

Department continues to conclude that these standards should remain separate.

As discussed previously, NEMA suggested that to prevent backsliding, in conjunction with a combined metric, DOE could create a separate requirement for the efficiency of the electrical component. (NEMA, No. 26 at pp. 6–8) For example, under such an approach, DOE would establish a combined metric (*e.g.*, AFUE2) but would additionally require that the furnace fan maintain a level of efficiency (*e.g.*, FER) no lower than the currently established FER standard. However, this approach was not suggested in the AHRI Petition, and DOE is not considering a modified combined metric, because with certain limited exceptions, DOE has interpreted the statutory definition of “energy conservation standard” at 42 U.S.C. 6291(6) and 42 U.S.C. 6311(18) as permitting establishment of only a single performance standard.<sup>11</sup> Furthermore, DOE notes that it is not clear that this suggested alternate approach would reduce the regulatory burden on manufacturers because a combined metric would have to include separate measurements and calculations for fuel consumption efficiency (to be compared to current AFUE standards), standby mode and off mode power consumption (to be compared to current  $P_{W,SB}$  and  $P_{W,OFF}$  standards), and furnace fan efficiency (to be compared to current FER standards) in order to prevent backsliding vis-a-vis any of the current metrics. Therefore, such an approach would effectively add an extra metric (*e.g.*, AFUE2) without replacing

any of the current metrics in practical terms.

Because DOE has determined that the proposed AFUE2 combined metric for furnaces and furnace fans would not be permitted under EPCA, DOE considers other comments received regarding the AHRI Petition, and in particular whether DOE should propose to adopt the AFUE2 metric, to be resolved. With regard to comments suggesting that DOE should align its future rulemakings for furnaces and furnace fans to minimize regulatory burden on manufacturers, DOE notes that it is bound by the statutory timeline provisions set out in EPCA. In particular, EPCA provides that, not later than 6 years after the issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(1)) EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered product, including furnaces and furnace fans, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle or period of use. (42 U.S.C. 6293(b)(1)(A)) To the extent feasible, DOE will seek to align the statutory review schedules for furnaces and furnace fans consistent with the provisions EPCA.

## V. Denial of Petition

Taking into account all of the factors discussed above and consistent with the requirements under EPCA, DOE is hereby denying AHRI’s petition for rulemaking.

## VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final denial of petition for rulemaking.

## Signing Authority

This document of the Department of Energy was signed on September 9, 2021, by Kelly Speakes-Backman, Principal Deputy Assistant Secretary and Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature

and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on September 9, 2021.

**Treena V. Garrett,**  
Federal Register Liaison Officer, U.S.  
Department of Energy.

[FR Doc. 2021–19813 Filed 9–20–21; 8:45 am]

**BILLING CODE 6450–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 1

[MD Docket 21–190; FCC 21–98; FRS 47254]

### Assessment and Collection of Regulatory Fees for Fiscal Year 2021

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) seeks comment on two issues that impact regulatory fees. First, what methodology should we use to assess regulatory fees on unlicensed spectrum users, and second, how should we calculate the fee for small satellites that will become a feeable category in FY 2022.

**DATES:** Submit comments on or before October 21, 2021 and reply comments on or before November 5, 2021.

**ADDRESSES:** Interested parties may file comments and reply comments identified by MD Docket No. 21–190, by any of the following methods below.

- **Electronic Filers:** Comments may be filed electronically using the internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.

- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing.

- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail

<sup>11</sup> DOE notes that it has adopted dual metrics under 42 U.S.C. 6313(a)(6)(A), when the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) has amended ASHRAE Standard 90.1, *Energy Standard for Buildings Except Low-Rise Residential Buildings*, and set a dual metric and accompanying standard levels. *See, e.g.*, 77 FR 28928 (May 16, 2012) (DOE adopted energy conservation standards for cooling and heating modes in terms of both Energy Efficiency Ratio (EER) and Coefficient of Performance (COP) for variable refrigerant flow (VRF) water-source heat pumps with cooling capacities at or greater than 135,000 Btu/h and less than 760,000 Btu/h (for which DOE did not previously have standards) in response to updated standards for such equipment in ASHRAE Standard 90.1.) DOE has also adopted a dual metric where a consensus agreement has been presented to DOE for adoption as a direct final rule (DFR) pursuant to 42 U.S.C. 6295(p)(4). *See, e.g.*, 76 FR 37408 (June 27, 2011) (For central air conditioners, DOE adopted dual metrics (*i.e.*, the Seasonal Energy Efficiency Ratio (SEER) and EER) for the hot-dry region as recommended by a consensus agreement supported by a variety of interested stakeholders including manufacturers and environmental and efficiency advocates.) DOE has interpreted these specific statutory provisions as authorizing an exception to the general rule previously stated.

and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

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

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Notice of Proposed Rulemaking* (NPRM), FCC 21-98, MD Docket No. 21-190, adopted on August 25, 2021 and released on August 26, 2021. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 45 L Street NE, Washington, DC 20554, and may also be purchased from the Commission's copy contractor, BCPI, Inc., 45 L Street, NE, Washington, DC 20554. Customers may contact BCPI, Inc. via their website, <http://www.bcpi.com>, or call 1-800-378-3160. This document is available in alternative formats (computer diskette, large print, audio record, and braille). Persons with disabilities who need documents in these formats may contact the FCC by email: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530 or TTY: 202-418-0432. Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, DA 20-304 (March 19, 2020). <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>. During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

## I. Procedural Matters

1. *Ex Parte Information.* This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written

presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with section 1.1206(b) of the Commission's rules. In proceedings governed by section 1.49(f) of the Commission's rules or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

2. *Initial Regulatory Flexibility Analysis.* An initial regulatory flexibility analysis (IRFA) is contained in this summary. Comments to the IRFA must be identified as responses to the IRFA and filed by the deadlines for comments on the *Notice of Proposed Rulemaking*. The Commission will send a copy of the *Notice of Proposed Rulemaking*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

3. *Initial Paperwork Reduction Act of 1995 Analysis.* This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to

the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

## II. Notice of Proposed Rulemaking

### A. New Regulatory Fee Categories

1. We seek comment on whether we should adopt new regulatory fee categories and on ways to improve our regulatory fee process regarding any and all categories of service. Some commenters suggest that we impose fees on particular industry participants, essentially asking that we consider new fee categories, such as unlicensed spectrum users, especially large technology companies, to pay regulatory fees. We seek comment on the legal basis for assessing regulatory fees on such users, consistent with the precedent interpreting our section 9 authority. What would be the proposed methodology for assessing regulatory fees on unlicensed spectrum users? We note that unlicensed spectrum users include a significant number of equipment manufacturers, such as appliance and other home goods equipment, many of which neither apply for nor require authorization by the Commission. Commenters should also explain, to the extent they advocate imposition of regulatory fees on either a subset of users or certain entities benefitting from such use, how to define any new fee category and how to calculate and assess such fees on an annual basis. Alternatively, should the Commission assess regulatory fees on large technology companies based on a different basis, such as any advantages they receive because of the Commission's universal service or other activities? Are there other categories that should be added, deleted, or reclassified? In recommending the addition, deletion, or reclassification of a fee category, commenters should also explain the impact of such addition, deletion or reclassification upon other regulatory fee categories and payors. We also seek comment on possible methodologies for re-calculating the regulatory fee allocation.

2. Section 9 of the Communications Act requires the Commission's methodology for assessing regulatory fees to "reflect the full-time equivalent number of employees within the bureaus and offices of the Commission, adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities." Commenters should specifically discuss how a proposed new fee category is consistent with the section 9 requirement to base regulatory fees on the number of FTEs

devoted to the oversight and/or regulation of the industry. Further, commenters should indicate how the new fee category fits within the Commission's current regulatory fee methodology. To the extent possible, commenters should support any proposed new fee category with data and/or examples necessitating a revision of the Commission's current regulatory fees framework.

#### *B. Fees for Small Satellites*

3. In anticipation of listing small satellites for the first time on the FY 2022 regulatory fee schedule, we seek comment on several proposals pertaining to this new category. In 2019, the Commission adopted a new, optional licensing process for small satellites and small spacecraft. The Commission also adopted a "small satellite" regulatory fee subcategory for licensed and operational satellite systems authorized under the new process adopted in that proceeding. As has been noted in prior year fee proceedings, small satellites typically have a number of characteristics that distinguish them from traditional NGSO satellite systems, such as having a lower mass, shorter duration missions, and more limited spectrum needs.

4. Commenters suggest that under the streamlined process, less agency resources are necessary to process than other systems because they are exempt from processing rounds and must certify that their operations will not interfere with those of existing operators or materially constrain future operators from using the assigned frequency band(s). For example, once small satellites are added to the Commission's regulatory fee schedule, the NGSO regulatory fee allocation be adjusted to a 5/5/90 split among small satellites, less complex systems, and other systems, respectively. Another suggestion is to assess a fee of 1/20th of the fee for NGSO systems, or a regulatory fee of not more than 1/10th of the previously proposed NGSO fee, which at the time was calculated to be \$22,350.00 for small satellites. One commenter believed that such a fee reflected the Commission's costs and was fair, but substantial in the amount.

5. We expect the small satellite fees to be on the FY 2022 fee schedule because there are several systems authorized under the small satellite process that are beginning operations, and we expect these systems to be operating as of the date for assessment of FY 2022 fees. FY 2022 will be the first year where regulatory fees are assessed on small satellites, and therefore we anticipate that we will continue to review

regulatory fees for small satellites on an ongoing basis as we gain more experience with these licensees and market access grantees.

6. There are a number of factors to consider in assessing the regulatory fee for such systems. There are a number of limitations on the benefits that small satellite licensees and market access grantees may receive from ongoing activities of the Commission. While small satellites may receive interference protection when operating as allocated, such satellites must be compatible with existing operations in the requested frequency bands and not materially constrain future operations of other satellites in those frequency bands. Moreover, small satellite licensees are limited to a license term not to exceed six years. As such, investments in any particular small satellite system are likely to be smaller compared with other types of NGSO systems, and therefore the overall benefits to a particular licensee from Commission rulemakings and other activities of an ongoing nature are also likely to be smaller. These systems are also less likely to be involved in ongoing adjudications because of the scope of such systems and the fact that they are not authorized under the Commission's processing round procedures. Further, as a result of the structure of the small satellite process, a single system may have multiple licenses or market access grants. There will also only be a few small satellite licensees which would commence operations as of the relevant date for assessing FY 2022 fees. Given these limitations, and taking into consideration the FTE regulatory benefits that may be associated with a single license or grant of market access, we make several proposals that would result in a fee for small satellites that is low, compared to other types of satellites or systems, but will reasonably reflect our FTE burden and the benefits received by these fee payors. We start with considering the number of FTEs working on oversight for this category of operators. Thus, we must estimate the relative number of FTEs that are attributable to benefitting small satellite licensees or grantees, based on the factors above. We also observe that due to the small satellite licensing regulatory framework and the nascent nature of these systems, currently, much of the IB FTE time that can be associated with small satellites appear to cover small satellite application processing.

7. Given the various considerations above, we seek comment on several proposals on the appropriate methodology to calculate the small satellite fees. First, we seek comment on

setting a fee for each small satellite license or market access grant, in such a way that the amount would not be dependent on the number of small satellite systems operating in a given regulatory period. This type of fee, rather than a fee that varies depending on the number of licensees or grantees, may be appropriate, since the small satellite process is calibrated to shorter duration missions, and therefore the number of small satellite systems licensed and operational could fluctuate more significantly from year to year than other types of NGSO systems that typically have a 15-year license term, creating uncertainty. We seek comment on these conclusions. There are several options for setting this type of fee. In comparing the actual regulatory work involved, we estimate that for a given small satellite system, the FTE activities would be approximately 1/20th of the FTE activities for a typical system in the category of "other" NGSO systems, similar to the Commission's findings in *In the FY 2018 Report and Order*. Thus, one option would be to tie the small satellite fee to the fee allocated for an individual "other" NGSO system in a given year, and charge any individual small satellite licensee or grantee 1/20th of that amount. Or, charge a small satellite system (even if authorized under multiple licenses), 1/20th of that amount. We recognize, however, that the fee for an individual "other" NGSO system may vary from year-to-year, and thus the fee for a small satellite licensee would be dependent on how many "other" NGSO systems are authorized and operational in a given year. As an alternative, we could set a fee for individual small satellite licensees (or systems), based on approximately 1/20th of FY 2021 NGSO "other" systems (\$17,178)—and which we could reassess each year to ensure that there was some predictability. We seek comment on these proposals and other appropriate methodology. Commenters suggesting other fee calculation methodologies should discuss how such methodologies would reasonably reflect the FTE time spent on regulatory activities or an objective measure that corresponds to the benefits of FTE time devoted to oversight and regulation of such entities.

8. Second, we seek comment on whether to allocate a percentage of the allocation for space station fees for small satellites. Under this proposal, a certain percentage of the space station fees would need to be recovered from small satellite regulatory fee payors, and therefore the amount would fluctuate depending on the number of payors in

the small satellite category. In estimating the percentage, we must consider that the number of systems in the small satellite category is likely to be small initially. This percentage could be reassessed depending on the number of small satellite systems in the category—as the benefits to the category as a whole as well as FTE activities would increase, as the number of systems increases. For example, if we estimate that roughly two to three percent of the total NGSO system regulatory FTE activities is comprised of activities for small satellites, and allocate two percent of the total NGSO fee to small satellites, based on the FY2021 regulatory fee amounts as an example, this would allocate approximately \$85,888 to the small satellite category. Divided among three licenses, for example, this would result in regulatory fees of approximately \$28,629 per license. We seek comment on this approach and generally on the best methods of fee calculation. Planet and AWS appear to propose an approach similar to this. AWS and Planet suggest an allocation that would be equivalent to the allocation for “less complex” NGSO systems, for example. We seek comment on these proposals as well. To the extent that commenters such as AWS propose that the Commission redistribute a percentage solely of the “less complex” NGSO system fee to systems authorized under the streamlined small satellite process, we note that while there may be overlap in the types of services being provided in some instances, there are also important differences between small satellites and “less complex” and “other” NGSO space station systems that we believe are likely to necessitate different regulatory fees. For example, as noted above, the license or market access term for these small systems are designed to be significantly shorter than other systems, an individual satellite is limited to an orbital lifetime of six years or less, and there is also no replenishment expectancy under the small satellite process. Therefore, the scope of such systems is inherently limited, as the Commission recognized in the *Small Satellite Report and Order*, when it established a separate fee category for small satellites only.

9. Both proposed fee approaches are estimates of the FTE burden and the benefits received by small satellite systems. As noted, we could revisit our adopted small satellite fee each year as the number of small satellite systems change and we become more familiar with the work involved in regulating such systems. We seek comment on how to determine that amount each fiscal

year to reflect any needed adjustment in proportion to the changes to our budget and cost. Would such approaches accurately capture the benefits to small satellite fee payors? We believe that both proposals reflect a reasonable approximation of the International Bureau’s total FTE work relative to these space station categories and the benefits each system receives. We further seek comment, however, on the various factors, such as rulemakings, adjudications, and international coordination, that are relevant to systems authorized under the Commission’s small satellite process and the FTE time devoted to those systems.

10. As indicated above in connection with the proposals, we also seek comment on whether we should assess regulatory fees per system or differently than other NGSO fee categories, given that a single entity may have multiple licenses for the same system, in accordance with the structure of the small satellite process. We do not want to discourage applicants from applying for multiple licenses, if such an approach is a good fit for their system plans, because of potential regulatory fees. Therefore, it is important that we account for the fact that one system may have multiple associated small satellite licenses or market access grants.

11. Finally, we also seek comment on how we should integrate the small satellite fee category into the overall space stations category. The total amount to be paid by small satellite regulatory fee payors could be either subtracted from the total space station allocation, before calculating the GSO/NGSO subcategories, or subtracted from the NGSO subcategory before calculating the fees for the subcategories among less complex and other NGSO systems. We seek comment on where we should place the small satellite category and whether it would be appropriate to include it as a third category under space stations, as GSO, NGSO, and Small Satellite, or place it as a subcategory under NGSO as NGSO Less Complex, NGSO Others, and Small Satellites. We seek comment on these and any other alternatives that would best reflect the statutory requirements of our regulatory fee authority under section 9 of the Communications Act and ensure that our actions in assessing regulatory fees on small satellite operators are fair, administrable, and sustainable.

### III. Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended

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

#### A. Need for, and Objectives of, the Proposed Rules

2. The *NPRM* seeks comment on a methodology for calculating regulatory fees, as required by section 9 of the Communications Act of 1934, as amended (Communications Act or Act), specifically for small satellites. The *NPRM* seeks comment on various factors, such as rulemakings, adjudications, and international coordination, that are relevant to systems authorized under the Commission’s small satellite process, and on the Commission’s earlier tentative conclusion that approximately 1/20 of FTEs are engaged in ongoing regulatory work related to small satellite systems. Specifically, the Commission observes that in assessing the regulatory fee for such small satellite NGSO systems, there are a number of factors to consider, including the fact that a single system may have multiple licenses, and therefore multiple call signs. The Commission also seeks comment on whether we should adopt new regulatory fee categories and on ways to improve our regulatory fee process regarding any and all categories of service. Additionally, the Commission notes that there are a number of limitations on small satellite licensees and market access grantees that limit the benefits such entities may receive from ongoing activities of the Commission. The Commission observes that such systems are by definition not authorized through processing rounds, and while small satellites may receive interference protection when operating in frequency bands allocated for the service they are providing, such satellites must be compatible with existing operations in the requested frequency bands and not materially constrain future operations of other satellites in those frequency bands. Moreover, small satellite licensees are limited to a license term not to exceed six years. Given these limitations, and taking into

consideration the regulatory benefits that may be associated with a single license, the Commission proposes a flat regulatory fee for small satellite licenses and market access grants that would be not change based on the number of small satellite fee payors in a given fiscal year. Specifically, the Commission proposes a flat fee for small satellites that would be equal to 1/20th of the fee applicable to each NGSO systems in “other” NGSO subcategory. The Commission seeks comment on this proposal in the *NPRM*.

3. This regulatory fee *NPRM* is needed because the Commission is required by Congress to adopt regulatory fees each year “to recover the costs of carrying out the activities described in section 6(a) only to the extent, and in the total amounts, provided for in Appropriation Acts.” The objective of the *NPRM* is to determine a methodology for calculating small satellite regulatory fees.

#### B. Legal Basis

4. This action, including publication of proposed rules, is authorized under sections (4)(i) and (j), 159, and 303(r) of the Communications Act of 1934, as amended.

#### C. Description and Estimate of the Number of Small Entities to Which the Proposed 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. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A “small business concern” is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

6. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business

having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 30.7 million businesses.

7. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

8. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” U.S. Census Bureau data from the 2017 Census of Governments indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 36,931 general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments— independent school districts with enrollment populations of less than 511 governmental jurisdictions.”

9. *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 Voice over internet Protocol (VoIP) services, wired (cable and IPTV) 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.” 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. U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

10. *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. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated for the entire year. Of that total, 3,083 operated with fewer than 1,000 employees. Thus under this category and the associated size standard, the Commission estimates that the majority of local exchange carriers are small entities.

11. *Incumbent LECs.* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated the entire year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our actions. According to Commission data, one thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers. Of this total, an estimated 1,006 have 1,500 or fewer employees. Thus, using the SBA’s size standard the majority of incumbent LECs can be considered small entities.

12. *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 and under that size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated during that year. Of that

number, 3,083 operated with fewer than 1,000 employees. Based on these data, the Commission concludes that the majority of Competitive LECS, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. Also, 72 carriers have reported that they are Other Local Service Providers. Of this total, 70 have 1,500 or fewer employees. 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.

13. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for Interexchange Carriers. The closest applicable NAICS Code category is Wired Telecommunications Carriers. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated for the entire year. Of that number, 3,083 operated with fewer than 1,000 employees. According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of this total, an estimated 317 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities.

14. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate NAICS code category for prepaid calling card providers is Telecommunications Resellers. This industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell

telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. 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. U.S. Census Bureau data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees. 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, 193 carriers have reported that they are engaged in the provision of prepaid calling cards. All 193 carriers have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small.

15. *Local Resellers.* The SBA has not developed a small business size standard specifically for Local Resellers. The SBA category of Telecommunications Resellers is the closest NAICS code category for local resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. Under the SBA's size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data from 2012 show that 1,341 firms provided resale services during that year. Of that number, all operated with fewer than 1,000 employees. 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, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities.

16. *Toll Resellers.* The Commission has not developed a definition for Toll Resellers. The closest NAICS Code

Category is Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. MVNOs are included in this industry. 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. 2012 Census Bureau data show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees. 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. Of this total, an estimated 857 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of toll resellers are small entities.

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

18. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching

and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. 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, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1,000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

19. *Television Broadcasting.* This Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound.” These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: Those having \$41.5 million or less in annual receipts. The 2012 Economic Census reports that 751 firms in this category operated in that year. Of that number, 656 had annual receipts of \$25,000,000 or less. Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

20. The Commission has estimated the number of licensed commercial television stations to be 1,377. Of this total, 1,258 stations (or about 91 percent) had revenues of \$41.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on November 16, 2017, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed noncommercial educational television stations to be 384. Notwithstanding, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

There are also 2,300 low power television stations, including Class A stations (LPTV) and 3,681 TV translator stations. Given the nature of these services, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

21. In assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of “small business” requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive. Also, as noted above, an additional element of the definition of “small business” is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and its estimates of small businesses to which they apply may be over-inclusive to this extent.

22. *Radio Stations.* This Economic Census category “comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources.” The SBA has established a small business size standard for this category as firms having \$41.5 million or less in annual receipts. Economic Census data for 2012 show that 2,849 radio station firms operated during that year. Of that number, 2,806 firms operated with annual receipts of less than \$25 million per year, 17 with annual receipts between \$25 million and \$49,999,999 million and 26 with annual receipts of \$50 million or more. Therefore, based on the SBA’s size standard the majority of such entities are small entities.

23. According to Commission staff review of the BIA/Kelsey, LLC’s Media Access Pro Radio Database as of January 2018, about 11,261 (or about 99.9 percent) of 11,383 commercial radio stations had revenues of \$41.5 million or less and thus qualify as small entities under the SBA definition. The

Commission has estimated the number of licensed commercial AM radio stations to be 4,633 stations and the number of commercial FM radio stations to be 6,738, for a total number of 11,371. We note the Commission has also estimated the number of licensed noncommercial (NCE) FM radio stations to be 4,128. Nevertheless, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities. We also note, that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. The Commission’s estimate therefore likely overstates the number of small entities that might be affected by its action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, to be determined a “small business,” an entity may not be dominant in its field of operation. We further note, that it is difficult at times to assess these criteria in the context of media entities, and the estimate of small businesses to which these rules may apply does not exclude any radio station from the definition of a small business on these basis, thus our estimate of small businesses may therefore be over-inclusive. Also, as noted above, an additional element of the definition of “small business” is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and the estimates of small businesses to which they apply may be over-inclusive to this extent.

24. *Cable Companies and Systems (Rate Regulation).* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission’s rules, a “small cable company” is one serving 400,000 or fewer subscribers nationwide. Industry data indicate that there are 4,600 active cable systems in the United States. Of this total, all but five cable operators nationwide are small under the 400,000-subscriber size standard. In addition, under the Commission’s rate regulation rules, a “small system” is a cable system serving 15,000 or fewer subscribers. Commission records show 4,600 cable systems nationwide. Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records. Thus, under this standard



as well, we estimate that most cable systems are small entities.

25. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.” As of 2019, there were approximately 48,646,056 basic cable video subscribers in the United States. Accordingly, an operator serving fewer than 486,460 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate. Based on available data, we find that all but five cable operators are small entities under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million. Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

26. *Direct Broadcast Satellite (DBS) Service*. DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic “dish” antenna at the subscriber’s location. DBS is included in SBA’s economic census category “Wired Telecommunications Carriers.” The Wired Telecommunications Carriers industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution; and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. The SBA determines that a wireline

business is small if it has fewer than 1,500 employees. U.S. Census Bureau data for 2012 indicates that 3,117 wireline companies were operational during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Based on that data, we conclude that the majority of wireline firms are small under the applicable SBA standard. Currently, however, only two entities provide DBS service, which requires a great deal of capital for operation: DIRECTV (owned by AT&T) and DISH Network. DIRECTV and DISH Network each report annual revenues that are in excess of the threshold for a small business. Accordingly, we must conclude that internally developed FCC data are persuasive that, in general, DBS service is provided only by large firms.

27. *All Other Telecommunications*. The “All Other Telecommunications” category is comprised of establishments 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. The SBA has developed a small business size standard for All Other Telecommunications, which consists of all such firms with annual receipts of \$35 million or less. For this category, U.S. Census Bureau data for 2012 shows that there were 1,442 firms that operated for the entire year. Of those firms, a total of 1,400 had annual receipts less than \$25 million and 15 firms had annual receipts of \$25 million to \$49,999,999. Thus, the Commission estimates that the majority of “All Other Telecommunications” firms potentially affected by our action can be considered small.

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

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

30. The U.S. Census Bureau defines *Wired Telecommunications Carriers* as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.” 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. U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Based on that data, we conclude that the majority of Carrier RespOrgs that operated with wireline-based technology are small.

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

32. *Non-Carrier RespOrgs*. Neither the Commission, the U.S. Census, nor the SBA have developed a definition of Non-Carrier RespOrgs. Accordingly, the



Commission believes that the closest NAICS code-based definitional categories for Non-Carrier RespOrgs are “Other Services Related to Advertising” and “Other Management Consulting Services.”

33. The U.S. Census defines *Other Services Related to Advertising* as comprising establishments primarily engaged in providing advertising services (except advertising agency services, public relations agency services, media buying agency services, media representative services, display advertising services, direct mail advertising services, advertising material distribution services, and marketing consulting services). The SBA has established a size standard for this industry as annual receipts of \$16.5 million dollars or less. Census data for 2012 show that 5,804 firms operated in this industry for the entire year. Of that number, 5,612 operated with annual receipts of less than \$10 million. Based on that data we conclude that the majority of Non-Carrier RespOrgs who provide toll-free number (TFN)-related advertising services are small.

34. The U.S. Census defines *Other Management Consulting Services* as establishments primarily engaged in providing management consulting services (except administrative and general management consulting; human resources consulting; marketing consulting; or process, physical distribution, and logistics consulting). Establishments providing telecommunications or utilities management consulting services are included in this industry. The SBA has established a size standard for this industry of \$16.5 million dollars or less. Census data for 2012 show that 3,683 firms operated in this industry for that entire year. Of that number, 3,632 operated with less than \$10 million in annual receipts. Based on this data, we conclude that a majority of non-carrier

RespOrgs who provide TFN-related management consulting services are small.

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

#### *D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements for Small Entities*

36. This NPRM does not propose any changes to the Commission’s current information collection, reporting, recordkeeping, or compliance requirements. Licensees, including small entities, will be required to pay application fees after such fees are adopted.

#### *E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

37. 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.

38. The NPRM seeks comment on a methodology to calculate regulatory fees

for small satellites. These small satellite systems are NGSOs; however, the Commission is proposing assessing a much smaller regulatory fee than the fee currently assessed on other NGSO systems. This new methodology would minimize the impact on small entities because the fee would be much lower than the existing NGSO fee. We also seek comment on whether we should adopt new regulatory fee categories and on ways to improve our regulatory fee process regarding any and all categories of service. We also seek comment on possible methodologies for re-calculating the regulatory fee allocation.

39. In addition, the Commission has taken steps to minimize the economic impact on small entities by adopting a de minimis threshold under the section 9(e)(2) exemption in the Act. Under the section 9(e)(2) exemption, a regulatee is exempt from paying regulatory fees if the sum total of all of its annual regulatory fee liabilities is \$1,000 or less for the fiscal year. The threshold applies only to filers of annual regulatory fees, not regulatory fees paid through multi-year filings.

#### *F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules*

40. None.

## **IV. Ordering Clauses**

41. Accordingly, *it is ordered* that, pursuant to the authority found in sections 4(i) and (j), 9, 9A, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 159, 159A, and 303(r), this Notice of Proposed Rulemaking *is hereby adopted*.

Federal Communications Commission.

**Marlene Dortch,**  
*Secretary.*

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**BILLING CODE 6712–01–P**