of Regulatory Fees for Fiscal Year 2006, Report and Order, 71 FR 43842, 43844-43845, paras. 10-16 (August 2, 2006) (FY 2006 Report and Order) (declining to change the DBS regulatory fee from a per operational space station fee to a subscriber based fee); Assessment and Collection of Regulatory Fees for Fiscal Year 2006, Notice of Proposed Rulemaking, 71 FR 17410, 17411-17412, para. 8 (June 6, 2006) (FY 2006 NPRM) (seeking comment on the appropriate regulatory fee structure for both cable operators and DBS providers).

⁵⁷ FY 2008 Report and Order and Further Notice, 73 FR 50285, 50290, para. 26 (August 26, 2008) (seeking comment on whether the Commission should impose the same per subscriber fee on DBS that cable providers pay, or continue to assess a space station regulatory fee for the DBS industry and a subscriber-based structure for the cable industry).

⁵⁸ FY 2005 Report and Order, 70 FR 41967, 41969, para. 11 (July 21, 2005).

⁵⁹ Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Report and Order, 74 FR 40089, 40089, para 3 (August 11, 2009) (FY 2009 Report and Order) (the Commission noted that the remaining outstanding issues from the FY 2008 Report and Order and Further Notice would be decided at a later time).

⁶⁰ See note 22, supra. We have adopted significant regulatory fee reforms in our annual regulatory fee proceedings in response to the GAO Report. See, e.g., FY 2013 Report and Order, 78 FR 52433, 52436, para. 12-14 (August 23, 2013) (using current FTE data to calculate regulatory fees).

“valid FTE analysis” of Media Bureau FTEs work related to the MVPDs including DBS.⁶¹ Following the GAO Report, in the fiscal year 2013 regulatory fee proceeding, the Commission considered and adopted a number of significant regulatory fee reforms such as updating the FTEs allocated to each of the core bureaus and reclassifying most of the International Bureau FTEs as indirect.⁶² The Commission also adopted other reforms such as broadening the cable television category to include IPTV providers as a “permitted amendment.”⁶³ As part of its overall analysis of the cable television systems category, the Commission considered a change to the DBS fee schedule.⁶⁴ While the Commission declined to do so in 2013 to allow additional time to examine the proposal as part of larger reform efforts, the Commission noted its intent to revisit the issue in the future.⁶⁵ In 2014, the Commission again proposed to adopt a fee to recover the costs incurred by the Media Bureau for regulation of DBS in the FY 2014 NPRM and the FY 2014 Further Notice of Proposed Rulemaking.⁶⁶ Alternatively, the Commission sought comment on whether Media Bureau FTEs working on DBS issues be assigned to the International Bureau as direct FTEs or assigned as indirect FTEs for regulatory fee purposes.⁶⁷

21. Discussion. Under section 9 of the Act, the Commission may make a permitted amendment to the fee schedule if it “determines that the Schedule requires amendment to comply with the requirements of” paragraph (1)(A) which mandates that the Commission allocate fees to cover the costs

⁶¹ GAO Report at 18-20.

⁶² See FY 2013 Report and Order, 78 FR 52433, 52436-52438, para. 12-22 (August 23, 2013).

⁶³ FY 2013 Report and Order, 78 FR 52433, 52439, 52444, paras. 31, 36 (August 23, 2013).

⁶⁴ FY 2013 Report and Order, 78 FR 52433, 52443-52444, paras. 35-36 (August 23, 2013); Assessment and Collection of Regulatory Fees for Fiscal Year 2013, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 78 FR 34612, 34627-34628, paras. 56-58 (June 10, 2013) (FY 2013 NPRM).

⁶⁵ FY 2013 Report and Order, 78 FR 52433, 52439, para. 31 (August 23, 2013) (“We will continue to examine these suggestions as we continue our regulatory fee reform, as well as our proposals that we do not reach in this Report and Order: to combine the ITSP and wireless categories, to use revenues in calculating all regulatory fees, and to include DBS providers in a new MVPD category. We find additional time is necessary and appropriate to examine these proposals under Section 9 of the Communications Act and analyze how these proposals account for changes in the communications industry and the Commission’s regulatory processes and staffing.”) (footnotes omitted) and para. 33.

⁶⁶ FY 2014 Further Notice of Proposed Rulemaking, 79 FR 63883, 63885-63886, paras. 10-15 (October 27, 2014); FY 2014 NPRM, 79 FR 37982, 37990-37991, paras. 47-52 (July 3, 2014).

⁶⁷ FY 2014 Further Notice of Proposed Rulemaking, 79 FR 63883, 63886, para. 13 (October 27, 2014).

of certain regulatory activities in accordance with the benefits provided to the payor and other factors that the Commission determines are in the public interest.⁶⁸ The statute also provides, however, that, “[i]n making such amendments, the Commission shall add, delete, or reclassify services in the Schedule to reflect additions, deletions or changes in the nature of its services as a consequence of Commission rulemaking proceedings or changes in law.”⁶⁹ We have conducted a review of the Media Bureau work devoted to MVPD matters and find that the recommendations in the GAO Report were correct.⁷⁰ Analysis of the oversight and regulation of MVPDs (including the DBS industry) by the Media Bureau in various rulemaking proceedings reveal a cumulative effect of changes in law that have taken effect since the Commission adopted the current DBS regulatory fee structure in 1996. Due to these changes, we find that the DBS providers should be included in the same fee category as the other MVPDs, such as cable television and IPTV. There are certain rules that both DBS providers and cable operators including IPTV are subject to, and Media Bureau FTEs provide the oversight and regulation of the DBS industry as required by these rules.⁷¹ For example, DBS providers (and cable television operators) are permitted to file program access complaints⁷² and complaints seeking relief under the retransmission consent good faith rules.⁷³ In addition, DBS providers are subject to MVPD requirements such as those pertaining to program carriage⁷⁴ and the requirement to negotiate retransmission consent in good faith.⁷⁵ More recently, the Commission adopted a host of requirements that apply to all MVPDs and thus equally apply to DBS providers as part of its implementation of the Commercial Advertisement Loudness Mitigation

⁶⁸ 47 U.S.C. 159(b)(3).

⁶⁹ 47 U.S.C. 159(b)(3).

⁷⁰ The GAO Report did not have a specific recommendation with respect to the DBS regulatory fee, but observed that the National Cable and Telecommunications Association had argued that our regulatory fee process was competitively disadvantaging the cable television industry. GAO Report at 18-19. Competition per se is not part of the permitted amendment analysis; however, in this case the Media Bureau FTEs work on MVPD issues that include DBS.

⁷¹ See, e.g., 47 CFR 76.65(b); 76.1000-1004; 47 U.S.C. 618(b).

⁷² 47 U.S.C. 548; 47 CFR 76.1000-1004.

⁷³ 47 U.S.C. 325(b)(1), (3)(C)(ii); 47 CFR 76.65(b).

⁷⁴ 47 U.S.C. 536; 47 CFR 76.1300-1302.

⁷⁵ 47 U.S.C. 325(b)(3)(C)(iii); 47 CFR 76.65(a)-(b).

Act (CALM Act),⁷⁶ the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA),⁷⁷ as well as the Satellite Television Extension and Localism Act (STELA) Reauthorization Act of 2014 (STELAR).⁷⁸ These regulatory developments increased the amount of regulatory activity by the Media Bureau FTEs involving regulation and oversight of MVPDs, including the DBS providers. The Media Bureau has been responsible for adopting many of these regulations and overseeing the MVPD industry. As MVPDs, DBS providers actively participate in Media Bureau proceedings involving MVPD oversight and regulation.⁷⁹

22. DIRECTV and DISH disagree that a permitted amendment is justified, contending that there has been no “meaningful increase in the regulation of DBS.”⁸⁰ To the contrary, as discussed above, implementation of the CALM Act, CVAA, and STELAR should alone provide adequate justification for a permitted amendment in this case. A permitted amendment under section 9(b)(3), however, does not require a sudden increase in regulation or oversight over a defined period of time. Circumstances have changed in the almost 20 years since the Commission first addressed the issue of DBS regulatory fees.⁸¹

⁷⁶ See Implementation of the Commercial Advertisement, Loudness Mitigation (CALM) Act, Report and Order, 77 FR 40276 (July 9, 2012) (CALM Act Report and Order).

⁷⁷ Public Law No. 111-260, 124 Stat. 2751 (2010). See also Amendment of Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law No. 111-265, 124 Stat. 2795 (2010) (making corrections to the CVAA); 47 CFR part 79.

⁷⁸ The STELA Reauthorization Act of 2014 (STELAR), 102, Public Law No.113-200, 128 Stat.2059, 2060-62 (2014) (codified at 47 U.S.C. 338(1)). The STELAR was enacted on Dec. 4, 2014 (H.R.5728, 113th Cong.). Implementation of Section 102 of the STELA Reauthorization Act of 2014, Notice of Proposed Rulemaking, MB Docket No. 15-71, FCC 15-34 (rel. Mar. 26, 2015) proposes satellite television “market modification” rules to implement section 102 of STELAR.

⁷⁹ NCTA and ACA Comments at 7, 10-11; ITTA Comments at 3. DIRECTV and DISH filed comments and ex parte statements in numerous Commission proceedings, in the Media Bureau dockets as well as other dockets. As of Mar. 17, 2015, in the past 12 months, DIRECTV filed 109 comments and ex parte statements in Media Bureau (and other) dockets. There are other proceedings, such as mergers, in which DIRECTV and DISH have participated. Regardless of whether the proceeding is merger-related or pertains strictly to MVPD regulation, DBS participation, and Media Bureau staff involvement, support our conclusion that DBS providers should be added to the cable television and IPTV category.

⁸⁰ DIRECTV and DISH Comments at 8-9.

⁸¹ The Commission’s annual MVPD Competition Report provides a history of MVPD services. Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Report, 9 FCC Rcd 7442 (1994) (First Report); 11 FCC Rcd 2060 (1996) (Second Report); 12 FCC Rcd 4358 (1997) (Third Report); 13 FCC Rcd 1034 (1998) (Fourth Report); 13 FCC Rcd 24284 (1998) (Fifth Report); 15 FCC Rcd 978 (2000) (Sixth Report); 16 FCC Rcd 6005 (2001) (Seventh Report); 17 FCC Rcd 1244 (2002) (Eighth Report); 17 FCC Rcd 26901 (2002) (Ninth Report); 19 FCC Rcd 1606 (2004) (Tenth Report); 20 FCC Rcd 2755 (2005) (Eleventh Report); 21 FCC Rcd (continued....)

At the time we adopted a DBS regulatory fee, it was a fledging service where the business model was uncertain and there were questions concerning whether it would operate as a subscription based service or a free to air broadcaster.⁸² The first DBS satellite was not launched until 1993 and did not become operational until 1994.⁸³ In 2015, however, DBS had developed into a large MVPD⁸⁴ and as such significant Media Bureau FTE resources are used in regulation and oversight of DBS. The GAO Report correctly noted that an evaluation of Media Bureau FTEs was long overdue⁸⁵ and the result of such evaluation leads us to the conclusion that the Media Bureau FTEs regulate the DBS industry together with the other MVPDs. Thus, there is no reasonable basis to exclude DBS providers from sharing in the cost of MVPD oversight and regulation. With this Report and Order, we recognize the changes in fact and law since the adoption of the DBS fee in 1996 cumulatively require us to adopt a permitted amendment to ensure that DBS providers contribute equitably to the FTE burden of MVPD oversight.⁸⁶

23. We also reject the argument raised by DIRECTV and DISH that section 9 of the Act requires us to “show that DBS and cable occupy a comparable number of FTEs.”⁸⁷ The commenters’ argument that DBS is not involved in certain matters such as petitions for effective competition,⁸⁸ or other requirements that do not pertain to DBS,⁸⁹ demonstrates that DBS is not identical to cable television. It

(Continued from previous page) _____
2503 (2006) (Twelfth Report); 24 FCC Rcd 542 (2007) (Thirteenth Report); 27 FCC Rcd 8610 (2012) (Fourteenth Report); 28 FCC Rcd 10496 (2013) (Fifteenth Report).

⁸² FY 1996 Report and Order, 61 FR 36629, 36652, Appendix F, para. 35 (July 12, 1996). DBS space stations applicants must indicate in their license application whether they seek to operate on a broadcast or non-broadcast basis, which affects the length of their license terms. Inquiry into the Development of Regulatory Policy in regard to Direct Broadcast Satellites for the Period Following the 1982 Regional Administrative Radio Conference, Report and Order, 90 FCC 2d 676 (1982), aff’d sub nom National Association of Broadcasters v. F.C.C., 740 F.2d 1190 (1984). To date, neither DIRECTV nor DISH has elected to operate as a broadcaster.

⁸³ First Report, 59 FR 64657, 64659, paras. 21-22 (December 15, 1994).

⁸⁴ Fifteenth Report, 28 FCC Rcd at 10546-49, paras. 110-117 (describing DBS MVPD business models and competitive strategies).

⁸⁵ GAO Report at 17-20.

⁸⁶ 47 U.S.C. 159(b)(3). See, e.g., 47 CFR 76.65(b); 76.1000-1004; Part 79; 47 U.S.C. 618(b).

⁸⁷ DIRECTV and DISH Comments at 11 & Reply Comments at 4-9.

⁸⁸ DIRECTV and DISH Comments at 12.

⁸⁹ DIRECTV and DISH Comments at 12 (these are (1) a requirement to encrypt the basic service tier, (2) the viewability requirements in sections 614 and 615 of the Act, and (3) the requirement to include certain digital interfaces on high definition set-top boxes).

does not, however, refute our conclusion that a significant number of Media Bureau FTEs work on MVPD issues that include DBS.⁹⁰ The Commission has determined in other proceedings that services that are not technologically identical nevertheless warrant placement in the same regulatory fee category. Other fee categories, such as Interstate Telecommunications Service Providers (ITSP), also include a range of carriers that may not be regulated identically.⁹¹ For example, 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.”⁹² The Commission stated that “Section 9 is clear, however, that regulatory fee assessments are based on the burden imposed on the Commission, not benefits realized by regulatees.”⁹³ Concerning many aspects of MVPD regulation, Media Bureau FTEs bear the same burden regardless of the specific technology used by the service provider. Thus, 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. The burden imposed on the Commission is therefore similar.

24. DIRECTV and DISH also observe that there are more cable operators and cable systems than DBS operators, and that the cable industry has a larger filing and recordkeeping requirement than DBS.⁹⁴ While we agree that the two DBS providers and their trade association had fewer filings than the top 25 cable operators and their two trade associations (combined), we are not persuaded that this

⁹⁰ See, e.g., Closed Captioning Report and Order, 79 FR 17911 (March 31, 2014), 79 FR 17093 (March 31, 2014); CALM Act Report and Order, 77 FR 40276 (July 9, 2012); 76.1000-1004; part 79; 47 U.S.C. 618(b).

⁹¹ 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. See NCTA and ACA Comments at 9 & Reply Comments at 8-9.

⁹² See Assessment and Collection of Regulatory Fees for Fiscal Year 2007, Report and Order and Further Notice of Proposed Rulemaking, 72 FR 45908, 45912, para. 19 (August 16, 2007) (FY 2007 Report and Order).

⁹³ FY 2007 Report and Order, 72 FR 45908, 45912, para. 19 (August 16, 2007).

⁹⁴ DIRECTV and DISH Comments at 13. DIRECTV and DISH compare the number of filings in our electronic comment filing system (ECFS) and observe that over a two year period DIRECTV and DISH and their trade association filed 4,870 pages in 401 proceedings and the top 25 cable companies and their two trade associations filed 93,673 pages in 2,217 proceedings. DIRECTV and DISH Comments at 13, note 53.

demonstrates a lack of Media Bureau oversight and regulation of the DBS industry.⁹⁵ We are therefore including DBS providers into the same regulatory fee category as cable television and IPTV because many Media Bureau issues involve the entire MVPD industry. We find that it is appropriate under section 9 of the Act to recover the costs associated with Media Bureau FTE work.⁹⁶ As we explain below, however, DBS will have an opportunity to raise questions concerning the rate calculation between it and other members of the same fee category for fiscal year 2015 and in the future.⁹⁷ The video programming and distribution industry continues to change⁹⁸ and the appropriate allocation between and among regulatees with respect to Media Bureau FTEs working on MVPD issues may change over time as different regulatory and legal issues are presented to the Commission.

25. To the extent that DIRECTV and DISH are suggesting by these arguments that the number of FTEs dedicated to a service is wholly determinative of their regulatory fees, we disagree. Although the statute requires us to calculate FTEs initially, we are also required to “adjust[]” that number “to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission’s activities.”⁹⁹ Since DBS providers generally benefit from the regulatory activities of the Media Bureau, much like cable operators and IPTV providers, the Commission can attribute Media Bureau FTEs to DBS providers and require them to pay Media Bureau regulatory fees.

26. DIRECTV and DISH also argue that because we declined to include DBS in the cable television and IPTV regulatory fee category previously, we must provide a reasoned explanation for

⁹⁵ In the 12 months prior to Mar. 17, 2015, Comcast Corporation (the largest cable company in the country) had 297 total ECFS filings, DIRECTV had 109, and DISH Network had 134 (some filings were by DIRECTV and DISH together), a not unexpected relative volume of ECFS filings for the top three MVPDs in the country.

⁹⁶ 47 U.S.C. 159(a)(1).

⁹⁷ Even when an industry has oversight generally by one organizational unit within the Commission, we are sensitive to the fact that balance between members of the same industry may require adjustments to FTE allocations. See, e.g., recent changes in FTE allocations between space station and earth stations even though such systems are may operate in the same spectrum and be part of the same telecommunication system. FY 2014 Report and Order, 79 FR 54190, 54192-54193, paras. 11-15 (September 11, 2014).

⁹⁸ See, e.g., Promoting Innovation and Competition in the Provision of Multichannel Video Programming Distribution Services, Notice of Proposed Rulemaking, 29 FCC Rcd 15995 (2014) (seeking comment on, inter alia, expanding the definition of MVPD to include providers of multiple linear streams of video programming, regardless of the technology used to distribute it.)

⁹⁹ 47 U.S.C. 159(b)(1)(A).

changing our fee determination.¹⁰⁰ We agree that it serves the public interest to explain our rationale. A prior decision, however, does not preclude us from making a different determination in light of the facts and circumstances presented to the Commission in 2015. When the Commission first determined to include DBS in the geosynchronous satellite regulatory fee, DBS was a new service with an uncertain business model. Imposing a subscription based fee derived from Media Bureau FTEs risked failing to compensate the Commission for the substantive work regulating DBS as a satellite industry.¹⁰¹ When we examined the issue again in 2005, 2006, and 2008, contemporaneously there was a significant amount of regulatory work being done by the International Bureau related to making new spectrum available for satellite based video services.¹⁰² Thus, it is not surprising that the Commission concluded in 2006 that the existing methodology adequately ensured recovery of International Bureau FTE burden of oversight and regulation. Further, removing DBS from the geosynchronous satellite regulatory fee category at a time when that fee category bore the burden of substantial rulemakings relating to new satellite spectrum would have been a complex issue. While the burden of new satellite rulemakings was not mentioned by the Commission in the FY 2006 Report and Order, review of the context in which decisions are made is appropriate here. Further, in the past, changes to the DBS regulatory fee was frequently described as either a fee assessed based on International Bureau FTEs or a fee based on Media Bureau FTEs. In contrast, our proposal presents a more nuanced approach of recognizing that the work of both the International Bureau FTEs and the Media Bureau FTEs provide oversight and regulation of DBS. As a

¹⁰⁰ DIRECTV and DISH Comments at 15-17 & Reply Comments at 10-11.

¹⁰¹ FY 1996 NPRM, 61 FR 16432, 16436, para. 41 (April 15, 1996) (“Moreover, because DBS licensees are not restricted to the provision of video programming, but rather may provide various non-video services, we concluded that a facility-based fee would ensure that each DBS licensee contributed equitably to the cost of DBS regulation without the need to impose possibly burdensome and overly intrusive reporting requirements necessary to gather information identifying the services offered by individual DBS operators.”)

¹⁰² Establishment of Policies and Service Rules for the Broadcasting Satellite Service at the 17.3-17.7 GHz Frequency Band and at the 17.7-17.8 GHz Frequency Band Internationally, and at the 24.75-25.25 GHz Frequency Band for Fixed Satellite Services Providing Feeder Links to the Broadcasting-Satellite Service and for the Broadcasting Satellite Service Operating Bidirectionally in the 17.3-17.7 GHz Frequency Band, Notice of Proposed Rulemaking, 72 FR 46939 (August 22, 2007), Report and Order and Further Notice of Proposed Rulemaking, 72 FR 50000 (August 29, 2007); Amendment of the Commission's Policies and Rules for Processing Applications in the Direct Broadcast Satellite Service, Notice of Proposed Rulemaking, 21 FCC Rcd 9443 (2006). See Thirteenth Report, 74 FR 11102, at para. (March 16, 2009).

result, while the decisions made in the past are understandable in their context, we are not bound to disregard the FTE burden born by the Media Bureau in regulating DBS as a MVPD simply because we previously declined to change the methodology of assessing fees on DBS providers.

27. Regulatory fee reform is a logistical challenge due to the time constraints in regulatory fee proceedings which typically must be completed in a year in order to satisfy our statutory mandate. Unfortunately, at times we must decline to adopt a proposal or take an incremental approach, not because a proposal lacks merit, but simply because there is insufficient time to address the substantive comments raised in the record in the time allotted.¹⁰³ In this instance, however, we have the benefit of comments regarding this issue from the FY 2013 NPRM, the FY 2014 NPRM, and the FY 2014 Further Notice of Proposed Rulemaking. As a result, unlike prior review of this issue, we have had more time within which to review the significant issue of adopting an additional fee category for DBS providers. The GAO Report also brought new focus to conducting the necessary analysis of Media Bureau FTEs as part of our overall regulatory fee reform.¹⁰⁴ Had the Commission performed this analysis of Media Bureau FTEs and regulation and oversight of DBS earlier, we may have reached this result at that time. The Commission may update its regulatory fee methodology when, among other things, it is supported by updated data, analysis, and changes in the regulation and oversight of the industry. As the GAO Report observed, it is important to “regularly update analyses to ensure that fees are set based on relevant information.”¹⁰⁵

28. Finally, DISH and DIRECTV contend that a “fee increase will cause rate shock”¹⁰⁶ and argue that we must explain the basis of any regulatory fee increase exceeding 7.5 percent relying upon a cap we adopted for FY 2013.¹⁰⁷ We note first that it is somewhat premature to address this concern since the rate for DBS providers is merely proposed in the accompanying NPRM, and DISH and DIRECTV,

¹⁰³ See, e.g., FY 2006 Report and Order, 71 FR 43842, 43845, para 16 (August 6, 2006) (“Finally, as a practical matter, we do not have sufficient time available to modify the section 9 regulatory fee classification and methodology as proposed by NCTA and still comply with the 90-day congressional notification requirement before we start our regulatory fee collections in the August/September time frame.”)

¹⁰⁴ See, e.g., FY 2013 Report and Order, 78 FR 52433, 52436, paras. 12-14 (August 23, 2013).

¹⁰⁵ GAO Report at 12.

¹⁰⁶ DIRECTV and DISH Comments at 11.

¹⁰⁷ DIRECTV and DISH Comments at 15-17 & Reply Comments at 10-11.

the two DBS providers, may provide comments on the rate for this year and in subsequent years. As to the substance of the complaint, we note that this cap was adopted due to the significant regulatory fee changes adopted that year and our concern on the impact on small entities; neither DISH nor DIRECTV claim that they are small entities. We are not required to adopt a cap every year and we are not seeking comment on such a cap for FY 2015 in our NPRM above. Due to their concern that the regulatory fee would have such an impact on their customers, we have decided to phase in the DBS fee and introduce it initially as a subcategory of the cable television and IPTV category.¹⁰⁸ This phased approach is consistent with the interim approach the Commission took in the FY 2013 Report and Order to “avoid sudden and large changes in the amount of fees”¹⁰⁹ and addresses DIRECTV and DISH’s concerns.¹¹⁰

29. We also note that we sought comment on whether the operator of the satellite or the provider of DBS service should be the entity that pays the regulatory fee.¹¹¹ As the fee is based on subscriber numbers, the DBS service provider would be the entity with this information and it would be more efficient for those DBS providers to be responsible for the regulatory fee. For purposes of calculating regulatory fees, the subscriber count includes single family dwellings as well as individuals in multiple dwelling units (e.g., apartments, condominiums, mobile home parks) based on the formula in the footnote below.¹¹²

30. In the FY 2014 Further Notice of Proposed Rulemaking, we further sought comment on whether, in lieu of a permitted amendment, Media Bureau FTEs working on DBS issues should be

¹⁰⁸ Commenters propose a three-year phase-in period. See NCTA and ACA Comments at 14-15.

¹⁰⁹ FY 2013 Report and Order, 78 FR 52433, 52439, para. 28 (August 23, 2013).

¹¹⁰ In FY 2014, DIRECTV and DISH paid approximately \$2.49 million in international regulatory fees for 20 satellites and 141 earth stations. Assuming these DBS providers pay for the same number of satellite and earth station units, the Commission estimates that in FY 2015 their total fees paid would be \$2.72 million (satellites and earth stations) plus \$2.72 million (media services) for a total of \$5.44 million.

¹¹¹ FY 2014 Further Notice of Proposed Rulemaking, 79 FR 63883, 63886, para. 13 (October 27, 2014).

¹¹² DBS providers, cable television system operators, and IPTV providers 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. Providers and operators may base their count on “a typical day in the last full week” of December 2014, rather than on a count as of December 31, 2014.

assigned to the International Bureau as direct FTEs or assigned as indirect FTEs.¹¹³ These alternatives would, in some ways, allocate the Media Bureau FTEs for regulatory fee purposes in a way that is fairer than the current allocation. DBS providers would be paying regulatory fees for some of the Media Bureau FTEs, if reallocated as direct FTEs to the International Bureau. If we reallocated some Media Bureau FTEs as indirect, the regulatory fee burden would be spread among all regulatory fee payors, which would relieve the burden on the cable television and IPTV industry. Although these two alternatives would serve to reallocate a portion of the Media Bureau FTEs, such reallocation would either shift the burden to all International Bureau regulatees or to all regulatory fee payors, instead of to the DBS providers. Thus, although those two alternative proposals might be an improvement over the status quo, including DBS in the same category as cable television and IPTV, and basing the regulatory fee on Media Bureau FTEs, is the more straightforward and equitable approach because the DBS regulation and oversight is done by the Media Bureau FTEs.

31. Under section 9 of the Act, the Commission must 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.”¹¹⁴ As explained above, after analyzing the oversight and regulation of MVPDs (including DBS) by the Media Bureau in various rulemaking proceedings, MVPDs (including DBS providers) are subject to increased regulation and oversight due to changes in law, and therefore DBS should be included in the same fee category as cable television and IPTV, as a permitted amendment. Since two different sets of FTE resources are involved, the Commission is assessing two separate fees on DBS providers, a satellite fee based on International Bureau FTEs and a fee based on Media Bureau FTEs, assessed per DBS subscriber. This adoption of a fee subcategory for DBS within the cable television and IPTV category is a permitted amendment as

¹¹³ FY 2014 Further Notice of Proposed Rulemaking, 79 FR 63883, 63886, para. 13 (October 27, 2014).

¹¹⁴ 47 U.S.C. 159(b)(3).

defined in section 9(b)(3) of the Act, which, pursuant to section 9(b)(4)(B), must be submitted to Congress at least 90 days before it becomes effective.¹¹⁵

32. In the Order portion of the rulemaking, the Commission makes ministerial changes to sections 1.911(d), 1.1912(b)(1), and 1.1917(c) of the Commission's rules¹¹⁶ to conform to the Digital Accountability and Transparency Act (DATA Act).¹¹⁷ In particular, the Commission amends the rule provisions to specify that debts owed to the Commission that have been delinquent for a period of 120 days shall be transferred to the Secretary of the Treasury.¹¹⁸ These amendments are to conform the Commission's rules to the DATA Act and the notice and comment and effective date provisions of the Administrative Procedure Act are inapplicable.¹¹⁹

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹²⁰ an Initial Regulatory Flexibility Analysis (IRFA) was included in the Report and Order and Further Notice of Proposed Rulemaking.¹²¹ The Commission sought written public comment on these proposals including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the IRFA.¹²²

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

2. In this Report and Order, we eliminate two categories from the regulatory fee schedule: amateur radio Vanity Call Signs and General Mobile Radio Service (GMRS). We also include direct broadcast satellite (DBS) providers in the cable television and IPTV regulatory fee category, as a subcategory. To aid in the implementation of new regulatory fees for Responsible Organizations

¹¹⁵ 47 U.S.C. 159(b)(4)(B).

¹¹⁶ 47 CFR 1.1911(d), 1.1912(b)(1), 1.1917(c).

¹¹⁷ 31 U.S.C. 3716(c)(6).

¹¹⁸ The full text of the new rules is contained in the Rule Change section of this document.

¹¹⁹ 5 U.S.C. 553(b)(3)(A).

¹²⁰ 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), Public Law No. 104-121, Title II, 110 Stat. 847 (1996).

¹²¹ Assessment and Collection of Regulatory Fees for Fiscal Year 2014, Report and Order and Further Notice of Proposed Rulemaking, MD Docket No. 14-92, 79 FR 63883 (October 27, 2014) (Further Notice).

¹²² 5 U.S.C. 604.

(RespOrgs) adopted in the fiscal year 2014 proceeding, we direct the Managing Director to coordinate with SMS/800, Inc. to ensure that all RespOrgs owing regulatory fees have sufficient information about this process and opportunity to pay the regulatory fee before the RespOrg is placed in red light status and enforcement procedures are initiated.

3. Our regulatory fee for DBS providers, adopted herein, will include DBS providers in the category of cable television operators and IPTV providers, but at a lower regulatory fee rate. This rule was adopted because the Media Bureau staff spend approximately as much time working on issues that include DBS as cable television and IPTV. For the most part, the rules and policies addressed by the Media Bureau include DBS and cable television, as well as IPTV. Under section 9 of the Commission's rules, the DBS industry should contribute to these regulatory fees, otherwise the cable television and IPTV industries are paying for costs that should be shared with DBS.

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.¹²³ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."¹²⁴ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.¹²⁵ A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field

¹²³ 5 U.S.C. 603(b)(3).

¹²⁴ 5 U.S.C. 601(6).

¹²⁵ 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."

of operation; and (3) satisfies any additional criteria established by the SBA.¹²⁶ Nationwide, there are a total of approximately 27.9 million small businesses, according to the SBA.¹²⁷

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.”¹²⁸ 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.¹²⁹ Census data for 2007 shows that there were 3,188 firms that operated that year. Of this total, 3,144 operated with less than 1,000 employees.¹³⁰ 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 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.¹³¹ According to Commission data, census data for 2007 shows that there were 3,188 firms

¹²⁶ 15 U.S.C. 632.

¹²⁷ See SBA, Office of Advocacy, “Frequently Asked Questions,” http://www.sba.gov/sites/default/files/FAQ_Sept_2012.pdf.

¹²⁸ <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

¹²⁹ See 13 CFR 120.201, NAICS Code 517110.

¹³⁰ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=table.

¹³¹ 13 CFR 121.201, NAICS code 517110.

that operated that year. Of this total, 3,144 operated with fewer than 1,000 employees.¹³² 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.¹³³ According to Commission data, 3,188 firms operated in that year. Of this total, 3,144 operated with fewer than 1,000 employees.¹³⁴ Consequently, the Commission estimates that most providers of incumbent local exchange service are 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.¹³⁵ Of this total, an estimated 1,006 have 1,500 or fewer employees.¹³⁶

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.¹³⁷ U.S. Census data for 2007 indicate that 3,188 firms operated during that year. Of that number, 3,144 operated with fewer than 1,000 employees.¹³⁸ Based on this data, the Commission

¹³² http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=table.

¹³³ 13 CFR 121.201, NAICS code 517110.

¹³⁴ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=table.

¹³⁵ 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).

¹³⁶ Id.

¹³⁷ 13 CFR 121.201, NAICS code 517110.

¹³⁸ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=table

(continued...)

concludes that the majority of 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.¹³⁹ Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees.¹⁴⁰ 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.¹⁴¹ Also, 72 carriers have reported that they are Other Local Service Providers.¹⁴² Of this total, 70 have 1,500 or fewer employees.¹⁴³ 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 that may be affected by the rules adopted.

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.¹⁴⁴ U.S. Census data for 2007 indicates that 3,188 firms operated during that year. Of that number, 3,144 operated with fewer than 1,000 employees.¹⁴⁵ According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.¹⁴⁶ Of this total, an estimated 317 have 1,500 or fewer employees.¹⁴⁷ Consequently, the Commission estimates that the

(Continued from previous page) _____
[pid=ECN_2007_US_51SSSZ5&prodType=table.](#)

¹³⁹ See Trends in Telephone Service, at tbl. 5.3.

¹⁴⁰ Id.

¹⁴¹ Id.

¹⁴² Id.

¹⁴³ Id.

¹⁴⁴ 13 CFR 121.201, NAICS code 517110.

¹⁴⁵ [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=table.](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=table)

¹⁴⁶ See Trends in Telephone Service, at Table 5.3.

¹⁴⁷ Id.

majority of interexchange service providers are small entities that may be affected by the rules adopted.

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. Mobile virtual networks operators (MVNOs) are included in this industry.¹⁴⁸ Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.¹⁴⁹ U.S. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees.¹⁵⁰ 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.¹⁵¹ All 193 carriers have 1,500 or fewer employees.¹⁵² 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.** 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.¹⁵³ Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees.¹⁵⁴ Under this category and the associated small business size standard, the majority of these local resellers can be considered small

¹⁴⁸ <http://www.census.gov/cgi-bin/ssd/naics/naicsrch>.

¹⁴⁹ 13 CFR 121.201, NAICS code 517911.

¹⁵⁰ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=table.

¹⁵¹ See Trends in Telephone Service, at Table 5.3.

¹⁵² Id.

¹⁵³ 13 CFR 121.201, NAICS code 517911.

¹⁵⁴ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=table.

entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.¹⁵⁵ Of this total, an estimated 211 have 1,500 or fewer employees.¹⁵⁶ 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. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹⁵⁷ Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees.¹⁵⁸ 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.¹⁵⁹ Of this total, an estimated 857 have 1,500 or fewer employees.¹⁶⁰ Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by the rules adopted.

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.¹⁶¹ Census data for 2007 shows

¹⁵⁵ See Trends in Telephone Service, at tbl. 5.3.

¹⁵⁶ Id.

¹⁵⁷ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=table.

¹⁵⁸ Id.

¹⁵⁹ Trends in Telephone Service, at Table 5.3.

¹⁶⁰ Id.

¹⁶¹ 13 CFR 121.201, NAICS code 517110.

that there were 3,188 firms that operated that year. Of this total, 3,144 operated with fewer than 1,000 employees.¹⁶² Thus, under this category and the associated small business size standard, the majority of 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.¹⁶³ Of these, an estimated 279 have 1,500 or fewer employees.¹⁶⁴ Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules and policies adopted.

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, such as cellular services, paging services, wireless internet access, and wireless video services.¹⁶⁵ 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 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 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.¹⁶⁶ Of this total, an estimated 261 have 1,500 or fewer employees.¹⁶⁷ Consequently, the Commission estimates that approximately half of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

¹⁶² http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=table.

¹⁶³ Trends in Telephone Service, at Table 5.3.

¹⁶⁴ Id.

¹⁶⁵ NAICS Code 517210. See <http://www.census.gov/cgi-bin/ssd/naics/naicsrch>.

¹⁶⁶ Trends in Telephone Service, at Table 5.3.

¹⁶⁷ Id.

16. **Cable Television and Other Subscription Programming.**¹⁶⁸ Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers. That category is defined as follows: “This 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 a combination of technologies.”¹⁶⁹ The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees.¹⁷⁰ Census data for 2007 shows that there were 3,188 firms that operated that year. Of this total, 3,144 had fewer than 1,000 employees.¹⁷¹ 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 adopted.

17. **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

¹⁶⁸ In 2014, “Cable and Other Subscription Programming,” NAICS Code 515210, replaced a prior category, now obsolete, which was called “Cable and Other Program Distribution.” Cable and Other Program Distribution, prior to 2014, was placed under NAICS Code 517110, Wired Telecommunications Carriers. Wired Telecommunications Carriers is still a current and valid NAICS Code Category. Because of the similarity between “Cable and Other Subscription Programming” and “Cable and other Program Distribution,” we will, in this proceeding, continue to use Wired Telecommunications Carrier data based on the U.S. Census. The alternative of using data gathered under Cable and Other Subscription Programming (NAICS Code 515210) is unavailable to us for two reasons. First, the size standard established by the SBA for Cable and Other Subscription Programming is annual receipts of \$38.5 million or less. Thus to use the annual receipts size standard would require the Commission either to switch from existing employee based size standard of 1,500 employees or less for Wired Telecommunications Carriers, or else would require the use of two size standards. No official approval of either option has been granted by the Commission as of the time of the release of this Regulatory Fees NPRM and its associated Report and Order and Order. Second, the data available under the size standard of \$38.5 million dollars or less is not applicable at this time, because the only currently available U.S. Census data for annual receipts of all businesses operating in the NAICS Code category of 515210 (Cable and other Subscription Programming) consists only of total receipts for all businesses operating in this category in 2007 and of total annual receipts for all businesses operating in this category in 2012. The data do not provide any basis for determining, for either year, how many businesses were small because they had annual receipts of \$38.5 million or less. See http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51I2&prodType=table.

¹⁶⁹ U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers” (partial definition), (Full definition stated in paragraph 6 of this IRFA) available at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

¹⁷⁰ 13 CFR 121.201, NAICS code 517110.

¹⁷¹ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=Table.

company” is one serving 400,000 or fewer subscribers, nationwide.¹⁷² Industry data indicate that at the end of June 2012, 1,141 cable companies were in operation.¹⁷³ Of this total, all but ten cable operators were small under this size standard. In addition, under the Commission’s rules, a “small system” is a cable system serving 15,000 or fewer subscribers.¹⁷⁴ Industry data indicate that of 4,945 systems nationwide, 4,380 systems have fewer than 20,000.¹⁷⁵ Thus, under this second size standard, most cable systems are small and may be affected by the rules adopted.

18. **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.¹⁷⁶ 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.¹⁷⁷ For this category, census data for 2007 show that there were 2,383 firms that operated for the entire year. Of these firms, a total of 2,346 had gross annual receipts of less than \$25 million.¹⁷⁸ Thus, a majority of “All Other Telecommunications” firms

¹⁷² See 47 CFR 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. See Implementation of Sections of the 1992 Cable Television Consumer Protection and Competition Act: Rate Regulation, MM Docket Nos. 92-266, 93-215, Sixth Report and Order and Eleventh Order on Reconsideration, 60 FR 35854, 35855, para. 7 (July 12, 1995).

¹⁷³ NCTA, Industry Data, Number of Cable Operating Companies. See <http://www.ncta.com/Statistics.aspx>.

¹⁷⁴ See 47 CFR 76.901(c).

¹⁷⁵ The number of active, registered cable systems comes from the Commission’s Cable Operations Licensing System (COALS) database on August 28, 2013.

¹⁷⁶ <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

¹⁷⁷ 13 CFR 121.201; NAICS Code 517919

¹⁷⁸ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSZ5&prodType=table.

potentially affected by the rules adopted can be considered small.

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

19. This Report and Order does not adopt any new reporting, recordkeeping, or other compliance requirements, other than the requirement that DBS providers pay regulatory fees based on Media Bureau FTEs, as a subcategory of the cable television operators and IPTV category. These two companies are already subject to our regulatory fee requirements.

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

20. 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.¹⁷⁹

21. 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. There will be a regulatory fee increase on DBS providers, but these companies are not small entities. We are also advising SMS/800, Inc. to provide information to Responsible Organizations, or RespOrgs, to ensure that they comply with their new previously adopted regulatory fee requirements. These entities may be small entities; however, the regulatory fee per toll free number is very small and could easily be paid and then passed on to the subscriber if the number is in use, in which case compliance would not be an issue. (We also note that there is a previously adopted de minimis threshold of \$500, per year.) If the toll free number is not used by a subscriber, the RespOrg can either choose to pay the regulatory fee or return the toll free number to the 800/SMS, Inc. database. The Commission expends resources to address toll free

¹⁷⁹ 5 U.S.C. 603(c)(1)–(c)(4).

issues, and so parties should either be responsible for the payment of the resources used or the toll free numbers should be returned for others to use.

22. 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. In addition, the Commission's rules provide a process by which regulatory fee payors may 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

23. None.

V. ORDERING CLAUSES

24. 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 Order **IS HEREBY ADOPTED**.

25. **IT IS FURTHER ORDERED** that Part 1 of the Commission's rules are amended as set forth in paragraph 32 and in the rule change section of this document, effective upon publication in the Federal Register.

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

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch,
Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 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, and 309.

Subpart O—Collection of Claims Owed the United States

2. Revise §1.1911(d) to read as follows:

§1.1911 Demand for payment.

* * * * *

(d) The Commission may, as circumstances and the nature of the debt permit, include in demand letters such items as the Commission's willingness to discuss alternative methods of payment; its policies with respect to the use of credit bureaus, debt collection centers, and collection agencies; the Commission's remedies to enforce payment of the debt (including assessment of interest, administrative costs and penalties, administrative garnishment, the use of collection agencies, Federal salary offset, tax refund offset, administrative offset, and litigation); the requirement that any debt delinquent for more than 120 days be transferred to the Department of the Treasury for collection; and, depending on applicable statutory authority, the debtor's entitlement to consideration of a waiver. Where applicable, the debtor will be provided with a period of time (normally not more than 15 calendar days) from the date of the demand in which to exercise the opportunity to request a review.

* * * * *

3. Revise §1.1912(b)(1) to read as follows:

§1.1912 Collection by administrative offset.

* * * * *

(b) Mandatory centralized administrative offset. (1) The Commission is required to refer past due, legally enforceable nontax debts which are over 120 days delinquent to the Treasury for collection by centralized administrative offset. Debts which are less than 120 days delinquent also may be referred to the Treasury for this purpose. See FCCS for debt certification requirements.

* * * * *

4. Revise §1.1917(c) to read as follows:

§1.1917 Referrals to the Department of Justice and transfer of delinquent debt to the Secretary of Treasury.

* * * * *

(c) All non-tax debts of claims owed to the Commission that have been delinquent for a period of 120 days shall be transferred to the Secretary of the Treasury. Debts which are less than 120 days delinquent may also be referred to the Treasury. Upon such transfer the Secretary of the Treasury shall take appropriate action to collect or terminate collection actions on the debt or claim. A debt is past-due if it has not been paid by the date specified in the Commission's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement) unless other satisfactory payment arrangements have been made.

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