

Dec. 19, 1989, 103 Stat. 2124, 2131; Pub. L. 102-538, title II, § 209, Oct. 27, 1992, 106 Stat. 3544; Pub. L. 103-66, title VI, § 6003(a)(2), Aug. 10, 1993, 107 Stat. 401; Pub. L. 103-414, title III, §§ 302, 303(a)(3), (4), Oct. 25, 1994, 108 Stat. 4294.)

#### REFERENCES IN TEXT

This chapter, referred to in subsec. (e), was in the original "this Act", meaning act June 19, 1934, ch. 652, 48 Stat. 1064, known as the Communications Act of 1934, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 609 of this title and Tables.

Parts II and III of title III of the Communications Act, referred to in subsec. (g), mean parts II and III of title III of the Communications Act of 1934 which are classified to parts II (§ 351 et seq.) and III (§ 381 et seq.), respectively, of subchapter III of this chapter.

#### AMENDMENTS

1994—Subsec. (d)(2). Pub. L. 103-414, § 303(a)(3), substituted "payment of an" for "payment of a".

Subsec. (g). Pub. L. 103-414, § 303(a)(4), substituted "Additional Application Fee" for "Additional Charge" in item 7.f. under heading "EQUIPMENT APPROVAL SERVICES/EXPERIMENTAL RADIO" in Schedule of Application Fees.

Pub. L. 103-414, § 302, added item 1.d. under heading "COMMON CARRIER SERVICES" in Schedule of Application Fees.

1993—Pub. L. 103-66, § 6003(a)(2)(A), substituted "Application fees" for "Charges" as section catchline.

Subsecs. (a) to (e). Pub. L. 103-66, § 6003(a)(2)(B)-(D), substituted "application fees" for "charges" and "Schedule of Application Fees" for "Schedule of Charges" wherever appearing, and substituted "application fee" for "charge" in subsec. (c).

Subsec. (g). Pub. L. 103-66, § 6003(a)(2)(D), in text substituted "Schedule of Application Fees" for "Schedule of Charges".

Pub. L. 103-66, § 6003(a)(2)(E), which directed amendment of schedule by substituting "SCHEDULE OF APPLICATION FEES" for "SCHEDULE OF CHARGES", "APPLICATION FEES" for "CHARGES", "application fee" for "charge", and "Application fees" for "Charges" was executed by substituting "SCHEDULE OF APPLICATION FEES" for "SCHEDULE OF CHARGES" in heading, "MISCELLANEOUS APPLICATION FEES" for "MISCELLANEOUS CHARGES" in last subheading, and "application fee" for "charge" in two places in text of schedule, to reflect probable intent of Congress.

1992—Subsec. (g). Pub. L. 102-538 in Schedule of Charges added twenty-second category, relating to Low-Earth Orbit Satellite Systems, under heading "COMMON CARRIER SERVICES", and substituted "75.00" for "360.00" in item 3.c., relating to inspection of vessels under the Great Lakes Agreement, under heading "MISCELLANEOUS CHARGES".

1989—Subsec. (a). Pub. L. 101-239, § 3001(b)(1), struck out at end "The Schedule of Charges established under this subsection shall be implemented not later than 360 days after April 7, 1986."

Subsec. (b)(1). Pub. L. 101-239, § 3001(b)(2), substituted "October 1, 1991" for "April 1, 1987".

Subsec. (d)(1). Pub. L. 101-239, § 3001(b)(3), substituted "(A) to governmental entities and nonprofit entities licensed in the following radio services:" for "to the following radio services:" and inserted "(B)" after "Emergency Radio, or".

Subsec. (g). Pub. L. 101-239, § 3001(a), added subsec. (g). 1988—Subsec. (b)(1). Pub. L. 100-594 substituted "two years after April 1, 1987," for "two years after April 7, 1986,".

#### EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101-239, title III, § 3001(c), Dec. 19, 1989, 103 Stat. 2131, provided that: "The amendments made by this section [amending this section] shall take effect on

the date of enactment of this Act [Dec. 19, 1989], and the Schedule of Charges required by the amendment made by subsection (a) of this section shall be implemented not later than 150 days after the date of enactment of this Act."

#### SCHEDULE OF CHARGES

Section 5002(f) of Pub. L. 99-272 established the Schedule of Charges which the Federal Communications Commission is required to prescribe pursuant to subsec. (a) of this section. See subsec. (g) of this section as added by Pub. L. 101-239.

### § 159. Regulatory fees

#### (a) General authority

##### (1) Recovery of costs

The Commission, in accordance with this section, shall assess and collect regulatory fees to recover the costs of the following regulatory activities of the Commission: enforcement activities, policy and rulemaking activities, user information services, and international activities.

##### (2) Fees contingent on appropriations

The fees described in paragraph (1) of this subsection shall be collected only if, and only in the total amounts, required in Appropriations Acts.

#### (b) Establishment and adjustment of regulatory fees

##### (1) In general

The fees assessed under subsection (a) of this section shall—

(A) be derived by determining the full-time equivalent number of employees performing the activities described in subsection (a) of this section within the Private Radio Bureau, Mass Media Bureau, Common Carrier Bureau, and other offices of the Commission, adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities, including such factors as service area coverage, shared use versus exclusive use, and other factors that the Commission determines are necessary in the public interest;

(B) be established at amounts that will result in collection, during each fiscal year, of an amount that can reasonably be expected to equal the amount appropriated for such fiscal year for the performance of the activities described in subsection (a) of this section; and

(C) until adjusted or amended by the Commission pursuant to paragraph (2) or (3), be the fees established by the Schedule of Regulatory Fees in subsection (g) of this section.

##### (2) Mandatory adjustment of schedule

For any fiscal year after fiscal year 1994, the Commission shall, by rule, revise the Schedule of Regulatory Fees by proportionate increases or decreases to reflect, in accordance with paragraph (1)(B), changes in the amount appropriated for the performance of the activities described in subsection (a) of this section for such fiscal year. Such proportionate increases or decreases shall—

(A) be adjusted to reflect, within the overall amounts described in appropriations Acts

under the authority of paragraph (1)(A), unexpected increases or decreases in the number of licensees or units subject to payment of such fees; and

(B) be established at amounts that will result in collection of an aggregate amount of fees pursuant to this section that can reasonably be expected to equal the aggregate amount of fees that are required to be collected by appropriations Acts pursuant to paragraph (1)(B).

Increases or decreases in fees made by adjustments pursuant to this paragraph shall not be subject to judicial review. In making adjustments pursuant to this paragraph the Commission may round such fees to the nearest \$5 in the case of fees under \$1,000, or to the nearest \$25 in the case of fees of \$1,000 or more.

**(3) Permitted amendments**

In addition to the adjustments required by paragraph (2), the Commission shall, by regulation, amend the Schedule of Regulatory Fees if the Commission determines that the Schedule requires amendment to comply with the requirements of paragraph (1)(A). In 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. Increases or decreases in fees made by amendments pursuant to this paragraph shall not be subject to judicial review.

**(4) Notice to Congress**

The Commission shall—

(A) transmit to the Congress notification of any adjustment made pursuant to paragraph (2) immediately upon the adoption of such adjustment; and

(B) transmit to the Congress notification of any amendment made pursuant to paragraph (3) not later than 90 days before the effective date of such amendment.

**(c) Enforcement**

**(1) Penalties for late payment**

The Commission shall prescribe by regulation an additional charge which shall be assessed as a penalty for late payment of fees required by subsection (a) of this section. Such penalty shall be 25 percent of the amount of the fee which was not paid in a timely manner.

**(2) Dismissal of applications for filings**

The Commission may dismiss any application or other filing for failure to pay in a timely manner any fee or penalty under this section.

**(3) Revocations**

In addition to or in lieu of the penalties and dismissals authorized by paragraphs (1) and (2), the Commission may revoke any instrument of authorization held by any entity that has failed to make payment of a regulatory fee assessed pursuant to this section. Such revocation action may be taken by the Commission after notice of the Commission's intent to take such action is sent to the licensee by registered mail, return receipt requested, at the

licensee's last known address. The notice will provide the licensee at least 30 days to either pay the fee or show cause why the fee does not apply to the licensee or should otherwise be waived or payment deferred. A hearing is not required under this subsection unless the licensee's response presents a substantial and material question of fact. In any case where a hearing is conducted pursuant to this section, the hearing shall be based on written evidence only, and the burden of proceeding with the introduction of evidence and the burden of proof shall be on the licensee. Unless the licensee substantially prevails in the hearing, the Commission may assess the licensee for the costs of such hearing. Any Commission order adopted pursuant to this subsection shall determine the amount due, if any, and provide the licensee with at least 30 days to pay that amount or have its authorization revoked. No order of revocation under this subsection shall become final until the licensee has exhausted its right to judicial review of such order under section 402(b)(5) of this title.

**(d) Waiver, reduction, and deferment**

The Commission may waive, reduce, or defer payment of a fee in any specific instance for good cause shown, where such action would promote the public interest.

**(e) Deposit of collections**

Moneys received from fees established under this section shall be deposited as an offsetting collection in, and credited to, the account providing appropriations to carry out the functions of the Commission.

**(f) Regulations**

**(1) In general**

The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section.

**(2) Installment payments**

Such rules and regulations shall permit payment by installments in the case of fees in large amounts, and in the case of fees in small amounts, shall require the payment of the fee in advance for a number of years not to exceed the term of the license held by the payor.

**(g) Schedule**

Until amended by the Commission pursuant to subsection (b) of this section, the Schedule of Regulatory Fees which the Federal Communications Commission shall, subject to subsection (a)(2) of this section, assess and collect shall be as follows:

SCHEDULE OF REGULATORY FEES

Bureau/Category	Annual Regulatory Fee
Private Radio Bureau	
Exclusive use services (per license)	
Land Mobile (above 470 MHz, Base Station and SMRS) (47 C.F.R. Part 90) .....	\$16
Microwave (47 C.F.R. Part 94) .....	16
Interactive Video Data Service (47 C.F.R. Part 95) .....	16

SCHEDULE OF REGULATORY FEES—CONTINUED

Bureau/Category	Annual Regulatory Fee
Shared use services (per license unless otherwise noted) .....	7
Amateur vanity call-signs .....	7
Mass Media Bureau (per license)	
AM radio (47 C.F.R. Part 73)	
Class D Daytime .....	250
Class A Fulltime .....	900
Class B Fulltime .....	500
Class C Fulltime .....	200
Construction permits .....	100
FM radio (47 C.F.R. Part 73)	
Classes C, C1, C2, B .....	900
Classes A, B1, C3 .....	600
Construction permits .....	500
TV (47 C.F.R. Part 73)	
VHF Commercial	
Markets 1 thru 10 .....	18,000
Markets 11 thru 25 .....	16,000
Markets 26 thru 50 .....	12,000
Markets 51 thru 100 .....	8,000
Remaining Markets .....	5,000
Construction permits .....	4,000
UHF Commercial	
Markets 1 thru 10 .....	14,400
Markets 11 thru 25 .....	12,800
Markets 26 thru 50 .....	9,600
Markets 51 thru 100 .....	6,400
Remaining Markets .....	4,000
Construction permits .....	3,200
Low Power TV, TV Translator, and TV Booster (47 C.F.R. Part 74) .....	135
Broadcast Auxiliary (47 C.F.R. Part 74) .....	25
International (HF) Broadcast (47 C.F.R. Part 73) .....	200
Cable Antenna Relay Service (47 C.F.R. Part 78) .....	220
Cable Television System (per 1,000 subscribers) (47 C.F.R. Part 76) .....	370
Common Carrier Bureau	
Radio Facilities	
Cellular Radio (per 1,000 subscribers) (47 C.F.R. Part 22) .....	60
Personal Communications (per 1,000 subscribers) (47 C.F.R.) .....	60
Space Station (per operational station in geosynchronous orbit) (47 C.F.R. Part 25) .....	65,000
Space Station (per system in low-earth orbit) (47 C.F.R. Part 25) .....	90,000
Public Mobile (per 1,000 subscribers) (47 C.F.R. Part 22) .....	60
Domestic Public Fixed (per call sign) (47 C.F.R. Part 21) .....	55
International Public Fixed (per call sign) (47 C.F.R. Part 23) .....	110
Earth Stations (47 C.F.R. Part 25)	
VSAT and equivalent C-Band antennas (per 100 antennas) .....	6
Mobile satellite earth stations (per 100 antennas) .....	6
Earth station antennas	
Less than 9 meters (per 100 antennas) .....	6
9 Meters or more	
Transmit/Receive and Transmit Only (per meter) .....	85
Receive only (per meter) .....	55
Carriers	
Inter-Exchange Carrier (per 1,000 pre-subscribed access lines) .....	60

SCHEDULE OF REGULATORY FEES—CONTINUED

Bureau/Category	Annual Regulatory Fee
Local Exchange Carrier (per 1,000 access lines) .....	60
Competitive access provider (per 1,000 subscribers) .....	60
International circuits (per 100 active 64KB circuit or equivalent) .....	220

**(h) Exceptions**

The charges established under this section shall not be applicable to (1) governmental entities or nonprofit entities; or (2) to amateur radio operator licenses under part 97 of the Commission's regulations (47 C.F.R. Part 97).

**(i) Accounting system**

The Commission shall develop accounting systems necessary to making the adjustments authorized by subsection (b)(3) of this section. In the Commission's annual report, the Commission shall prepare an analysis of its progress in developing such systems and shall afford interested persons the opportunity to submit comments concerning the allocation of the costs of performing the functions described in subsection (a) of this section among the services in the Schedule.

(June 19, 1934, ch. 652, title I, §9, as added Pub. L. 103-66, title VI, §6003(a)(1), Aug. 10, 1993, 107 Stat. 397; amended Pub. L. 103-121, title I, Oct. 27, 1993, 107 Stat. 1167; Pub. L. 103-414, title III, §303(a)(5), (6), Oct. 25, 1994, 108 Stat. 4294.)

AMENDMENTS

1994—Subsec. (f). Pub. L. 103-414, §303(a)(5), designated second sentence of par. (1) as par. (2) and inserted par. (2) heading.

Subsec. (g). Pub. L. 103-414, §303(a)(6), inserted "95" after "(47 C.F.R. Part)" in item pertaining to Interactive Video Data Service under Private Radio Bureau in Schedule of Regulatory Fees.

1993—Subsec. (a). Pub. L. 103-121 designated existing provisions as par. (1), inserted heading, and added par. (2).

**§ 160. Competition in provision of telecommunications service**

**(a) Regulatory flexibility**

Notwithstanding section 332(c)(1)(A) of this title, the Commission shall forbear from applying any regulation or any provision of this chapter to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets, if the Commission determines that—

(1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;

(2) enforcement of such regulation or provision is not necessary for the protection of consumers; and