

believe our allocations of FTEs reasonably assign personnel and related costs attributable to each fee category. As noted, actual FTE assignments can only be determined once a fiscal year is completed. However, we are satisfied that our estimates, based upon careful review of current and anticipated FTE assignments conducted well into the fiscal year and shortly before the adoption of the *Notice* in this proceeding, yield an accurate estimate of FY 1995 FTE assignments.

24. We also note the concerns of several commenters that certain individual fees seem unreasonable relative to the benefits provided. In general, these commenters fail to recognize the formulaic approach to setting the mandatory fee levels dictated by Congress. Section 9 provides that, in setting individual fee amounts, we prorate increases or decreases to the individual services within each fee category. 47 U.S.C. § 159(b)(2). This statutory requirement remains the relationship between annually calculated fees and the fees initially established by the Congress. It does not provide the flexibility to adjust fees relative to benefits to the payor or in consideration of other factors. These factors, however, are considered in the next stage of the fee development process as permitted amendments, if warranted.

25. As discussed earlier, the Commission is not able to allocate detailed costs to individual fee line items (e.g., VHF Television Stations in the 51–100 markets). Rather, those costs are allocated to broad categories of services by Section 9. Even when the Commission implements a cost accounting system in FY 1996, it may not be cost effective to obtain detailed cost data relative to our regulation of individual services. Since we do not relate specific regulatory costs to particular services within a fee category, we are constrained by Section 9 and by our information collection systems to the formulaic approach to the mandatory adjustment of regulatory fees. However, any inequities resulting from this approach are likely to be small and confined to like services due to the pro-rata formula applied by fee category. As noted, in developing the individual fees, as discussed below, we have carefully examined any apparent inequities computed pursuant to the mandatory formula required by Section 9 and have adjusted certain fees pursuant to our authority to make “permitted” amendments to the fees. In making the permitted amendments, the Commission is not required to calibrate the amount of the regulatory fee

collected precisely to the cost of the benefits each regulatee derives from the Commission’s regulation. See *United States v. Sperry Corp.*, 493 U.S. 52, 60 (1989) (upholding a one and a half percent user fee of amount recovered by claimant before Iran-U.S. Claims Tribunal); *Massachusetts v. United States* 435 U.S. 444, 463 (1978) (upholding flat registration fee on civil aircraft). Moreover, the Commission can collect fees from regulatees for their use of frequencies and for the potential benefits of its regulatory activities, even if they do not utilize these activities. See *United States v. Sperry Corp.*, 493 U.S. *supra* at 63.

26. Also, many commenters have mistakenly correlated gross increases in fee amounts from FY 1994 to FY 1995 to increases in regulation. Although there may, in fact, be changes in regulatory burden for certain services, the primary reason for increased fees overall is the 93% increase in recoverable fees mandated by Congress. Additionally, Section 9 prohibited any adjustment of individual fees established in the Regulatory Fee Schedule for FY 1994. 9 U.S.C. § 159(b)(2). Thus, the FY 1994 fee was established by Congress and was not adjusted to reflect changes in the allocation of FTEs not considered by Congress. Our development of FY 1995 fees in accordance with Section 9’s requirements represents the first allocation of FTEs to appropriate fee categories. This has resulted in a realignment of costs between major fee categories and a redistribution of relative fee revenue requirements among the four major fee categories. As the commenters have noted, certain fees decrease from FY 1994 levels while other fees increase. This primarily reflects the reallocation of FTEs for FY 1995 compared to the Congressionally mandated Regulatory Fee Schedule in effect in FY 1994.

27. We have retained, for fee determination purposes, the regulatory fee category classifications (i.e., Private Radio, Common Carrier, Cable Services and Mass Media) set forth in Section 159 in order to minimize any adverse impact on the fees resulting from changes in classification. Further, for ease in locating particular fees, we have formatted the FY 1995 Schedule of Fees to reflect our new organizational structure even though we have developed those fees based upon the fee activities contained in the FY 1994 Regulatory Fee Schedule. See Appendix B. With the exception of annual fees in the amount of \$5.00 or less, individual fee amounts have been rounded 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 in accordance with Section 9(b)(2). Appendices C through G describe the method by which FTEs were assigned to the fee categories and the development of the individual fees within each major category.

28. We have revised the revenue requirements for individual fees in several of the fee categories. Revenue requirements change whenever volume estimates change due to the pro-rata formula associated with the mandatory provisions of Section 9. Likewise, any permitted amendments which reduce fees have the effect of reallocating to other services within a fee category the revenues which would have been collected if the permitted amendment had not been accepted. In effect, each volume change and/or permitted amendment impacts the revenue requirement in each service within the category. Zero-basing each revenue calculation makes any attempt to explain the calculated difference between revenue requirements shown in the *Notice* and in this *Report and Order* meaningless. We, therefore, have not attempted to do this and instead, have explained each permitted amendment we’ve made and also described the source of any changes to volume estimates.

## 2. Private Radio Services.

29. In developing the FY 1995 regulatory fees for Private Radio Services (set forth in the Wireless Radio Services category in the FY 1995 Regulatory Fee Schedule), we made mandatory adjustments to the Regulatory Fee Schedule required by 47 U.S.C. § 159, considering the number of FTEs and the estimated volume of payments. We have also taken into account the quality of the frequencies licensed. Accordingly, we have decided to continue to assess the two levels of regulatory fees applied to these services by Congress’ fee schedule, i.e., exclusive use services and shared use services, in recognition that those licensees who generally receive a higher quality communications channel, due to exclusive or lightly shared frequencies, should pay a higher fee than licensees who operate on heavily shared frequencies. 47 U.S.C. § 159(2).

30. We are implementing no changes to the rules for calculating fee payments and submitting regulatory fee payments for Private Radio Services. Due to the relatively small regulatory fees generally assessed for the services, we will continue to require applicants for new, reinstatement, and renewal licenses in these services to pay the entire