

Section 9. These parties contend that our proposed allocation of FTEs to the various major service categories violates Section 9(b)(1)(a) because, in their view, the *Notice* contains insufficient supporting information to permit analysis of the basis for our FTE allocations. Comsat General argues that a detailed accounting of the overhead and employees' time, based on a task code charge system, is necessary to justify the reasonableness of our assignment of FTEs to the common carrier and other categories and to the individual services within these categories.

18. Also, several parties contend that the *Notice* fails to demonstrate that individual fees are "reasonably related to the benefits provided to the payor of the fee," in violation of Section 9(b)(1)(A), and are contrary to the intent of Congress as reflected in the legislative history of Section 9. They also contend that the regulation of their particular service does not justify the fee proposed for the service. GE America Communications, Inc. (GE Americom) states that the amount of cost recovery that we allocated to geosynchronous satellites should be reduced because our regulatory activities with respect to in-orbit domestic satellites are *de minimis* since their licensees are not the subject of enforcement proceedings, our domestic satellite policies are well-established with little need for rule makings, and our deregulatory policies have further reduced the cost of space segment regulation.

19. We reject Comsat General and Comsat Video's arguments that our proposed fees constitute unauthorized taxes. In reviewing a similar fee program enacted by Congress, the Supreme Court held that *NCTA I* stood only for the proposition that Congress must indicate clearly its intention to delegate "discretionary authority to recover administrative costs not inuring directly to the benefit of regulated parties by imposing additional financial burdens, whether characterized as 'fees' or 'taxes' on those parties." *Skinner v. Mid-American Pipe Line Co.*, 490 U.S. 212, 224; 109 S.Ct. 1762, 1733 (1989).¹¹ *Skinner* thus bars any interpretation of *NCTA I* and its progeny in the courts of appeals that would limit Congress to allowing agencies to set regulatory fees only in amounts that reflect services

received by the regulated entities. *Skinner* also stated that a congressional delegation of authority to raise funds was proper where Congress provides sufficient guidance to the collecting agency concerning the identity of the entities subject to the fee, the purposes for which the funds may be used, the manner in which the fees are to be established, and the aggregate amount of the fees to be collected. 490 U.S. 219–220, 109 S. Ct. 1731.

20. Subsequent to the Court's decision in *Skinner*, Congress adopted Section 9 directing us to recover the full amount of specified regulatory costs from regulatees. Consistent with the guidance in *Skinner*, Congress identified the categories of service providers subject to the fees, and declared that fees are to be assessed in a rule making proceeding, based upon the number of FTEs within our bureaus and offices performing enforcement, policy and rule making, international, and user information activities. Section 9 further requires us to take into account factors reasonably related to the benefits provided to the payor of the fee by these activities, and we are to recover the costs of these activities only if required in annual Appropriations Acts and only in the aggregate amount annually designated by Congress. As described below, our actions to revise the regulatory fees are consistent with the requirements of Section 9. Thus, our revisions to the Regulatory Fee Schedule in establishing regulatory fees for FY 1995 satisfy the Court's concerns and guidelines regarding unauthorized taxation of persons subject to a fee requirement.

21. The FTE allocations used to calculate the amounts to be recovered from each fee category were developed in full compliance with the requirements of Section 9 of the Act. In developing the FY 1995 regulatory fee schedule, we relied upon estimates of year-end FTEs from our Bureaus and Offices, because actual FTEs utilized are not known until the completion of the fiscal year. Thus, to produce the best possible estimates of FY 1995 year-end FTEs, we conducted a survey in December 1994, immediately prior to releasing the *Notice* in this proceeding to estimate FTEs for this rule making.¹² The Commission performed a review of its staffing, taking into consideration expected new and replacement hiring and attrition through the end of the

fiscal year, in order to determine the most accurate estimate of projected FY 1995 year-end FTEs by organization. Next, the Bureaus and Offices allocated their assigned year-end FTEs to each of their major functional activities (e.g., Authorization of Service, Enforcement, Public Information). The staff actually assigned to perform these allocations within the Bureau and Offices were those individuals most familiar with the regulatory programs and associated staffing under their auspices.¹³

22. In contending that their proposed fees are unduly high, commenters generally have failed to recognize that Section 9 requires that we add to our direct FTEs, *i.e.*, those represented by staff directly assigned to our operating Bureaus, any support FTEs representing staff assigned to overhead functions such as our field and laboratory staff and certain staff assigned to the Office of Managing Director. 47 U.S.C. § 159(b)(1)(A). These support FTEs comprise nearly 40% of all FTEs associated with regulatory fees. Therefore, personnel costs to be recovered through regulatory fees are approximately 40% higher than the costs associated with staff directly assigned to an operating Bureau and performing functions covered by the regulatory fee program. Further, personnel costs represent only 75% of our costs to be recovered through regulatory fees. Thus, the addition of non-personnel costs (equipment, rents, contractual services, supplies, etc.) to personnel costs results in an actual cost of regulation significantly exceeding direct staff costs. The addition of benefits and other obligations to the average Commission salary cost results in an addition cost of approximately \$33,000 per employee. Although some of the parties view these costs of regulation to be excessive, they often reflect costs associated with our regulatory programs that they may not have fully considered.

23. Support FTEs, and ultimately costs, are allocated to each regulatory fee category (e.g., cable television) based upon the number of direct FTEs assigned to each fee category. We

¹¹ *Skinner* stated that in *NCTA I*, the Court had expressed doubt whether Congress had intended in the particular statute in question to delegate the authority to recover the costs of benefits to the public by assessing fees on regulated parties. For that reason, it struck down the agency's efforts to recover such costs. 490 U.S. at 223–224; 109 S.Ct. at 1733.

¹² When the survey was conducted, in December 1994, only approximately 20% of the total FTEs expected to be utilized for the entire FY 1995 time frame were actually "accrued". As such, approximately 80% or 1,125 of the 1,406 FTEs for FY 1995 were estimated based on this small 20% "sample".

¹³ Congress recognized, in adopting the Schedule of Fees, that the Commission has no cost accounting system in place to assist in the estimation of final fiscal year FTEs and related costs. Public Law 103–66, 107 Stat. 313 at 401 (1993). Although the Commission is developing a cost accounting system and it should be in place for FY 1996, such a system would not provide a definitive count, but only an estimate of year-end FTEs even when fully implemented. In summary, we believe that the estimates of FTEs and costs utilized in this proceeding are reasonable and represent the most accurate information available. We have provided in Appendix C an explanation of how FTEs were calculated for each fee category.