consumers. Colorado's petition requests a continuation of previous relaxations of the RVP standard. EPA has approved relaxations in the Denver-Boulder area for the past four years, from 1992 through 1995.

DATES: Comments on this proposed rule must be received in writing by May 15, 1996.

ADDRESSES: Materials relevant to this rulemaking have been placed in Docket A–96–10 by EPA. The docket is located at the Docket Office of the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, Room M–1500 in Waterside Mall and may be inspected from 8:30am to 5:30 pm, Monday through Friday. A reasonable fee may be charged for copying docket material.

Comments should be submitted (in duplicate if possible) to the Air Docket Section at the above address. A copy should also be sent to the EPA contact person listed below at the following address: U.S. Environmental Protection Agency, Office of Air and Radiation, 401 M Street, SW. (6406–J), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Marilyn Winstead McCall of the Fuels and Energy Division at 202–233–9029 at the above address.

SUPPLEMENTARY INFORMATION: For more detailed information on this proposal, please see EPA's Direct Final Rulemaking published in the Final Rules section of this Federal Register which approves for a limited time period Colorado's petition to relax the Reid Vapor Pressure standard in the Denver-Boulder area from 7.8 psi to 9.0 psi for the summer ozone season beginning June 1, 1996. The Agency views this as a noncontroversial action due to the limited scope of this proposed rulemaking, Colorado's continued attainment of the ozone standard and for the reasons discussed in the direct final rulemaking published in today's Federal Register. If no adverse comments are received in response to this proposed rule, no further action is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

Authority: 42 U.S.C. 7545 and 7601(a).

Dated: April 4, 1996.

Carol M. Browner,

Administrator.

[FR Doc. 96–9177 Filed 4–12–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[GC Docket No. 96–55, FCC 96–109]

Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has adopted a Notice of Inquiry and a Notice of Proposed Rulemaking to begin a proceeding to evaluate its practices and policies concerning the treatment of competitively sensitive information that has been provided to the Commission. The Commission's objective is to develop a policy that will guide it in evaluating an increasing number of requests that it afford confidential treatment to information that has been provided to it by regulated entities and others. The central issue that confronts the Commission is how to avoid unnecessary competitive harm that could be caused by the disclosures of such information and still fulfill its regulatory duties in a manner that is efficient and fair to the parties and members of the public who have an interest in its proceedings.

DATES: Comments are due on or before June 14, 1996 and Reply comments are due on or before July 15, 1996.

FOR FURTHER INFORMATION CONTACT: Joel Kaufman, Office of General Counsel, (202) 418–1720.

SUPPLEMENTARY INFORMATION: The complete text of this Notice of Inquiry and Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service at (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Synopsis

I. Background

A. Authority To Disclose and Withhold Competitively Sensitive Information

1. Freedom of Information Act

1. Under the Freedom of Information Act (FOIA), 5 U.S.C. 552, the Commission is required to disclose reasonably described agency records requested by any person, unless the records contain information that fits within one or more of the nine exemptions from disclosure provided in the Act. For the purposes of this proceeding, the most important of the FOIA exemptions is commonly referred to Exemption 4. Exemption 4 provides that the government need not disclose ''trade secrets and commercial or financial information obtained from a person and privileged or confidential.'' 5 U.S.C. § 552(b)(4).

2. For many years, the applicable standard for whether commercial or financial information was ''confidential'' under Exemption 4 of FOIA was set forth in *National Parks and Conservation Association* v. *Morton*, 498 F.2d 765 (D.C. Cir. 1974). In National Parks, the Court set forth a two-part test, stating that ''[c]ommercial or financial matter is 'confidential' * * * if disclosure of the information is likely * * * either * * * (1) to impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.'' Id. at 770. In *Critical Mass Energy Project* v. *Nuclear Regulatory Commission*, 975 F.2d 871 (D.C. Cir. 1992), *cert. denied*, 113 S.Ct. 1579 (1993), the court limited National Parks to situations where a party must submit information to a federal agency. Under Critical Mass, ''financial or commercial information provided to the Government on a voluntary basis is 'confidential' for the purpose of Exemption 4 if it is of a kind that would customarily not be released to the public by the person from whom it was obtained.'' *Id.* at 879.

2. The Trade Secrets Act and Commission Authority To Disclose Exemption 4 Records

3. While FOIA Exemption 4 allows an agency to withhold business competitive information from public disclosure, the Trade Secrets Act, 18 U.S.C. 1905, acts as an affirmative restraint on an agency's ability to release such information. It states:

Whoever, being an officer or employee of the United States or of any department or

agency thereof, * * * publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties * * * [that] concerns or relates to the trade secrets, processes, operations, style of work, or apparatus * * * shall be fined not more than $1000, or imprisoned not more than one year, or both; and shall be removed from office or employment.

18 U.S.C. 1905 (emphasis added).

4. In *Chrysler Corp.* v. *Brown,* 441 U.S. 281 (1979), the Supreme Court discussed the relationship between the Trade Secrets Act and Exemption 4 as follows:

> Although there is a theoretical possibility that material might be outside Exemption 4 yet within the substantive provisions of [the Trade Secrets Act] * * * that possibility is at most of limited practical significance in view of the similarity of language between Exemption 4 and the substantive provisions of [the Trade Secrets Act].

Id. at 319 n. 49. Thus, if information may be withheld under Exemption 4, the agency is barred from disclosing it by the terms of the Trade Secrets Act unless the disclosure is otherwise authorized by law.

5. Sections 0.457(d)(1) and 0.457(d)(2)(i) of the Commission's rules, 47 CFR §§ 0.457(d)(1), 0.457(d)(2)(i), constitute the requisite legal authorization for disclosure of competitively sensitive information under the Trade Secrets Act. These rules permit disclosure of trade secrets and commercial or financial information upon a ''persuasive showing'' of the reasons in favor of the information's release.

5. The Commission's legal authority to adopt a rule that permits disclosure of materials covered by the Trade Secrets Act is grounded in Section 4(j) of the Communications Act, 47 U.S.C. § 4(j). In Federal Communications Commission v. Schreiber, 381 U.S. 279, 291–92 (1965), the Supreme Court expressly addressed the Commission's authority under that Section, noting: ''Grants of agency authority comparable in scope to § 4(j) [of the Communications Act] have been held to authorize public disclosure of information, or receipt of data in confidence, as the agency may determine to be proper upon a balancing of the public and private interests involved.''

B. Review of Commission's Policies Governing Disclosure

1. Commission Rules and Procedures

6. The Commission has adopted general rules to implement the provisions of the FOIA. Section 0.457(d) of the Commission's Rules, 47 CFR § 0.457(d), implements FOIA Exemption 4. Quoting Exemption 4, it provides that records not routinely available for public inspection include ''[t]rade secrets and commercial or financial information obtained from any person and privileged or confidential.'' Section 0.457 of the Commission's rules also provides that certain categories materials listed therein are deemed to be within Exemption 4 and therefore are ''not routinely available for public inspection.'' Such Exemption 4 materials may not be disclosed by Commission employees unless an appropriate request for inspection is made and, after weighing the considerations favoring disclosure and non-disclosure, the Commission determines that a ''persuasive showing'' has been made to warrant disclosure. 47 CFR §§ 0.451(b)(5), 0.457(d)(1); 0.457(d)(2)(i); 0.461(f)(4).

7. Any person submitting information or materials to the Commission not falling within the specific categories set forth in Section 0.457 may also request on an *ad hoc* basis that such information not be made routinely available for public inspection under Exemption 4. Each such request must contain a statement of the reasons for withholding the materials from inspection and of the facts upon which those reasons are based. A request that information not be made routinely available for public inspection will be granted if it presents by a preponderance of the evidence a case for non-disclosure consistent with the provisions of FOIA. 47 CFR § 0.459(b). If a request that materials not be routinely available for public inspection is granted, the material will be treated the same as those categories of information presumed not routinely available for public disclosure. 47 CFR § 0.459(h). The Commission's rules also contain procedures to protect the confidentiality of information until administrative and judicial appeals procedures have been completed. 47 CFR § 0.459(g).

2. General Policies Regarding Disclosure of Exemption 4 Records

8. As indicated above, the Commission's rules provide for the disclosure of Exemption 4 material if a ''persuasive showing is made.'' The Commission generally has exercised its discretion to release FOIA Exemption 4 information only in very limited circumstances such as where a party placed its financial condition at issue in a Commission proceeding or where the Commission has identified a compelling public interest in disclosure. See e.g., The Western Union Telegraph Company, 2 FCC Rcd 4485, 4487 (1987) (citing Kannapolis Television Co., 80 FCC 2d 307 (1980)); MCI Telecommunications Corporation, 58 RR 2d 187 (1985). In determining whether a public interest in the privacy of proprietary business data exists, the Commission has adhered to a policy whereby it ''will not authorize the disclosure of confidential financial information on the mere chance that it might be helpful, but insists upon a showing that the information is a necessary link in a chain of evidence that will resolve a public interest issue.'' E.g., Classical Radio for Connecticut, Inc., 69 FCC 2d 1517, 1520 n.4 (1978).

3. The Protective Order Approach

9. In recent years, the Commission also has increasingly relied on special remedies such as redaction,[1] aggregated data or summaries,[2] and protective orders[3] to balance the interests in disclosure and the interests in preserving the confidentiality of competitively sensitive materials. In particular, the Commission has refined the manner in which it releases confidential information by relying more frequently on protective orders or agreements. Protective orders or agreements essentially require parties to whom confidential information is made available to limit the persons who will have access to the information and the purposes for which the information will be used. Disclosure under a protective order or agreement may serve the dual purpose of protecting competitively

[1] Allnet Communications Services, Inc., 8 FCC Rcd 5629, 5630 (1993) (withholding from public release some redacted material provided to the parties under a protective order, but releasing other redacted material that did not contain confidential information).

[2] Id. (finding certain averaged data not to be competitively sensitive); Bellsouth Corp., 8 FCC Rcd 8129, 8130 (1993) (releasing summary of audit findings despite claim of confidentiality since summary nature of information significantly diminished the likelihood of competitive harm).

[3] See, e.g., Cincinnati Bell Telephone Co. (''Cincinnati''), 10 FCC Rcd 10574 (Com. Car. Bur. 1995); Petition of Public Utilities Commission, State of Hawaii, for Authority to Extend its Rate Regulation of Commercial Mobile Radio Services in the State of Hawaii (''Hawaii''), 10 FCC Rcd 2359 and 10 FCC Rcd 2881 (Wireless Bur. 1995); In re Applications of Craig O. McCaw, Transferor, and American Telephone and Telegraph Company, Transferee, for Consent to the Transfer of Control of McCaw Cellular Communications, Inc. and its Subsidiaries, 9 FCC Rcd 2610 (Com. Car. Bur. 1994); Commission Requirements for Cost Support Material to be Filed with Open Network Architecture Access Tariffs (''Open Network Architecture''), 7 FCC Rcd 1526 (Com. Car. Bur. 1992), aff'd, 9 FCC Rcd 180 (1993); Motorola Satellite Communications, Inc. Request for Pioneer's Preference to Establish a Low-Earth Orbit Satellite System in the 1610–1626.5 MHz Band (''Motorola''), 7 FCC Rcd 5062 (1992).

valuable information while still permitting limited disclosure for a specific public purpose. Cincinnati, 10 FCC Rcd at 10575; Hawaii, 10 FCC Rcd at 2366. While protective orders permit the Commission to make confidential information available on a limited basis while minimizing the competitive harm that might ensue from widespread disclosure, the Commission is mindful of the fact that extensive reliance on protective orders may also impose burdens on the public and the Commission. See e.g., Motorola Satellite Communications Inc., 7 FCC Rcd 5062, 5064 (1992) (quoting Letter of Thomas P Stanley, Chief Engineer (June 3, 1992)).

II. Issues for Comment

A. General Issues

10. The Commission's policies implementing its rules governing confidentiality affect both the competitive nature of the telecommunications industry and performance of the Commission's public responsibilities. The Commission has long been sensitive to the concern that fulfillment of its regulatory responsibilities does not result in unnecessary disclosure of confidential information that places Commission regulatees at an unfair competitive disadvantage. In that respect, we recognize that the ''private'' interests of regulatees in ensuring their own competitive vitality generally coincide with the public interest in promoting a robust and competitive telecommunications market. Further, allowing confidential submission increases the willingness of holders of confidential information to provide that information to the Commission and, even where submission is mandatory, often avoids the burden and delay of invoking such mandatory means. For these reasons, the Commission's policy has been to avoid disclosures of confidential information except where necessary to the effective performance of its regulatory duties and to employ protective orders where appropriate.

11. At the same time, allowing confidential submission necessarily decreases the amount of information publicly available to facilitate public participation in the regulatory process. Public participation in Commission proceedings cannot be effective unless meaningful information is made available to the interested persons. As noted, in recent years, the Commission also has relied more frequently on protective orders and agreements. Protective orders and agreements have the advantage of permitting the release—albeit on a limited basis—of more information than would be possible without them, given our obligations to protect trade secrets and commercial or financial information. On the other hand, protective orders are inconvenient and sometimes cumbersome and increase the administrative burdens on the Commission and those subject to them. In addition, protective orders may make it less likely that the Commission will receive a diversity of public comment on the protected materials. Given the Commission's obligation to balance these concerns, we therefore seek comment whether the Commission should adopt additional policies or rules governing the treatment of information submitted to the Commission in confidence.

12. Specifically, we seek comment on the standard in the Commission's current rules that permits disclosure of trade secrets and confidential commercial or financial information upon a ''persuasive showing'' of the reasons in favor of the information's release. See 47 CFR § 0.457(d)(1), (d)(2)(i). We ask commenters to address whether this continues to be the appropriate standard or whether the Commission should adopt some other standard. Assuming we retain this standard, we seek comment on what should constitute a ''persuasive showing'' of the reasons in favor of the information's release. As discussed in more detail below, we also ask comment on standards that should apply in particular types of Commission proceedings.

13. We also seek comment on whether the Commission's current approach to the use of protective orders is the appropriate approach or whether the Commission should adopt some other approach. Advantages and disadvantages of the current approach should be discussed. We specifically request comment on any problems or burdens that commenters perceive with the current protective order approach and ways in which these problems or burdens might be minimized. Commenters should also address whether the Commission's willingness to release confidential information subject to a protective order reduces submitters willingness to voluntarily submit information to the Commission. And, we seek comment on whether the use of protective orders unduly interferes with the Commission's ability to obtain public comment or with the public's right to know what actions the Commission is taking and why it is taking them.

14. As a related matter, we note that a recent D.C. Circuit opinion suggests that the Commission may have the option of releasing all or part of an order under seal. *SBC Communications, Inc.* v. *FCC*, 56 F.3d 1484, 1492 (D.C. Cir. 1995). We seek comment whether it is appropriate for the Commission to draft a decision that relies on confidential data (or data disclosed pursuant to protective order) without publicly revealing the information. If the Commission determines that the data is necessary to support the order, should the Commission place the relevant order under seal or should the information lose protected status at this point?

15. Commenters also are invited to address and comment on any other issues relating to the Commission's policies and rules governing confidential treatment of information submitted to the Commission.

B. Model Protective Order

16. As discussed, release of confidential information under a protective order or agreement can often serve to resolve the conflict between safeguarding competitively sensitive information and allowing interested parties the opportunity to fully respond to assertions put forth by the submitter of confidential information. We seek comment as to whether it would be helpful for the Commission to develop a standard form protective order that could then be modified as appropriate to fit the circumstances of particular cases. We have supplied, as an Attachment to this Notice of Proposed Rulemaking, a draft model protective order. We look forward to receiving comments on this draft order, and in particular what modifications need to be made to make it suitable to the varied types of Commission proceedings in which issues of confidentiality arise.

17. We also seek comment on what procedures the Commission should use to resolve disputes about the issuance and content of protective orders and how to ensure compliance with them. We are especially interested in whether commenters believe that our rules should be amended to address such issues directly.

C. Issues That Arise With Respect to Specific Types of FCC Proceedings

18. As indicated above, we also seek comment on whether different standards should apply for various categories of proceedings with respect to (i) what constitutes a ''persuasive showing'' of the reasons in favor of confidential information's release and (ii) what, if any, protective conditions we should place upon released material and whether this should vary depending on the nature of a proceeding.

Specifically, we seek comment on whether the Commission should apply different disclosure policies to rulemakings, licensing proceedings, tariff proceedings and perhaps other categories of proceedings. For example, we seek comment on whether the Commission should require public disclosure of information without protective orders in some types of Commission proceedings even though that information is within FOIA Exemption 4. Specific issues that arise in connection with various types of proceedings are discussed below. In addition, we request comments on whether special disclosure policies should apply to other categories of proceedings, not specifically mentioned below, and, if so, what those procedures should be.

1. Title III Licensing Proceedings

19. Section 309 of the Communications Act provides that the Commission must allow at least 30 days following issuance of a public notice of certain radio license applications for interested parties to file petitions to deny an application. 47 U.S.C. 309(b), (d)(1). Section 309 thus contemplates that interested members of the public will have a full opportunity to challenge the grant of license applications. In addition, relevant case law indicates generally that petitioners to deny must be afforded access to all information submitted by licensees that bear upon their applications. *See,* e.g., *Bilingual Bicultural Coalition on Mass Media, Inc.* v. *FCC,* 595 F.2d 621, 634 (D.C. Cir. 1978) (en banc).

20. We seek comment on whether the fact that the statutory scheme expressly contemplates public participation in Title III license application proceedings makes it inappropriate to withhold information filed in such proceedings from routine public disclosure. In this regard, we note that Commission rules currently specify that broadcast and other Title III license applications are routinely available for public inspection. See 47 CFR §§ 0.453, 0.455. Nevertheless, applicants do sometimes request confidential treatment pursuant to Section 0.459 of our rules for information submitted with their applications in both contested and uncontested application proceedings. In light of the special issues regarding public participation that arise in Section 309 proceedings, we therefore seek comment on whether our general policy should be to discourage submission of confidential information in the application context but still to leave the Commission some discretion to use protective orders where it seems warranted. Or, is it appropriate to adopt a general policy with regard to licensing proceedings, permitting disclosure of trade secrets and commercial or financial information only pursuant to protective orders?

21. If the Commission were to adopt a policy favoring the use of protective orders in licensing proceedings, we assume that petitioners would be given an opportunity to supplement their petitions to deny after reviewing the protected material. We also seek comment on whether members of the public should be afforded access to such protected material (pursuant to protective orders) in order to enable them to determine whether they wish to file petitions to deny. Would such policies tend to unduly delay Commission action on license applications? We also seek comment on whether it is ever appropriate to withhold from release entirely some Exemption 4 information, as has sometimes been done in the context of licensing proceedings and if so what standard should be used. See e.g., Application of Mobile Communications Holdings, Inc. for Authority to Construct the ELLIPSO Elliptical Orbit Mobile Satellite System, 10 FCC Rcd 1547, 1548 (Int'l Bur. 1994) (declining to release, even under protective order, detailed cost and pricing information of applicant for a license). Finally, we seek comment on whether different policies apply to different categories of material. For example, commenters should address whether our policy would be to use protective orders in licensing proceedings only in instances in which the material in question satisfies the trade secrets or ''substantial competitive harm'' prongs of Exemption 4 and to require public disclosure in all other cases in which the Exemption is invoked.

2. Tariff Proceedings

22. Section 203 of the Communications Act, 47 U.S.C. 203, requires that common carriers file and maintain tariffs with the Commission. Section 204, 47 U.S.C. 204, gives the Commission the authority to review tariffs for lawfulness, which involves, among other things, a determination of whether the tariff is just and reasonable pursuant to Section 201(b), 47 U.S.C. 201(b), and is not unjustly discriminatory pursuant to Section 202, 47 U.S.C. 202. The Commission has adopted rules specifying what support materials carriers must file to enable it to carry out its tariff review authority. See 47 CFR §§ 61.38, 61.49. Pursuant to Section 0.455(b)(11) of the Commission's rules, 47 CFR § 0.455(b)(11), cost support data are routinely available for public inspection.

23. The Commission has generally made tariff support material publicly available. See, e.g., Cincinnati, 10 FCC Rcd at 10575. It has departed from this policy only in a few limited circumstances, for example, to protect third-party vendor data where the data were made available subject to a protective agreement. See Letter from Kathleen M.H. Wallman to Jonathan E. Canis, et al., 9 FCC Rcd 6495 (Com. Car. Bur. 1994) (denying unrestricted access to cost support data filed in connection with virtual collocation tariff, but allowing access pursuant to protective order), application for review pending. Recently, a number of carriers have filed requests for confidential treatment of their cost support data with their tariff transmittals. This presents a number of problems during the tariff review process. The maximum period for tariff review is defined by statute. The Commission has a maximum of one hundred and twenty days to determine the lawfulness of the tariff transmittal. See 47 U.S.C. 203(b)(2); 47 CFR § 61.58(a)(2). The tariff goes into effect on its effective date unless the Commission issues an order rejecting or suspending and investigating the tariff. 47 U.S.C. 204. Section 402(b) of the Telecommunications Act of 1996 provides that, effective one year after enactment, a local exchange carrier may file charges, classifications, regulations or practices on a streamlined basis, which shall be effective 7 days (in the case of a reduction in rates) or 15 days (in the case of an increase in rates) after the date on which they are filed unless the Commission takes action before the end of the period.

24. A request for confidential treatment may not be resolved within the 120 day statutory time frame established for the tariff review process under current law, especially if a ruling is appealed. A request for confidentiality is unlikely to be resolved under the 7 or 15 day time frame that is to become effective for streamlined local exchange carrier filings under the Telecommunications Act of 1996. We therefore seek comment on how to resolve a request for confidentiality made in the context of the tariff review process. One possibility that takes account of the statutory time frame for the tariff review process is to require that carriers file any confidential information first, independent of the filing of the tariff transmittal. Under this alternative, the tariff filing could not be made until the request for confidentiality was resolved.

Commenters should also address whether we should continue to make exceptions to the Commission's rule requiring such data to be made publicly available. In this regard, we seek comment on how petitioners will be able to formulate meaningful objections to the proposed tariff rates, terms and conditions, often a critical part of the tariff review process, if they are unable to review all support material prior to the date that petitions are due. One possible solution is to develop a generic protective agreement that parties can use to protect the information during the tariff review process.

25. Commenters also should address whether different disclosure policies should apply to different phases of the tariff review process. Specifically, should different disclosure policies be applied to the tariff review and tariff investigation stages? Actions denying petitions to suspend or reject tariffs, thereby allowing a tariff to go into effect, are considered non-final, non-judicially reviewable actions because a party can seek further redress by filing a formal complaint pursuant to Section 208 of the Act. In contrast, a tariff set for investigation is assigned a docket number and a pleading cycle is established providing for direct cases, comments and replies. At the conclusion of the investigation, the Commission issues an order which is subject to judicial review. Therefore since decisions to allow tariffs to go into effect are non-reviewable, non-final orders, should the Commission's policies focus on the need for disclosure to petitioners (whether or not pursuant to protective orders) primarily in instances in which a particular tariff has been set for investigation?

3. Rulemaking Proceedings

26. Section 553(b) of the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, generally requires notice and an opportunity to comment before promulgation of a final agency rule. An agency's decision to withhold information in the context of a rulemaking can have a significant impact on whether meaningful notice and opportunity to comment on the bases of an agency's decision have been given. In addition, issues arise to the extent that an agency relies on information that has not been made available to commenters. For these reasons, the Commission generally has not afforded confidential treatment to material submitted in rulemakings, although it has on rare occasions utilized protective orders or agreements in the context of rulemakings. Rulemakings also may create special problems for use of protective orders, however, because a large number of commenters may be involved. On the other hand, a blanket refusal to apply protective orders in the context of rulemakings might cause the Commission to have access to less information than if it used protective orders. We seek comment on these issues as well as the general issue of whether it is ever appropriate to withhold competitively sensitive information filed in rulemaking proceedings from routine public disclosure. We note that the Commission has the option of refusing to consider information in a rulemaking that is submitted along with a request for confidentiality.

4. Requests for Special Relief and Waivers

27. Parties affected by our rules have the right to seek special relief from the rules' scope or waiver of these rules. In certain cases, parties may base their request for relief upon—or otherwise put into issue—information that is confidential. This information may include financial information explaining cash flow, profitability, or bankruptcy problems, or corporate or partnership structure designed to demonstrate insulation from control or interest. For example, in various cable television special relief proceedings, a party may seek relief based on severe financial difficulties, or upon corporate or partnership structure and insulation from control. See 47 CFR § 76.7(a) (cable petitions for special relief). We seek comment on whether and under what circumstances it is appropriate to withhold information filed in such proceedings from routine public disclosure, particularly when the information is potentially decisional to a point placed in issue by the party seeking to withhold such information and may have precedential value for future cases.

5. Formal Complaints

28. Section 208 of the Communications Act, 47 U.S.C. § 208, permits any party to bring before the Commission a complaint against a common carrier for acts or omissions in violation of either the Act or a Commission rule or order. Our rules, in turn, establish both informal and formal procedures for handling such complaints. 47 CFR § 1.711 et seq. Confidentiality issues frequently arise in formal complaint proceedings, especially in connection with discovery. See 47 CFR § 1.731; see also Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers, 58 FR 25569 (1993), 8 FCC Rcd 2614, 2621–22 (1993).

29. We ask commenters to consider the most effective means of balancing our sometimes conflicting obligations to ensure protection of proprietary business data, to prevent undue delay in resolving formal complaints, and to produce decisions that adequately explain, by reference to a specific record, the basis for our disposition of a complaint. For instance, in some cases, a factually and legally sound decision cannot be drafted without referring to information subject to a claim of confidentiality. The particular information deemed by the staff as necessary for resolution may be only a small portion of voluminous materials that are subject to a protective order and provided to the Commission in confidence. Thus, considerable time might be necessary for the staff to examine all materials subject to claims of confidentiality and rule on those claims. If the staff were to rule on the confidentiality of only the particular information determined to be decisionally significant, however, this ruling might prematurely indicate to the parties the staff's recommendation for Commission or Bureau disposition of the complaint. In either instance, the complaint process could be delayed by administrative and judicial appeals of a confidentiality ruling. We ask commenters to consider whether any such delays and burden on Commission resources could or should be mitigated by issuing parts of adjudicatory decisions that rely on confidential information under seal. We seek comment on whether such a procedure would serve the public interest, given that complaint cases—although adjudications of disputes between particular parties—may result in rulings that indirectly, through the establishment of precedent, determine the legality of the practices of non-parties. We welcome suggestions as to how we can preserve the broad utility of the formal complaint process to elucidate the Commission's judgments regarding carrier conduct without either compromising sensitive business data or miring complaint proceedings in protracted peripheral disputes involving confidentiality.

6. Audits

30. The Commission has a statutory right of access to all accounts, records and memoranda, including all documents, papers, and correspondence kept or required to be kept by common carriers. 47 U.S.C. 220(c). The detailed financial and commercial information

inspected during an audit is generally sensitive in nature and is not customarily released to the public. This fact is highlighted by section § 220(f) of the Communications Act, 47 U.S.C. § 220(f), which expressly prohibits the release of information gathered during an audit absent a Commission or court order. The Commission has held that the public disclosure of data gathered in an audit is likely to impair its future ability to obtain such data because while the Commission could rely on compulsory measures to obtain the desired materials, such measures would involve significant expense and delay. J. David Stoner, 5 FCC Rcd 6458, 6459 (1990); Martha H. Platt, 5 FCC Rcd 5742, 5743 (1990); Scott J Rafferty, 5 FCC Rcd 4138, 4138 (1990); Western Union Telegraph Co., 2 FCC Rcd 4485, 4486 (1987).

31. The Commission has departed from its general policy and publicly released audit reports only in extraordinary circumstances when (i) the summary nature of the data contained in a particular report is not likely to cause the providing carrier substantial competitive injury, (ii) the release of the summary data and information is not likely to impair our ability to obtain information in future audits and (iii) overriding public interest concerns favor release of the report. See Bell Telephone Operating Companies, FCC 94–418 (released Oct. 17, 1995); see also, e.g., Bell Communications Research, Inc, 7 FCC Rcd 891 (1992); BellSouth Corp., 8 FCC Rcd 8129, 8130 (1990). In the past, we have normally allowed submitters to request confidentiality for such data and have dealt with such requests on a case-by-case basis, consistent with the applicable standards in FOIA. *See id*. We seek comment on whether we should continue to follow this policy and on whether and in what circumstances information gathered during an audit should be released even under a protective order.

7. Surveys and Studies.

32. The Commission has authority to conduct studies and surveys needed to fulfill its regulatory functions. See, e.g., 47 U.S.C. 403. Unlike information submitted in support of a specific regulatory action involving the submitting entity, surveys may request information from a broad category of regulated entities who are only submitting data because they were selected as part of a survey sample. Because these studies may involve the submission of information deemed competitively sensitive by responding entities, we seek comment on standards that should be applied to protect the confidentiality of information submitted in this context. We also seek comment regarding the treatment of such information when the information is used ultimately in the development of Commission rules or policies.

D. Scope of Materials Not Routinely Available for Public Inspection

33. The need for and burdens associated with protective orders are necessarily affected by the amount of information eligible for protected status. Accordingly, we seek comment on several issues raised by our current rules on materials not routinely available for public release.

34. *Categories of Materials that are not Routinely Available for Public Inspection.* Section 0.457(d) of our rules, 47 CFR § 0.457(d), contains a list of categories of materials that are not routinely available for public inspection and as such do not require a request for such treatment under Section 0.459, 47 CFR § 0.459. To the extent it is possible to define broad categories of information that should not be routinely available for public inspection, we can reduce administrative burdens on the Commission and submitters. On the other hand, over-inclusive categories would not be consistent with the presumption FOIA creates in favor of disclosure. We seek comment whether the current list of materials that are not routinely available for public inspection is appropriate or whether the list ought to be expanded or contracted.

35. *Substantiating Confidentiality Claims.* Section 0.461(a) of the Commission's confidentiality regulations, 47 CFR § 0.461(a), provides that a person submitting information or materials to the Commission may request that the information not be made routinely available to the public. Section 0.461(b), 47 CFR § 0.461(b), requires that each such request contain a statement of the reasons for withholding the materials from inspection and of the facts upon which those reasons are based. Because the Commission sometimes receives frivolous or unsubstantiated requests for confidentiality, we seek comment on whether the Commission should establish a policy or rule specifying more explicitly types of information that should be provided to comply with Section 0.461(b).

36. Information that the submitter could be required to provide to substantiate requests for confidentiality might include:

(1) What portion of the information the submitter believes is entitled to confidential treatment;

(2) The length of time for which confidential treatment is desired;

(3) Measures taken by the business to prevent undesired disclosure to others;

(4) The extent to which the information has already been disclosed to others;

(5) Specific information showing the degree to which the information concerns a service that is subject to competition; and

(6) Specific information concerning why disclosure would result in substantial harmful effects to the business' competitive position.

37. Establishing a policy specifying what types of information should be provided to comply with Section 0.461(b) might be beneficial for several reasons. First, it would enable the Commission to deal in a more efficient fashion with requests that materials not be made routinely available to the public and with requests to release materials not made routinely available to the public. For example, even though our rules provide for seeking confidential treatment for only portions of documents when other portions of documents are nonconfidential, 47 CFR § 0.459(a), submitters frequently assert an entire submission as confidential, even though many documents are not composed entirely of confidential business information. When the Commission is dealing with masses of data from multiple submitters, uncertainty as to what specific confidentiality claims are being asserted can be a significant barrier to efficient action. In addition, a policy specifying what types of information should be provided to comply with Section 0.461(b) might help reduce those confidentiality claims made as a matter of course and induce submitters to be more selective in their confidentiality claims. We seek comment on these benefits and on whether more precise substantiation requirements might burden a submitter's assertion of a claim for information which is truly entitled to confidential treatment. We also seek comment on what measures might be appropriate to deter frivolous requests for confidential treatment.

38. *Aggregated or Sanitized Information.* The Commission sometimes finds it beneficial to disclose to the public non-confidential information derived from data supplied by businesses and claimed as confidential. Such releases might take the form of industry-wide data aggregated into a non-confidential figure, or sanitized documents where all information that could identify the submitters has been removed. We seek comment on procedures the

Commission could use to ensure that the portions of the sanitized or aggregated documents which are disclosed do not contain information claimed as confidential and whether the rules should be amended to incorporate such procedures.

E. Proposed Clarifications to Commission Rules

39. Any person submitting information or materials to the Commission that do not fall within the specific categories of information not subject to routine disclosure may also request, on an *ad hoc* basis, that such information not be made routinely available for public inspection under Exemption 4. 47 CFR § 0.459(a). The Commission is considering amending Section 0.459 of its rules to make express in the rules an existing practice whereby the Commission sometimes defers acting on a request for confidentiality if no request for inspection has been made. This practice conserves Commission resources because Exemption 4 determinations are often complex and require substantial Commission analysis. In such instances, the party submitting the information for which confidentiality is claimed is not harmed because the information is not available for public inspection pending Commission action on the confidentiality request. Likewise, the public is not harmed, because, under the FOIA, the Commission would be required to rule on any request that the information be disclosed. We seek comment on codifying this practice of deferring action on requests for confidentiality in the absence of a FOIA or other request for the information.

40. The Commission also proposes a clarifying amendment to the title of Section 0.457(d) of its rules, 47 CFR § 0.457(d), to better describe the Section's contents. The amended title would read: ''Certain trade secrets and commercial or financial information obtained from any person and privileged or confidential—categories of materials not routinely available for public inspection.''

Administrative Matters

Initial Regulatory Flexibility Act Analysis

41. Pursuant to Section 603 of the Regulatory Flexibility Act, the Commission has prepared the following initial regulatory flexibility analysis (IRFA) of the expected impact of these proposed policies and rules on small entities. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *Notice of Proposed Rulemaking,* but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of the *Notice of Proposed Rulemaking,* including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

Reason for Action

42. The Communications Act of 1934 and the Commission's rules require the Commission to balance various factors in determining whether and under what conditions to withhold or to disclose competitively sensitive information that has been submitted to the Commission and that is not required to be publicly disclosed under the Freedom of Information Act. This *Notice of Proposed Rulemaking* proposes to examine the Commission's regulations and policies to determine whether the Commission should modify its existing disclosure policies and rules.

Objectives

43. To implement the Communications Act of 1934 and the Freedom of Information Act and to develop a policy that will guide the Commission in evaluating the increasing number of requests that it afford confidential treatment to information that has been provided to it by regulated entities and others.

Legal Basis. Action as proposed for this rulemaking is contained in Sections 4(i), 4(j), 303(r) and 403 of the Communications Act of 1934, as amended.

Description, Potential Impact and Number of Small Entities Affected

44. The Commission's policies and rules regarding the disclosure of confidential commercial and financial information affects small entities that are regulated by the Commission and small entities that participate in Commission proceedings. We are presently unable to estimate the

Reporting, Record Keeping and Other Compliance Requirements

45. None.

Federal Rules Which Overlap, Duplicate or Conflict With This Rule

46. None.

Any Significant Alternatives Minimizing Impact on Small Entities and Consistent with Stated Objectives

47. None.

Paperwork Reduction Act

48. The requirements proposed herein have been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose no new or modified information collection requirement on the public.

Procedural Provisions

49. This Notice of Inquiry and Notice of Proposed Rulemaking is issued pursuant to authority contained in Sections 4(i), 4(j), 303(r) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r) and 403. Pursuant to applicable procedures set forth in Sections 1.415, 1.419 and 1.430 of the Commission's Rules, 47 CFR §§ 1.415, 1.419 and 1.430, interested parties may file comments on or before June 14, 1996, and reply comments on or before July 15, 1996. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus ten copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

50. *Ex parte Rules—Non-Restricted Proceeding.* This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in Commission rules. *See generally* 47 CFR Sections 1.1202, 1.1203, and 1.1206(a).

Ordering Clauses

51. *It is ordered* that, pursuant to Sections 4(i), 4(j), 303(r) and 403 of the Communications Act of 1934, 47 U.S.C. §§ 154 (i), 154 (j), 303(r) and 403, notice is hereby given of proposed amendments to Part 0, in accordance with the proposals and discussions, in this Notice of Proposed Rulemaking, and that comment is sought regarding such proposals, discussion, and statement of issues.

52. *It is further ordered* that, the Secretary shall send a copy of this

Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

List of Subjects in 47 CFR Part 0

Freedom of information, Public information and inspection of records.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Not to be published in the Code of Federal Regulations.

Attachment—Model Protective Order and Declaration

Before the Federal Communications Commission, Washington, DC 20554

In the Matter of [Name of Proceeding], Docket No. _____.

Protective Order

This Protective Order is a device to facilitate and expedite the review of documents containing trade secrets and commercial or financial information obtained from a person and privileged or confidential. It reflects the manner in which ''Confidential Information,'' as that term is defined herein, is to be treated. The Order is not intended to constitute a resolution of the merits concerning whether any Confidential Information would be released publicly by the Commission upon a proper request under the Freedom of Information Act or otherwise.

1. For purposes of this Order, ''Confidential Information'' shall in the first instance mean either (i) information submitted to the Commission by the Submitting Party that has been so designated by the Submitting Party and which the Submitting Party has determined in good faith constitutes trade secrets and commercial or financial information which is privileged or confidential within the meaning of Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4) or (ii) information submitted to the Commission by the Submitting Party that has been so designated by the Submitting Party and which the Submitting Party has determined in good faith falls within the terms of [cite Commission order designating items for treatment as Confidential Information]. Confidential Information shall be deemed to include additional copies of and information derived from Confidential Information.

2. The Commission may sua sponte or upon petition determine that all or part of the information claimed as ''Confidential Information'' is not entitled to such treatment.

3. Confidential Information submitted to the Commission shall bear on the front page in bold print, ''CONTAINS PRIVILEGED AND CONFIDENTIAL INFORMATION—DO NOT RELEASE.'' Confidential Information shall be segregated by the Submitting Party from all non-confidential information submitted to the Commission. To the extent a document contains both Confidential Information and non-confidential information, the submitting party shall designate the specific portions of the document claimed to contain Confidential Information and shall, where feasible, also submit a redacted version not containing Confidential Information.

4. The Secretary of the Commission or other Commission staff to whom Confidential Information is submitted shall place the Confidential Information in a non-public file. In the event that any person requests that Confidential Information be released publicly, the Commission will treat the request pursuant to 47 CFR § 0.461.

5. Confidential Information shall only be made available to Commission staff, Commission consultants and to counsel to the Reviewing Parties or if a Reviewing Party has no counsel to a person designated by the Reviewing Party. Reviewing Party shall mean a party to a Commission proceeding or any person or entity filing a pleading in a Commission proceeding. Before counsel to a Reviewing Party or such other designated person may obtain access to Confidential Information, counsel or such other designated person must execute the attached Declaration.

6. Counsel to a Reviewing Party or such other person designated pursuant to Paragraph 5 may disclose Confidential Information to other Authorized Representatives to whom disclosure is permitted under the terms of paragraph 7 of this Protective Order only after advising such Authorized Representatives of the terms and obligations of the Order. In addition, before Authorized Representatives may obtain access to Confidential Information, Authorized Representatives must execute the attached Declaration.

7. Authorized Representatives shall be limited to:

a. Counsel for the Reviewing Parties to this proceeding including in-house counsel actively engaged in the conduct of this proceeding and their associated attorneys, paralegals, clerical staff and other employees, to the extent reasonably necessary to render professional services in this proceeding, provided that such persons are not representing or advising or otherwise assisting * * *;

b. Specified persons, including employees of the Reviewing Parties, requested by counsel to furnish technical or other expert advice or service, or otherwise engaged to prepare material for the express purpose of formulating filings in this proceeding except that disclosure to persons in a position to use this information for competitive commercial or business purposes shall require the approval of the Commission; or

c. Any person designated by the Commission in the public interest, upon such terms as the Commission may deem proper.

8. Confidential Information shall be maintained by a Submitting Party for inspection in at least two locations, one of which shall be in Washington, D.C. Inspection shall be carried out by Authorized Representatives by appointment during normal business hours. The Submitting Party shall provide copies of the Confidential Material to Authorized Representatives upon request and may charge a reasonable copying fee not to exceed twenty five cents per page.

9. Authorized Representatives may make additional copies of Confidential Information but only to the extent required and solely for the preparation and use in this proceeding, and provided further that the original copy and all other copies of the Confidential Information shall remain in the care and control of Authorized Representatives at all times and shall not pass to any other persons except as provided herein.

10. Counsel for Reviewing Parties shall provide to the Submitting Party and the Commission with a copy of the attached Declaration for each Authorized Representative within five (5) business days after the attached Declaration is executed, or by any other deadline prescribed by the Commission.

11. Confidential Information shall not be used by any person granted access under this Protective Order for any purpose other than for use in this proceeding (including any subsequent administrative or judicial review), shall not be used for competitive business purposes, and shall not be disclosed except in accordance with this Order. This shall not preclude the use of any material or information that is in the public domain or has been developed independently by any other person who has not had access to the Confidential Information nor otherwise learned of its contents.

12. Reviewing Parties may, in any pleadings that they file in this proceeding, reference the Confidential Information, but only if they comply with the following procedures:

a. Any portions of the pleadings that contain or disclose Confidential Information must be physically segregated from the remainder of the pleadings;

b. The portions containing or disclosing Confidential Information must be covered by a separate letter referencing this Protective Order;

c. Each page of any Party's filing that contains or discloses Confidential Information subject to this Order must be clearly marked: ''Confidential Information included pursuant to Protective Order, [cite proceeding];'' and

d. The confidential portion(s) of the pleading shall be served upon the Secretary of the Commission, the Submitting Party, and those Reviewing Parties that have signed the attached Declaration. Such confidential portions shall be served under seal, and shall not be placed in the Commission's Public File unless the Commission directs otherwise (with notice to the Submitting Party and an opportunity to comment on such proposed disclosure). A Reviewing Party filing a pleading containing Confidential Information shall also file a redacted copy of the pleading containing no Confidential Information, which copy shall be placed in the Commission's public files. Reviewing Parties may provide courtesy copies of pleadings containing Confidential Information to Commission staff.

13. Should a Reviewing Party that has properly obtained access to Confidential

Information under this Protective Order violate any of its terms, it shall immediately convey that fact to the Commission and to the Submitting Party. Further, should such violation consist of improper disclosure of Confidential Information, the violating party shall take all necessary steps to remedy the improper disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to denial of further access to Confidential Information in this proceeding.

14. Within two weeks after final resolution of this proceeding (which includes any administrative or judicial appeals), Authorized Representatives of Reviewing Parties shall destroy all Confidential Information as well as all copies and derivative materials made, and shall certify that no material whatsoever derived from such Confidential Information has been retained by any person having access thereto, except that counsel to a Reviewing Party may retain two copies of pleadings submitted on behalf of the Reviewing Party.

15. Disclosure of Confidential Information as provided herein shall not be deemed a waiver by the Submitting Party of any privilege or entitlement to confidential treatment of such Confidential Information. Reviewing Parties, by viewing these materials: (a) agree not to assert any such waiver; (b) agree not to use information derived from any confidential materials to seek disclosure in any other proceeding; and (c) agree that accidental disclosure of privileged information shall not be deemed a waiver of the privilege.

16. The entry of this Protective Order is without prejudice to the rights of the Submitting Party to apply for additional or different protection where it is deemed necessary or to the rights of Reviewing Parties to request further or renewed disclosure of Confidential Information. Moreover, it in no way precludes the Commission from disclosing any Confidential Information where it determines the public interest so requires.

17. This Protective Order is issued pursuant to Section 4(i) of the Communications Act as amended, 47 U.S.C. § 154(i) and 47 CFR § 0.457(d).

18. As used in this Order, the term ''Commission'' shall also include any arm of the Commission acting pursuant to delegated authority.

Declaration

[Cite Proceeding]

I, _____, hereby declare under penalty of perjury that I have read the foregoing Protective Order that has been entered by the Commission in this proceeding, and that I agree that I will be bound by its terms pertaining to the treatment of Confidential Information submitted by parties to this proceeding. I understand that the Confidential Information shall not be disclosed to anyone except in accordance with the terms of the Protective Order and shall be used only for purposes of the proceedings in this matter. I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission.

(signed) _____

(printed name) _____

(title) _____

(affiliation) _____

(address) _____

_____

(phone) _____

(date) _____

[FR Doc. 96–9240 Filed 4–12–96; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Chapter I

[MD Docket No. 96–84; FCC 96–153]

Assessment and Collection of Regulatory Fees For Fiscal Year 1996

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress has required it to collect for fiscal year 1996. Section 9 of the Communications Act of 1934, as amended, provides for the annual assessment and collection of regulatory fees. For fiscal year 1996 sections 9(b) (2) and (3) provide for annual ''Mandatory Adjustments'' and ''Permitted Amendments'' to the Schedule of Regulatory Fees. The proposed revisions will further the National Performance Review goals of reinventing Government by requiring beneficiaries of Commission services to pay for such services.

DATES: Comments must be filed on or before April 29, 1996 and reply comments must be filed on or before May 9, 1996.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Peter W. Herrick, Office of Managing Director at (202) 418–0443, or Terry D. Johnson, Office of Managing Director at (202) 418–0445.

SUPPLEMENTARY INFORMATION:

Adopted: April 5, 1996.
Released: April 9, 1996.

By the Commission.

Table of Contents

Topic/Paragraph Numbers

I. Introduction

1. By this *Notice of Proposed Rulemaking,* the Commission commences a proceeding to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress, pursuant to Section 9(a) of the Communications Act, has required it to collect for Fiscal Year (FY) 1996. *See* 47 U.S.C. § 159 (a).

2. For FY 1996, Congress has required that we collect $116,400,000 through regulatory fees in order to recover the costs of our enforcement, policy and rulemaking, international and user information activities for FY 1996. P.L. 104–99 and 47 U.S.C. § 159(a)(2). This is the same amount that Congress designated for recovery through regulatory fees for FY 1995. *See Assessment and Collection of Regulatory Fees for Fiscal Year 1995,* FCC 95–227, released June 19, 1995, 60 FR 34004 (June 29, 1995). The current