

the **Federal Register**. A Final Regulatory Flexibility Analysis (FRFA) has been performed and is found in Attachment A, and it is ordered that the Commission's Consumer And Governmental Affairs Bureau, Reference Information Center, send this to the Chief Counsel for Advocacy of the Small Business Administration (SBA). Finally, it is ordered that this proceeding is terminated.

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

Federal Communications Commission.

Willaim F. Caton,
Deputy Secretary.

Attachment A.—Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA),⁴¹ the Commission prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules and incorporated it into the *Notice of Proposed Rulemaking, In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2003*.⁴² Written public comments were sought on the FY 2003 fees proposal, including comments on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.⁴³

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

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

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

3. None.

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

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁴⁴ The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁴⁵ In addition, the term "small

business" has the same meaning as the term "small business concern" under the Small Business Act.⁴⁶ A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁴⁷ Nationwide, there are approximately 22.4 million small businesses.⁴⁸ In addition, a small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."⁴⁹ Nationwide, as of 1992, there were approximately 275,801 small organizations.⁵⁰ The term "small governmental jurisdiction" is defined as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."⁵¹ As of 1997, there were about 87,453 governmental jurisdictions in the United States.⁵² This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

Cable Services or Systems

5. *Cable and Other Program Distribution.* The SBA has developed a small business size standard for cable and other program distribution services, which includes all such companies generating \$12.5 million or less in revenue annually.⁵³ This category includes, among others, cable operators, direct broadcast satellite ("DBS") services, home satellite dish ("HSD") services, multipoint distribution services ("MDS"), multichannel multipoint distribution service ("MMDS"), Instructional Television Fixed Service ("ITFS"), local multipoint distribution service ("LMDS"), satellite master antenna television ("SMATV") systems, and open video systems ("OVS"). According to the Census Bureau data, there are 1,311 total cable and other pay television service firms that operate throughout the year of which 1,180 have less than \$10 million in

revenue.⁵⁴ We address below each service individually to provide a more precise estimate of small entities.

6. *Cable Operators.* The Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide.⁵⁵ We last estimated that there were 1,439 cable operators that qualified as small cable companies.⁵⁶ Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by our action.

7. The Communications Act, as amended, also contains a size standard for a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% 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."⁵⁷ The Commission has determined that there are 67,500,000 subscribers in the United States. Therefore, an operator serving fewer than 675,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate.⁵⁸ Based on available data, we find that the number of cable operators serving 675,000 subscribers or less totals approximately 1,450.⁵⁹ Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

8. *Direct Broadcast Satellite ("DBS") Service.* Because DBS provides subscription services, DBS falls within the SBA-recognized definition of cable and other

⁴¹ 5 U.S.C. 603. The RFA, 5 U.S.C. 601-612 has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

⁴² 68 FR 17577, April 10, 2003.

⁴³ 43 See 5 U.S.C. 604.

⁴⁴ 5 U.S.C. 603(b)(3).

⁴⁵ 5 U.S.C. 601(6).

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

⁴⁷ Small Business Act, 15 U.S.C. 632 (1996).

⁴⁸ See SBA, *Programs and Services*, SBA pamphlet no. CO-0028, at page 40 (July 2002).

⁴⁹ 5 U.S.C. 601(4).

⁵⁰ U.S. Bureau of the Census, 1992 Economic Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

⁵¹ 5 U.S.C. 601(5).

⁵² U.S. Census Bureau, Statistical Abstract of the United States: 2000, Section 9, pages 299-300, Tables 490 and 492.

⁵³ 13 CFR 121.201, NAICS code 517510 (formerly 513220). This NAICS code applies to all services listed in this paragraph.

⁵⁴ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Subject Series—Establishment and Firm Size, Information Sector 51, Table 4 at 50 (2000). The amount of \$10 million was used to estimate the number of small business firms because the relevant Census categories stopped at \$9,999,999 and began at \$10,000,000. No category for \$12.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

⁵⁵ 47 CFR 76.901(e). The Commission developed this definition based on its determinations that a small cable system operator is one with annual revenues of \$100 million or less. Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd. 7393 (1995).

⁵⁶ Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

⁵⁷ 47 U.S.C. 543(m)(2).

⁵⁸ 47 CFR 76.1403(b).

⁵⁹ Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).