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

In the Matter of	)	
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Assessment and Collection of Regulatory Fees for Fiscal Year 2015	)	MD Docket No. 15-121
	)	
Amendment of Part 1 of the Commission's Rules	)	MD Docket No. 15-121
	)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2014	)	MD Docket No. 14-92
	)	

COMMENTS OF AVIATION SPECTRUM RESOURCES, INC., AIRLINES FOR AMERICA, AIRCRAFT OWNERS AND PILOTS ASSOCIATION), DELTA AIRLINES, HARRIS CORPORATION, ROCKWELL-COLLINS INFORMATION MANAGEMENT SERVICES, SOUTHWEST AIRLINES CO., THE BOEING COMPANY, AND SITA ONAIR

I. INTRODUCTION AND SUMMARY

Aviation Spectrum Resources, Inc. ("ASRI"), Airlines for America ("A4A"), Aircraft Owners and Pilots Association ("AOPA"), Delta Airlines, Harris Corporation, Rockwell-Collins Information Management Services ("Rockwell-Collins IMS"), Southwest Airlines Co., The Boeing Company ("Boeing"), and SITA OnAir hereby submit comments in response to the Federal Communications Commission's ("Commission") Notice of Proposed Rulemaking ("NPRM") in the above-reference proceeding.[1] The NPRM seeks input on the collection of regulatory fees in Fiscal Year ("FY") 2015. Once again, it appears that aviation ground licensees are targeted for an unjustified and disproportionate increase in their regulatory fees. Moreover, as was the case in FY2014, the proposed fee increase appears to lack any rational basis or

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[1] *Assessment and Collection of Regulatory Fees for Fiscal Year 2015*, Notice of Proposed Rulemaking, Report and Order, and Order, MD Docket Nos. 15-121 and 14-92 (May 21, 2015) ("*NPRM*").

supporting data. Rather than "ensuring a more equitable distribution of the regulatory fee burden,"[2] the NPRM's proposals would unfairly over-recover from aviation ground licensees in a manner that could adversely affect their economic well-being at a pivotal moment for the industry—namely, just as the industry is poised to transition to much-needed next-generation technologies. Accordingly, ASRI, as a licensee of nearly 4,500 aeronautical enroute authorizations, A4A, AOPA, Delta Airlines, Harris Corporation, Rockwell-Collins IMS, and Southwest Airlines Co., Boeing, and SITA OnAir urge the Commission to reconsider the NPRM's proposal to again increase regulatory fees for aviation ground licensees in FY2015.

ASRI is the communications company of the U.S. air transport industry, and is owned by U.S. airlines and other airspace users. It is the principal licensee for U.S. enroute frequencies used for aeronautical operational control ("AOC")[3] and the sponsor of the Aeronautical Frequency Committee ("AFC").[4] This enables ASRI to draw on expertise and opinions from across the U.S. aviation sector, promoting the safe and efficient operation of civilian aviation radio communications systems operating within the U.S. By coordinating with the AFC, ASRI also supports the safe operation of U.S. aviation in an international environment through participation with the International Civil Aviation Organization ("ICAO"), the International Air Transport Association ("IATA"), and International Telecommunication Union Radiocommunications Sector ("ITU-R").

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[2] *NPRM* at ¶ 6.

[3] 128.825 – 132.0 MHz and 136.5 – 136.975 MHz in VHF.

[4] Membership includes: Airlines for America ("A4A"); Aircraft Owners and Pilots Association ("AOPA"); Helicopter Safety and Advisory Conference ("HSAC"); National Business Aviation Association ("NBAA"); National Air Transport Association ("NATA"); Helicopter Association International ("HAI"); and all major U.S. airlines, cargo carriers, and helicopter operators.

Airlines for America (A4A) is the principal trade association for the leading U.S. passenger and cargo airlines. A4A member carriers and their affiliates transport more than 90 percent of U.S. airline passenger and cargo traffic. A4A advocates on behalf of its members to shape crucial policies and measures that promote safety, security and a healthy U.S. airline industry. A4A works collaboratively with airlines, labor, Congress, the Administration and other groups to improve air travel for everyone and improve the competitiveness of U.S. airlines in the global economy.

AOPA is a not-for-profit individual membership organization representing nearly 400,000 members whose mission is to effectively represent the interests of its members as aircraft owners and pilots concerning the economy, safety, utility, and popularity of flight in general aviation aircraft

Delta Airlines has grown into one of the world's largest global airlines, helping more than 160 million travelers get to the places they want to go to each year. The airline and its subsidiaries operate over 5,400 flights daily and serve an extensive domestic and international network that includes 333 destinations in 64 countries on six continents.

Harris Corporation provides advanced, technology-based solutions that solve government and commercial customers' mission critical challenges. The company has approximately 23,000 employees - including 9,000 engineers and scientists - supporting customers in more than 125 countries.

Rockwell Collins is a global aviation industry leader, with its ARINC air-to-ground network depended on by airlines around the world to seamlessly deliver a true global link of voice and data communications.

Southwest Airlines Co. operates more than 3,600 flights a day, serving 94 destinations across the United States and six additional countries. With more than 47,000 Employees serving more than 100 million Customers, Southwest Airlines Co. continues to differentiate itself from other air carriers with exemplary Customer Service.

Boeing is the world's largest aerospace company and a leading manufacturer of commercial jetliners and defense, space and security systems. A top U.S. exporter, the company supports airlines and U.S. and allied government customers in 150 countries. Boeing has been the premier manufacturer of commercial jetliners for more than 40 years. Boeing employs more than 152,000 workers 49 states across the country.

SITA OnAir works with our air transport owners and members to provide technology solutions that make a difference at a community level. We innovate collaboratively, while developing and managing solutions over our extensive ground-air aviation network, both in the US and internationally.

II. THE NPRM PROPOSES A SUBSTANTIAL INCREASE IN REGULATORY FEES FOR FY2015 FOR AVIATION GROUND LICENSEES WITHOUT JUSTIFICATION, COMPOUNDING A PREVIOUS 100 PERCENT INCREASE IN FEES FOR FY2014

The proposed fee schedule in Appendix C of the NPRM sets forth the revised annual regulatory fees for FY2015.[5] Pursuant to Appendix C, aviation ground licensees will pay $35 per license annually for FY2015. Moreover, Appendix C notes that regulatory fees for aviation ground licensees are collected in advance to cover the ten-year term of the license and are submitted at the time the application is filed. Thus, aviation ground licensees will pay $350 in

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[5] *See NPRM* at Appendix C.

regulatory fees per license at the time an application is submitted—approximately a 17 percent increase from FY2014, which, in itself, was a 100 percent increase from FY2013.

Notably, the NPRM does not bother to justify or explain why or how the proposed increase in fees is warranted. To the extent there is a justification, it is shrouded in leaps of logic and disconnected math. About all that can be gleaned from the NPRM is that the proposed 17 percent increase in regulatory fees for aviation ground licensees is derived from two factors: first, the NPRM proposes to decrease the FY2015 payment units for aviation ground from 510 to 460; and second, the NPRM proposes to increase the revenue requirement from $153,000 to $162,127.[6] Neither change, however, is explained, much less justified.

Appendix D of the NPRM purportedly sets forth the sources of payment unit estimates for FY2015.[7] However, Appendix D provides little guidance to aviation ground licensees. It states only that "Aviation (Aircraft) and Marine (Ship) estimates have been adjusted to take into consideration the licensing portions of these services on a voluntary basis."[8] Not only is this irrelevant to aviation ground, it makes little sense considering that the NPRM does not propose any changes to the payment units for aviation (aircraft) from FY2014.[9]

Nor does the NPRM explain its revised revenue requirement calculation. The NPRM states only that the Commission is required to collected $339,844,000 in regulatory fees for FY2015 (notably, the same amount it was required to collect in FY2014),[10] and that regulatory

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6 *NPRM* at Appendix B.

7 *NPRM* at Appendix D.

8 *Id.*

9 *See id; Assessment and Collection of Regulatory Fees for Fiscal Year 2014*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 10767, at Appendix B (2014) ("*FY2014 Order*").

10 *NPRM* at ¶ 7.

fees "are to 'be derived by determining the full-time equivalent number of employees performing' these activities, 'adjusted to take into account factors that are reasonably related to the benefits provided to the payer of the fee by the Commission's activities."[11] From there, the NPRM does not address exactly how it allocates FTEs to determine the specific revenue requirements for each fee category. Nor does it address when or how it adjusts regulatory fees to take into account changes in the costs of regulating various services. Thus, it is impossible to discern the reasoning behind the increase in revenue requirements, making it impossible to justify or explain the proposed increase in regulatory fees.

The NPRM's proposal to increase regulatory fees in FY2015 is even more alarming considering that the Commission already doubled the regulatory fees for aviation ground licensees in FY2014.[12] Despite asserting that "it is unlikely regulatees will experience substantial increases in their regulatory fees" in FY2014,[13] the Commission increased regulatory fees for aviation ground from $15 per license in FY2013 to $30 per license in FY2014.[14] In the absence of any significant change in the Commission's regulatory activities relating to aviation ground licensees in either FY2014 or FY2015, there is no justification for the dramatic and

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[11] *Id.* at ¶ 4.

[12] *See FY2014 Order* at Appendix C.

[13] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2014*, Notice of Proposed Rulemaking, Second Further Notice of Proposed Rulemaking, and Order, 29 FCC Rcd 6417, at ¶ 34 (2014).

[14] ASRI notes that the regulatory fees for aviation ground licensees understandably increased starting in 2012 from $10 to $15 since the Commission extended license terms from five to ten years. Regulatory fees remained at $15 until 2014. *See Assessment and Collection of Regulatory Fees for Fiscal Year 2012*, Report and Order, 27 FCC Rcd 8390, Attachment B (2012); *Assessment and Collection of Regulatory Fees for Fiscal Year 2013*, Report and Order, 28 FCC Rcd 12351, Attachment B (2013).

burdensome 133 percent increase in regulatory fees for aviation ground licensees in the short span of two fiscal years.

III. THE NPRM'S PROPOSED FEES WOULD OVER-RECOVER FROM AVIATION GROUND LICENSEES

The NPRM's proposal to increase regulatory fees for aviation ground licensees from $30 in FY014 to $35 in FY2015 does not reflect an equitable distribution of the regulatory fee burden to aviation ground licensees. Section 159 of the Communications Act authorizes the Commission to assess and collect regulatory fees to recover the following regulatory activities: enforcement activities, policy and rulemaking activities, user information services, and international activities.[15] The Commission, however, performs very few of these enumerated activities for the benefit of aviation ground licensees, and it certainly has not increased its performance of any of these activities in a discernable manner in connection with aviation ground licensees since FY2014. As such, the proposed fee increase threatens to over-recover fees from aviation ground licensees.

The Commission expends minimal resources in regulating aviation ground licensees. First, the Commission rarely engages in enforcement-related activities against aviation ground licensees. In the past fifteen years, the Commission has identified few violations stemming from aviation ground licensees. In fact, the Commission's Enforcement Bureau lists only one enforcement action since 2000 pertaining to ASRI, which holds nearly 4,500 Commission licenses, as a licensee.[16] Moreover, in most enforcement actions relating to aeronautical frequencies, the Commission's enforcement activity was not directed at aviation ground

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[15] 47 U.S.C. § 159(a).

[16] *See* Federal Communications Commission, Enforcement Bureau, Orders, available at http://transition.fcc.gov/eb/Orders/2014.html.

licensees, but at others using aeronautical frequencies in violation of the Commission's rules.[17] It would be inequitable to charge such enforcement activity against licensees instead of these other interests.

Second, the Commission conducts little policy or rulemaking activities pertaining to aviation ground licensees. ASRI identifies only a handful of rulemaking activities in the aviation ground service in recent years.[18] Moreover, aviation ground licensees operate on a non-common carrier basis, meaning that they are not subject to and do not benefit from significant regulation under the Communications Act of 1934.

Third, the Commission does not maintain unique user information services for aircraft ground licensees. Records related to such licenses reflect only a tiny fraction of the records appearing in the Commission's Universal Licensing System. In addition, very little of the Commission's website addresses aviation ground issues.

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[17] *See, e.g.*, *Extended Stay America #0780, Farmington Hills, Michigan*, Citation and Order Exceeding Signal Leakage Limits in Aeronautical Bands, File No. EB-FIELDNER-14-00013355, Citation No. C01432360003 (Jun. 25, 2014). The Enforcement Bureau regularly enforces Commission rules that require that cable and non-cable multichannel video programming distributors ("MVPDs") that transmit carriers with certain characteristics within aeronautical frequency bands to comply with specific technical requirements delineated in the rules in order to avoid interference to licensed aeronautical operations.

[18] *See, e.g.*, *Review of Part 87 of the Commission's Rules Concerning the Aviation Radio Service*, Notice of Proposed Rulemaking, WT Docket No. 01-289, FCC 01-303 (Oct. 16, 2001) (proposing to consolidate, revise, and streamline the Part 87 rules governing the Aviation Radio Service); *Review of Part 87 of the Commission's Rules Concerning the Aviation Radio Service*, Third Further Notice of Proposed Rulemaking, WT Docket No. 01-289, FCC 13-2 (Jan. 8, 2013) (proposing to implement 406 MHz emergency locator transmitters under Part 87 of the Commission's rules); Amendment of the Commission's Rules Governing Certain Aviation Ground Station Equipment, WT Docket Nos. 10-61 and 09-42, RM-11503, and RM-11596, FCC 13-30 (Mar. 1, 2013) (authorizing new ground station technologies to promote aviation safety); *Potomac Aviation Technology Corporation*, Request for Interpretation or Waiver of Sections 87.71 and 87.73 of the Commission's Rules, Public Notice, WT Docket No. 09-42 (rel. May 1, 2009) (seeking comment on a request for interpretation or waiver of Sections 87.71 and 87.73).

Indeed, aviation ground licensees largely represent a self-regulating system that relieves the Commission of much of its regulatory burdens rather than benefits from them. Aviation communications have been refined over a period of more than 80 years, resulting in licensees that are sophisticated and knowledgeable entities that are well-versed in regulatory compliance issues. In addition, aviation ground licensees shoulder much of the burden for regulating FCC compliance themselves. ASRI, for example, employs three inspectors that inspect a total of over 1,000 aeronautical ground stations annually. ASRI also binds its users to comply with Commission rules through contractual agreements, while regularly interfacing with operators to provide information and operating manuals that discuss Commission compliance in detail. Against this backdrop, any increase in fees in FY2015 would only serve to unfairly over-recover regulatory fees from ASRI's users, and other aviation ground licensees.

To illustrate the extent of the likely over-recovery of fees from aviation ground licensees, ASRI alone already has filed 586 applications for its aviation ground users in FY2015. As explained above, licensees submit their regulatory fees for the full ten-year license term at the time an application is filed. Thus, based on the existing fee schedule, ASRI users alone have already paid approximately $176,000 in regulatory fees in FY2015.[19] The Commission's expected revenue from all aviation ground licensees in FY2015, however, is only $161,000.[20] Thus, the Commission already has exceeded its revenue requirement for the year—only three-quarters of the way through FY2015. Moreover, it has done so based on the regulatory fees submitted by a single licensee.

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[19] Calculated based on the Commission's current regulatory fees of $30 per aviation ground station license.

[20] *NPRM* at Appendix B.

ASRI expects to renew an additional 304 licenses in FY2015, increasing its projected total payment of regulatory fees in FY2015 to $267,000 under the existing fee schedule. Moreover, in addition to ASRI's already-significant payments, the Commission also has—and will continue to—generate additional revenue from new license applications and from other renewal applications filed by other licensees. Available records indicate, for example, that approximately 668 aviation ground licenses already have been licensed or renewed in FY2015, and an additional 110 are expected to be renewed, by licensees other than ASRI.[21] In fact, based on the current and expected renewal applications from ASRI and other aviation ground licensees—specifically, renewal applications for approximately 1,668 licenses[22]—the Commission will generate total revenues of $500,400 for aviation ground services—more than three times its estimated revenue requirement for FY2015.[23] Notably, the Commission will generate these revenues without the NPRM's proposed 17 percent increase in regulatory fees for FY2015.

Taking into account the expected total number of aviation ground licenses that will expire in FY2015, combined with the Commission's budgetary target of $161,000, ASRI understandably is confused as to the Commission's logic behind both the proposed 17 percent increase for FY2015 and the previous 100 percent increase for FY2014. A simple calculation would suggest that, estimating 1,668 license applications and renewals, a regulatory fee of $10

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[21] Federal Communications Commission, Universal Licensing System (accessed June 10, 2015) (searching all aviation ground licenses granted between October 1, 2014 and June 10, 2015). ASRI, based on its experience as a licensee of aviation ground systems, expects that aviation ground licenses due to expire will be renewed.

[22] Totals for non-ASRI license totals exclude estimated aviation ground licenses expected to be exempt from the regulatory fee, such as to 501(c) Corporation status, or as a federal/state entity.

[23] This figure does not account for any new license applications filed in FY2015.

for would allow the Commission to reach its revenue requirement. Unsurprisingly, this amount is not far from the original $15 regulatory fee for aviation ground licensees before the Commission implemented an unwarranted and burdensome increase in FY2014.

IV. IF ADOPTED, THE PROPOSED FEES FOR FY2015 COULD SEVERELY IMPACT THE ECONOMIC WELL-BEING OF AVIATION GROUND LICENSEES

Aviation ground licensees already are reeling from an unexpected 100 percent increase in their regulatory fees for FY2014, and a further increase in FY2015 will compound the effect of the Commission's fee increases on the economic wellbeing of these licensees. If adopted, the NPRM's proposals will require licensees to make unexpected and up-front payments to renew licenses that are expiring in the next few years.[24] Such payments represent a significant and unexpected financial burden that could detract from the ability of licensees to transition to much-needed next-generation technologies.

Specifically, civil aviation now is transitioning to VHF Digital Link Mode 2 ("VDLM2"), a digital, air/ground and ground/air datalink technology that combines digital AOC and air traffic control ("ATC"). VDLM2 is the cornerstone of next-generation systems that are replacing voice communications for ATC and AOC messages globally, such as the Federal Aviation Administration's ("FAA") NextGen program. Both the U.S. and international aviation already have invested hundreds of millions of dollars developing and implementing VDLM2 for

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[24] As stated above, ASRI expects to file renewal applications for 869 of its licenses in FY2015. ASRI further expects to file 801 renewal applications in FY2016, 732 renewal applications in FY2017, and 739 renewal applications in FY2018. If adopted, the NPRM's proposals will require ASRI to submit to the Commission significantly higher regulatory fees over the next few years than it has been required to pay in the past. Moreover, ASRI will not be alone in being financially burdened by the new rules. Available records indicate that an additional 778 non-ASRI aviation ground licensees are estimated to be renewed by the end of FY2015, 1,527 licenses in FY2016, 1,314 licensees in FY2017, and 1,160 in FY2018. Furthermore, these totals do not include any new license applications over the projected 3 years.

worldwide operation. Unexpected and burdensome regulatory fees from the Commission at this pivotal moment could economically affect or otherwise interfere with the industry's efforts to transition to this next-generation technology, which is vital to safety of life and property.

V. CONCLUSION

The Commission should reassess the NPRM's proposed regulatory fee for aviation ground licenses for FY 2015. After already doubling regulatory fees for aviation ground licensees in FY2014, there is no justification for further increasing fees another 17 percent in FY2015. In fact, there is even a case for reducing regulatory fees for aviation ground licensees given the clear imbalance between the expected number of applications in FY2015 and the Commission's stated revenue requirement. If adopted, the NPRM's proposals would amount to a 133 percent increase in fees on aviation ground licensees in the short span of two fiscal years. Not only would such fees grossly over-recover regulatory fees from aviation ground licensees, they would negatively affect the ability of the industry to invest in and transition to next-generation systems.

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