



April 30, 2015

**FILED ELECTRONICALLY**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20544

**Re: Notice of Oral *Ex Parte* Presentations – MD Docket Nos. 14-92, 13-140, and 12-201**

Dear Ms. Dortch:

On April 29, 2015, representatives of the Satellite Industry Association (“SIA”)<sup>1</sup> met with Mika Savir, Enforcement Bureau, Thomas Buckley, Office of the Managing Director, and Thomas Sullivan, International Bureau to discuss the satellite industry’s views on the above-captioned proceeding. SIA was represented by: Sam Black, SIA; Karis Hastings, outside counsel to SES; Sue Crandall, Intelsat; and Jesse Jachman, EchoStar Satellite Operating Corporation.

In these meetings, SIA discussed its concern that the current high regulatory fees for satellite network operators are disconnected from the actual costs expended by the Commission given the low and decreasing regulatory burdens associated with

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<sup>1</sup> Since its creation twenty years ago, SIA has advocated for the unified voice of the U.S. satellite industry on policy, regulatory, and legislative issues affecting the satellite business. For more information, visit [www.sia.org](http://www.sia.org). SIA Executive Members include: The Boeing Company; The DIRECTV Group; EchoStar Corporation; Intelsat S.A.; Iridium Communications Inc.; Kratos Defense & Security Solutions; LightSquared; Lockheed Martin Corporation; Northrop Grumman Corporation; SES Americom, Inc.; SSL; and ViaSat, Inc. SIA Associate Members include: ABS US Corp.; Airbus DS SatCom Government, Inc.; Artel, LLC; Cisco; Comtech EF Data Corp.; DRS Technologies, Inc.; Eutelsat America Corp.; Glowlink Communications Technology, Inc.; Harris CapRock Communications; Hughes; iDirect Government Technologies; Inmarsat, Inc.; Kymeta Corporation; Marshall Communications Corporation.; MTN Government; O3b Limited; Orbital ATK; Panasonic Avionics Corporation; Row 44, Inc.; TeleCommunication Systems, Inc.; Telesat Canada; TrustComm, Inc.; Ultisat, Inc.; Vencore Inc.; and XTAR, LLC.

Commission oversight of the satellite industry.<sup>2</sup> In its filings, SIA has emphasized that the Commission must conduct a function-based analysis of full-time equivalents (“FTEs”) throughout the Commission in order to ensure that current direct and indirect costs are fairly allocated. This review is critical to ensure that the regulatory fees the Commission imposes are accurately linked to the resources expended to regulate the satellite industry, as required by the Communications Act.<sup>3</sup> In particular, SIA believes that the Commission can do more to determine which licensees are directly benefited by many of the FTEs currently categorized as “indirect,” including many of the FTEs working in the Enforcement and Consumer and Government Affairs Bureaus, for the purpose of calculating regulatory fees.<sup>4</sup> In addition, SIA requests that the Commission ensure that those Wireless Telecommunications Bureau employees whose costs are covered by the proceeds of spectrum auctions are included in the FTE counts used to assign indirect FTEs to various licensees.<sup>5</sup>

In the upcoming further action in this proceeding, SIA urges the Commission to undertake a more comprehensive function-based analysis of FTEs throughout the Commission. Such a recalculation will ensure that fees are assessed more accurately and fairly, consistent with the mandates of the Communications Act.

Please contact the undersigned if you have any questions.

Respectfully submitted,

/s/

SATELLITE INDUSTRY ASSOCIATION

Tom Stroup, President  
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<sup>2</sup> See Comments of the Satellite Industry Association, MD Docket Nos. 12-201, 08-65 (filed Sept. 17, 2012); see also Reply Comments of the Satellite Industry Association, MD Docket Nos. 12-201, 08-65 (filed June 26, 2013); see also Letter from Patricia A. Cooper, President, Satellite Industry Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, Notice of Oral Ex Parte Presentation, MD Docket Nos. 12-201, 08-65, 13-140 (filed Nov. 22, 2013).

<sup>3</sup> The Communications Act mandates that regulatory fees “reasonably relate[] to the benefits provided to the payor of the fee.” 47 U.S.C. § 159(b)(1)(A).

<sup>4</sup> See Comments of the Satellite Industry Association, MD Docket Nos. 12-201, 08-65, 13-140 (filed June 19, 2013) at 9-11 (included in excerpt attached).

<sup>5</sup> See *id.* at 13-16 (included in excerpt attached).

Attachment

cc's (via email):

Mika Savir

Thomas Buckley

Thomas Sullivan

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2013	)	MD Docket No. 13-140
	)	
Procedures for Assessment and Collection of Regulatory Fees	)	MD Docket No. 12-201
	)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2008	)	MD Docket No. 08-65
	)	

**COMMENTS OF THE SATELLITE INDUSTRY ASSOCIATION**

Patricia A. Cooper  
President  
Satellite Industry Association  
1200 18<sup>th</sup> Street, N.W., Suite 1000  
Washington, DC 20036

Dated: June 19, 2013

Moreover, because this calculation has already been performed, the functional assignment of International Bureau FTE costs can be implemented immediately as part of the Fiscal Year 2013 cycle. The Notice seeks comment on whether as an alternative the Commission should apply for another year the same allocation percentages it has been using, without updating the underlying FTE data.<sup>34</sup> SIA cannot imagine why, having completed the analysis needed to assign FTEs in a fair and accurate manner, the Commission would defer implementation of that assignment.<sup>35</sup>

In short, the Notice's proposal to assign 27 FTEs to entities regulated by the International Bureau and treat the remaining International Bureau FTEs as indirect costs is fully justified by the evidence before the Commission and is required as a matter of law. The Commission should adopt this approach and use it to assess Fiscal Year 2013 regulatory fees.

### **III. FTEs OUTSIDE THE CORE LICENSING BUREAUS SHOULD BE ASSIGNED AS DIRECT COSTS WHERE APPROPRIATE**

The Commission should take the same functional approach to categorizing FTEs outside the core licensing bureaus to determine whether they should be allocated as direct costs to specific licensee groups instead of as indirect overhead. The Notice recognizes that it cannot be assumed that all personnel outside the core bureaus perform work that benefits all licensees. Instead, "work of the FTEs in a support bureau may tend to focus disproportionately more on some of the core bureaus than others and . . . this focus may shift over time."<sup>36</sup> Accordingly, the Commission seeks comment on whether the work of some personnel who are categorized as

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<sup>34</sup> *Id.* at ¶ 32.

<sup>35</sup> *Id.* at ¶ 9. *See also* GAO Report at 7-12 (criticizing the Commission for assessing regulatory fees based on "obsolete" data).

<sup>36</sup> *Id.* at ¶ 29.

indirect FTEs is focused disproportionately on one or more core bureaus, and should be allocated accordingly.<sup>37</sup>

SIA has repeatedly demonstrated that there are personnel outside the licensing bureaus whose work pertains only to a subset of licensees, and that these FTEs should be assigned as direct costs for regulatory fee purposes.<sup>38</sup> For example, the Enforcement Bureau has divisions whose work is focused on specific industries, including the Market Disputes Resolution Division<sup>39</sup> and the Telecommunications Consumers Division.<sup>40</sup> In addition, the Enforcement Bureau's website indicates that there are 17 attorneys and 16 other support personnel within the Bureau that work on matters involving obscenity, indecency and profanity.<sup>41</sup> The site goes on to note that within the Consumer and Governmental Affairs Bureau, the "Consumer Inquiries & Complaints Division, Information Access and Privacy Office, and Reference Information Center intake complaints and work to provide information to consumers on indecency as well as various other matters."<sup>42</sup> These Enforcement Bureau and other support bureau FTEs should all be assigned as direct costs to the relevant groups of Commission licensees.

Assigning these FTEs as direct costs is required to comply with the statute's command that fees be set to reflect benefits to the fee payer. Furthermore, enforcement and user

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<sup>37</sup> *Id.*

<sup>38</sup> See SIA 2012 Reply Comments at 3-6 & 10-12; SIA 2012 Comments at 16-19; SIA 2008 Reply Comments at 7-9.

<sup>39</sup> The role of the Market Disputes Resolution Division is limited to handling complaints against common carriers and pole attachment disputes. See SIA 2012 Comments at 16-17; SIA 2008 Reply Comments at 8. See also <http://transition.fcc.gov/eb/mdrd/> (last visited June 14, 2013).

<sup>40</sup> The Telecommunications Consumers Division "is focused on protecting consumers from fraudulent, misleading and other harmful practices involving telecommunications." See <http://transition.fcc.gov/eb/tcd/> (last visited June 14, 2013).

<sup>41</sup> See <http://transition.fcc.gov/eb/oip/Handle.html> (last visited June 14, 2013).

<sup>42</sup> *Id.*

information are among the Commission functions whose costs Congress specified should be collected through regulatory fees.<sup>43</sup> In order to fulfill that statutory mandate, the Commission must assess these costs directly to the categories of fee payers who benefit from the work of, or whose activities are overseen by, these personnel. Accordingly, SIA requests that the Commission undertake a review of the responsibilities of personnel in bureaus and offices outside the core licensing bureaus. If a specific Commission unit works on matters involving a subset of regulatory fee payers, the Commission should assign the FTE costs for those personnel directly to the regulated entities whose operations are the focus of that work.

Including these FTEs as overhead instead of directly assigning them to the common carriers, cable television operators and broadcasters who benefit from these tasks harms satellite licensees in two ways. First, it results in an undercounting of the total number of FTEs that should be allocated as direct costs and therefore unfairly increases the percentage of direct FTEs assigned to entities regulated by the International Bureau. Second, it expands the size of the total Commission overhead amount. Thus, the failure to directly assign these FTEs to the industries responsible for their costs results in International Bureau licensees paying an inappropriately high percentage of an inflated overhead total. The Commission is obligated to address this unfairness by directly assigning FTEs outside the core bureaus whose work focuses on a subset of licensees to those regulatory fee categories.

#### **IV. INDIRECT COSTS SHOULD BE ALLOCATED MORE ACCURATELY**

The Notice also seeks comment on alternatives to its current approach of allocating indirect FTEs based on a given fee category's percentage of direct FTEs.<sup>44</sup> Fair

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<sup>43</sup> 47 U.S.C. § 159(a)(1).

<sup>44</sup> Notice at ¶¶ 2 & 17.

allocation of these overhead costs is critical. Because under the proposals in the Notice there are more than twice as many FTEs characterized as indirect by the Commission as there are FTEs within the core licensing bureaus,<sup>45</sup> the indirect or overhead portion of the fee burden dwarfs direct regulatory costs.

SIA has previously shown that a more granular approach to assigning indirect FTEs is necessary to ensure that indirect costs are not disproportionately attributed to satellite industry fee payers. For example, we have noted that very few satellite-focused items are voted on by the Commissioners in any given year, only a tiny proportion of the proceedings before the Enforcement Bureau's Spectrum Enforcement Division concern satellite licensees, and satellite entities rarely if ever have any contact with the Office of Engineering and Technology's Laboratory Division.<sup>46</sup> As a result, assuming that the satellite industry's share of the work performed by these FTEs is proportional to the industry's share of the Commission's direct costs is not supported by the facts.

To increase the accuracy of its assessment, the Commission should use objective measures of the workloads of these parts of the Commission to assign the relevant FTEs to regulatory fee payers. Again, SIA is not advocating a return to the time-card-based approach to cost allocation that was tried and abandoned.<sup>47</sup> We are simply suggesting that with respect to support divisions of the Commission whose workloads can be measured and categorized, the Commission should assign the FTEs based on an annual analysis of such workload data. For

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<sup>45</sup> *See id.* at ¶ 7 & nn.12 & 13. The data in these footnotes indicates that the current total of direct FTEs in the core licensing bureau is 548 and the total of indirect FTEs in the support bureaus is 967. However, once the FTEs of International Bureau personnel with Commission-wide responsibilities are excluded as discussed above, the direct FTE number drops to 456, and the indirect FTE number increases to 1059.

<sup>46</sup> *See* SIA 2012 Comments at 19-21; SIA 2008 Reply Comments at 3.

<sup>47</sup> *See* SIA 2012 Reply Comments at 6; SIA 2012 Comments at 19.

example, FTEs for the Commissioners and their staffs could be allocated based on the docket numbers of Commission level decisions, which would identify the bureau whose licensees are subject to each decision.

SIA recognizes that for some bureaus and offices this more granular approach will not be possible because there is no objectively measurable data that could be used as the basis for FTE allocation. As an example, the Office of Workplace Diversity performs a Commission-wide function, overseeing the Commission's equal employment opportunity program and promoting diversity and fair treatment within the agency's workforce. These tasks are not focused on a specific regulated industry but on the Commission as an employer, and they benefit all Commission personnel. In this instance, SIA agrees that using an allocation percentage based on the share of direct costs is a reasonable means of assigning these FTEs.

However, SIA asks the Commission to make one significant and very important change in the way it assigns indirect costs. Specifically, SIA requests that the Commission include the 194 FTEs funded by auctions<sup>48</sup> when it calculates the direct cost percentage used for purposes of assigning indirect FTEs.

This change is needed to more fairly and accurately assign indirect FTEs and ensure that all regulatory fee payers are charged with their fair share of support bureau costs. As SIA understands it, the 194 FTEs funded by auctions represent only personnel who work directly on auction proceedings, not personnel in the support bureaus. The Notice proposes to exclude these personnel from the FTE calculations for regulatory fees because they are funded separately

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<sup>48</sup> Notice at n.12.

and their costs are therefore not included in the amount that Congress instructs the Commission to collect via regulatory fees.<sup>49</sup>

Whatever the validity of this rationale for excluding the auction FTEs from the Commission's calculations to determine direct costs,<sup>50</sup> it does not justify excluding these FTEs when determining the proportions that will be used to assign indirect costs. The rationale underlying the Commission's indirect cost allocation methodology is that indirect costs are proportional to direct costs. Thus, the relative size of a core licensing bureau serves as a proxy for assigning the costs of the support bureaus.

For example, the assumption is that licensees regulated by the Wireless Telecommunications Bureau should be responsible for roughly a fifth of the Commission's indirect costs, because the FTEs in this bureau represent roughly a fifth of the total direct FTEs.<sup>51</sup> However, by excluding FTEs funded by auctions in determining this proportion, the Commission significantly understates the actual size of the Wireless Telecommunications Bureau.<sup>52</sup> This

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<sup>49</sup> *See id.*

<sup>50</sup> SIA assumes that the exclusion of these FTEs from the direct cost calculations is intended to prevent double counting, since auction revenues obtained from regulated entities cover the costs of these FTEs. *See* Reply Comments of CTIA – The Wireless Association®, MD Docket Nos. 12-201 & 08-65, filed Oct. 23, 2012 at 1 (arguing that “it would be a mistake to double count auction-related FTEs by including them in the regulatory fee program”). However, satellite industry licensees are also subject to double counting, since the significant application fees we pay are not applied to offset the costs of International Bureau FTEs who process satellite applications. *See* GAO Report at 4 n.8 (observing that the fees collected “for activities such as license applications, renewals or requests for modification” are deposited in the General Fund of the Treasury and cannot be used by the Commission). Thus, in order to prevent double counting for all licensees, the Commission would need to exclude application processing FTEs as well as FTEs funded by auctions in calculating regulatory fees.

<sup>51</sup> *See* Notice at 9 (proposing a cost allocation of 19.42% for the Wireless Telecommunications Bureau).

<sup>52</sup> The Notice does not indicate for which bureaus the 194 auction-funded FTEs work, but SIA assumes for purposes of this argument that most of them work for the Wireless Telecommunications Bureau given that the Auctions & Spectrum Access Division is part of that bureau. *See* <http://wireless.fcc.gov/index.htm?job=asad> (last visited June 16, 2013).

seriously skews the end result and requires entities regulated by all other bureaus to pay an unfairly high share of support bureau costs.

As an illustration, consider the Office of Workplace Diversity discussed above. The 194 auction FTEs benefit from the tasks performed by this office to the same extent as do all other Commission employees. Yet under the current method of calculating the percentages used to assign the costs of this office, the auction FTEs are ignored. The result is that an unfairly high proportion of the office’s costs are assigned to satellite operators and others who hold licenses not assigned by auctions. Similarly, an excessive portion of the costs of the other Commission support bureaus falls on these licensees.

The magnitude of this misallocation could be substantial. The chart below compares the FTE allocations under the methodology proposed by the Notice (ignoring the 7.5% cap on increases) to the allocations that would result if auction-funded FTEs were added to the total for the Wireless Telecommunications Bureau (assuming for present purposes that all 194 FTEs are employees of this bureau).

Bureau	FY 2013 Direct Cost Allocation Applying the Methodology in the Notice (with no cap)	FY 2013 Indirect Cost Allocation Counting Auction FTEs (all included in Wireless Telecommunications Bureau)
International Bureau	5.9%	4.2%
Media Bureau	37.5%	26.3%
Wireline Competition Bureau	35.1%	24.6%
Wireless Telecommunications Bureau	21.5%	44.9%

This data suggests that entities regulated by the International, Media, and Wireline Competition Bureaus have all been paying far more than their share of Commission support bureau costs.

To correct this skewed result, the Commission should separately calculate the direct and indirect costs to be paid for by entities regulated by each of the core licensing bureaus. Even if the Commission continues to exclude the 194 auction FTEs from the direct cost analysis, it should count those FTEs as part of the appropriate core licensing bureaus before calculating the percentage to be used in assigning indirect FTE costs. This will ensure that licensees that benefit from auctions pay a fair proportion of the Commission’s overhead.

**V. THE COMMISSION SHOULD NOT USE REVENUES TO ASSESS SATELLITE INDUSTRY REGULATORY FEES**

The Notice asks whether the Commission should change to using revenues instead of licenses to assess satellite industry regulatory fees.<sup>53</sup> SIA strongly opposes such a shift, which would conflict with the statutory mandate to link regulatory fees to costs and would be inconsistent with the other goals of the Commission’s regulatory fees review.

When it adopted the initial regulatory fee framework, Congress instructed the Commission to assess satellite industry regulatory fees on a per license basis,<sup>54</sup> and this remains the logical approach today. Changing to a revenue-based approach cannot be squared with the statutory language requiring that fees reflect costs because the regulatory costs associated with satellite operation have no relationship to the revenue generated by the satellite asset. A fully occupied satellite payload costs no more to regulate than does a satellite providing primarily back-up protection and occasional use service.

Making this alteration also would be contrary to Section 9(b)(3) of the statute. That provision limits “permitted amendments” to the regulatory fee schedule to changes needed

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<sup>53</sup> Notice at ¶ 33.

<sup>54</sup> See 47 U.S.C. § 159(g) (schedule of regulatory fees incorporated in the statute provides for payment “per operational station in geosynchronous orbit” and “per system in low-earth orbit”).