

**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

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Dated: June 19, 2013

SUMMARY

The Satellite Industry Association (“SIA”) strongly endorses the Commission’s proposals to set regulatory fees using updated data and a more accurate assignment of full time equivalent employees (“FTEs”) based on the tasks they perform. The underlying statute requires that regulatory fees be based on benefits to the fee payer, and the changes set forth in the Notice will move the Commission closer to achieving that objective.

First, the Commission should adopt its proposal to include only International Bureau FTEs whose work focuses on satellite regulation and undersea cables when calculating the direct costs for International Bureau licensees. The Notice properly recognizes that International Bureau personnel in the Strategic Analysis and Negotiations Division and Policy Division have broad responsibilities benefiting a range of Commission licensees. Consistent with the statutory mandate, these FTE costs must be spread across regulatory fee categories, not imposed solely on industries regulated by other personnel within the International Bureau. Because the Commission has already performed the necessary analysis to determine which International Bureau FTEs are properly assigned to International Bureau licensees, this change should be implemented immediately for Fiscal Year 2013.

The Commission should also take additional steps to assign direct and indirect costs in a manner that more accurately reflects benefits to the fee payer. As SIA has repeatedly shown, there are divisions of the Enforcement Bureau and personnel in other offices outside the core licensing bureaus whose work is focused on a specific subset of Commission licensees and whose costs should be recovered from those licensees. Satellite licensees should not be forced to pay for personnel who handle only slamming complaints, pole attachment disputes, or indecency matters – these costs should be assigned directly to the relevant industries.

Indirect costs must also be allocated more fairly. To the extent possible, the Commission should assign costs of a support division among regulatory fee payers based on a functional analysis. For example, the costs of the Commissioners' offices could be divided among the core licensing bureaus by using the docket numbers to determine the proportion of Commission-level decisions generated by each of the core bureaus. To the extent that it is not feasible to divide costs of a support bureau based on objective data, the Commission should use the direct cost percentage to assign indirect costs, as it does today. However, SIA urges the Commission to include FTEs funded by auctions in determining this percentage. This will ensure that support costs generated by auction proceedings are allocated properly.

The Commission should not modify the way it assesses regulatory fees on satellite network operators. The current license-based assessment adopted by Congress is predictable and easy to administer and enforce. In contrast, changing to a revenue-based assessment would introduce significant complications and make it more difficult to accurately predict the fee factor necessary to collect the required fee amount. In addition, this change would conflict with the statutory requirements to set fees based on costs and to change the fee structure only in response to changes in the underlying regulatory structure.

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The Satellite Industry Association (“SIA”) pursuant to Sections 1.415 and 1.419 of the Commission’s Rules (47 C.F.R. §§ 1.415 & 1.419), hereby comments on the above-captioned Notice of Proposed Rulemaking (the “Notice”).¹ The Notice seeks input on establishing regulatory fees for Fiscal Year 2013 as well as on broader proposals to reform the Commission’s regulatory fee framework, building on issues raised in prior phases of this proceeding.²

SIA is a U.S.-based trade association providing worldwide representation of the leading satellite operators, service providers, manufacturers, launch services providers, and ground equipment suppliers. Since its creation more than eighteen years ago, SIA has advocated

¹ *Assessment and Collection of Regulatory Fees for Fiscal Year 2013, Procedures for Assessment and Collection of Regulatory Fees, and Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, MD Docket Nos. 13-140, 12-201 & 08-65, FCC 13-74 (rel. May 23, 2013).

² *See Procedures for Assessment and Collection of Regulatory Fees and Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Notice of Proposed Rulemaking, MD Docket Nos. 12-201 & 08-65, 27 FCC Rcd 8458 (2012) (“2012 Notice”); *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6388 (2008) (“2008 FNPRM”).

for the unified voice of the U.S. satellite industry on policy, regulatory, and legislative issues affecting the satellite business.³

SIA has participated actively at every stage of this proceeding because the level of regulatory fees for satellite network facilities has a significant impact on the industry's ability to continue to offer cost-effective services to customers.⁴ In our comments here, we emphasize again the need to link regulatory fee assessments to cost causation as required by the Communications Act.

I. INTRODUCTION

The statute that established the regulatory fee framework requires the Commission to allocate the costs of personnel among categories of fee payers based on “the benefits provided to the payer of the fee by the Commission’s activities.”⁵ SIA has long been concerned that the high regulatory fees for satellite network operators do not meet this standard, given the low and decreasing regulatory burdens associated with Commission oversight of the

³ SIA Executive Members include: Artel, LLC; The Boeing Company; The DIRECTV Group; EchoStar Satellite Services LLC; Harris CapRock Communications; Hughes Network Systems, LLC; Intelsat S.A.; Iridium Communications Inc.; Kratos Defense & Security Solutions; LightSquared; Lockheed Martin Corporation.; Northrop Grumman Corporation; Rockwell Collins Government Systems; SES Americom, Inc.; and SSL. SIA Associate Members include: AIS Engineering, Inc.; Astrium Services Government, Inc.; ATK Inc.; Cisco; Cobham SATCOM Land Systems; Comtech EF Data Corp.; DRS Technologies, Inc.; Encompass Government Solutions; Eutelsat, Inc.; Globecom Systems, Inc.; Glowlink Communications Technology, Inc.; Inmarsat, Inc.; ITT Exelis; Marshall Communications Corporation.; MTN Government Services; NewSat America, Inc.; O3b Networks; Orbital Sciences Corporation; Panasonic Avionics Corporation; Spacecom, Ltd.; Row 44; Spacenet Inc.; TeleCommunication Systems, Inc.; Telesat Canada; The SI Organization, Inc.; TrustComm, Inc.; Ultisat, Inc.; ViaSat, Inc., and XTAR, LLC. Additional information about SIA can be found at www.sia.org.

⁴ See Comments of the Satellite Industry Association, MD Docket Nos. 12-201 & 08-65, filed Sept. 17, 2012 (“SIA 2012 Comments”); Reply Comments of the Satellite Industry Association, MD Docket Nos. 12-201 & 08-65, filed Oct. 23, 2012 (“SIA 2012 Reply Comments”); Reply Comments of the Satellite Industry Association, MD Docket No. 08-65, RM-11312, filed Oct. 27, 2008 (“SIA 2008 Reply Comments”).

⁵ 47 U.S.C. § 159(b)(1)(A).

satellite industry.⁶ Since the Commission abandoned the detailed cost allocation methodology it developed and applied in the late 1990's, regulatory fees have been based on data regarding full time equivalent employees ("FTEs") compiled in Fiscal Year 1998.⁷ Regulatory fees have not been adjusted to reflect the significant developments in the industry and Commission activities over the past decade and a half, including the exponential growth in the mobile wireless industry.⁸ The lack of transparency in the Commission's process for setting regulatory fees has impaired SIA's ability to explore these issues.⁹

The current Notice proposes to update the FTE counts used in assessment of regulatory fees to reflect current Commission personnel counts among the four bureaus with primary licensing responsibility: the International, Media, Wireless Telecommunications, and Wireline Competition Bureaus.¹⁰ Importantly, however, the Commission expressly recognizes that fees cannot be set based on that raw numerical data alone. Instead, the Commission states that its methodology "of using the direct and indirect FTEs based on the four core bureaus and supporting bureaus and offices should be revised to more accurately reflect the direct and indirect costs for those regulatees."¹¹ In particular, the Notice proposes to exclude certain International Bureau FTEs from the direct cost assignment for entities regulated by that bureau to

⁶ See, e.g., SIA 2008 Reply Comments at 2-4; SIA 2012 Comments at 3-4 & 6-12.

⁷ 2012 Notice at ¶ 8.

⁸ *Id.* at ¶ 1.

⁹ The Government Accountability Office has highlighted this issue, observing that the "limited nature of the information" the Commission has published on the regulatory fee process "has made it difficult for industry and other stakeholders to understand and provide input on fee assessments." U.S. Government Accountability Office, *Federal Communications Commission, Regulatory Fee Process Needs to Be Updated*, GAO-12-686 (August 2012) ("GAO Report"), Highlights Section.

¹⁰ Notice at ¶ 7. These are referred to as the "core" licensing bureaus.

¹¹ *Id.* at ¶ 16.

reflect the fact that those personnel perform tasks that benefit a broad range of Commission entities.¹²

SIA strongly supports this proposal and urges the Commission to implement this approach for Fiscal Year 2013 and beyond. Basing the allocation of direct costs for entities regulated by the International Bureau on an analysis of cost causation is consistent with the statutory mandate and with the other regulatory fee goals identified by the Commission.¹³

The Commission should also take other critical steps to more closely align regulatory fee allocations to underlying costs. Specifically, the Commission should assign as direct costs FTEs for personnel who work outside the core licensing bureaus but have responsibilities that are limited to a subset of regulated entities. In addition, the Commission should implement improvements in the allocation of indirect costs among fee categories. Finally, satellite industry regulatory fees should continue to be assessed based on licenses, not on revenues.

II. THE COMMISSION SHOULD ADOPT ITS PROPOSAL TO ALLOCATE INTERNATIONAL BUREAU FTEs BASED ON FUNCTION

The Notice properly acknowledges that treating the International Bureau as a whole as a “core licensing bureau” and assigning all its FTEs to entities regulated by the bureau would be fundamentally unfair, contrary to the requirements of the statute, and could have significant adverse economic consequences.¹⁴ Instead, the Commission proposes to consider only the FTEs of the Satellite Division and the personnel responsible for regulating submarine

¹² *Id.* at ¶ 19.

¹³ *See* 2012 Notice at ¶ 3 (proposing that the goals of fairness, administrability and sustainability should guide the Commission’s regulatory fee decisions).

¹⁴ Notice at ¶¶ 15-28.

cable operations in calculating the percentage of direct costs to be borne by entities regulated by the International Bureau.¹⁵

This approach is fully supported by both the facts and the law. Allocating all the International Bureau FTEs to satellite and undersea cable licensees and providers of international bearer circuits would have produced more than a tripling of the regulatory fees for these entities.¹⁶ Such an outcome cannot possibly be reconciled with the reality that ongoing streamlining over the past fifteen years has significantly reduced the expenditure of Commission resources for satellite regulation.¹⁷ Much of the work that remains involves application processing, and space station operators already pay substantial fees to cover these costs.¹⁸ Thus, it is clear that the share of FTEs associated with regulation of satellite entities has been shrinking, not growing – and certainly not tripling.

SIA and others have previously demonstrated the reason for this disconnect between the size of the International Bureau and the resources associated with regulation of international licensees: most of the personnel in the International Bureau have broad responsibilities that go beyond oversight of international licensees. In particular, we showed that both the International Bureau’s Strategic Analysis and Negotiations Division (“SAND”) and its

¹⁵ *Id.* at ¶ 28.

¹⁶ *Id.* at ¶ 17 (noting that International Bureau regulatory fee payers account for 6.3% of the total regulatory fees, but that the International Bureau FTEs are 22 percent of the FTEs for the core licensing bureaus).

¹⁷ SIA 2012 Comments at 7-12.

¹⁸ *Id.* at 22 (application fees are \$120,005 for a geostationary satellite and \$413,295 for a nongeostationary satellite system, by far the highest fees paid by license applicants).

Policy Division are involved in a wide range of activities that directly benefit licensees of other core bureaus.¹⁹

The Notice expressly confirms these points. The Commission observes that SAND, the largest division in the International Bureau, “is not significantly involved in regulation or oversight of International Bureau regulatees.”²⁰ To the contrary, SAND has responsibility “for intergovernmental and regional leadership, negotiating, and planning – processes that benefit offices and bureaus throughout the Commission.”²¹ SAND’s activities include participation in international forums on behalf of all telecommunications services, cross-border coordination of terrestrial wireless services, and analysis of international regulation and economic trends.²² Given the broad scope of SAND’s activities that benefit all licensees, the Notice proposes “excluding the SAND FTEs from the International Bureau for regulatory fee purposes and instead allocating them as indirect FTEs.”²³

The Commission finds that the work of the International Bureau’s Policy Division is similarly “multifaceted.”²⁴ Its duties include international spectrum rulemakings, foreign ownership review, coordinating with other U.S. agencies on national security and other issues

¹⁹ See SIA 2012 Reply Comments at 8-9; SIA 2012 Comments at 13-14; SIA 2008 Reply Comments at 6. See also Comments of América Móvil, S.A.B. de C.V., MD Docket Nos. 12-201 & 08-65, filed Sept. 17, 2012 at 3-4 (“the Commission must recognize that a significant number of the International Bureau’s FTEs are engaged in activities that benefit licensees regulated by other Bureaus”); Comments of the Global VSAT Forum, MD Docket Nos. 12-201 & 08-65, filed Sept. 17, 2012 at 6-7 (both the Strategic Analysis and Negotiations Division – SAND – and the Policy Division of the International Bureau have responsibilities that benefit wireless, wireline, and broadcast providers).

²⁰ Notice at ¶ 21.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.* at ¶ 24.

relating to mergers and other license applications, and efforts to protect international telecommunications and promote lower international calling rates for U.S. consumers.²⁵ The Commission expressly recognizes that “[m]any of these functions involve wireless and wireline issues and therefore benefit regulatees in other Bureaus.”²⁶ Based on its analysis of the Policy Division’s role, the Commission proposes to allocate most of its FTEs as indirect costs as well.²⁷

As discussed above, the regulatory fees statute requires the Commission to set fees in a way that considers “factors that are reasonably related to the benefits provided to the payer of the fee by the Commission’s activities.”²⁸ Because the Notice finds that all industries regulated by the Commission benefit from the work of SAND and the International Bureau’s Policy Division, the simplified approach of considering the International Bureau as a whole as a core licensing bureau for purposes of assigning direct costs would contravene this statutory requirement. Instead,

fairness warrants an allocation that more closely reflects the appropriate proportion of direct costs required for regulation and oversight of International Bureau regulatees. Under such an analysis, the regulatory fee allocation of these regulatees should be decreased, rather than significantly increased²⁹

²⁵ *Id.*

²⁶ *Id.*, citing SIA 2012 Comments at 14.

²⁷ See Notice at ¶ 28.

²⁸ 47 U.S.C. § 159(b)(1)(A).

²⁹ Notice at ¶ 18.

Assigning all International Bureau FTEs solely to entities regulated by the International Bureau could be justified only if all International Bureau personnel ceased their activities on behalf of non-International Bureau licensees.³⁰

The analysis in the Notice effectively disposes of any argument against a functional approach to allocation of International Bureau FTEs. In the previous phase of this proceeding, the main contention of those supporting assignment of all International Bureau FTEs to the licensees of that bureau was that it would be too difficult to perform a more detailed analysis of staff responsibilities.³¹ As SIA has observed, this rationalization cannot be squared with the Commission's legal duty – the Commission cannot sacrifice accuracy and adherence to the statutory requirements in the interests of making administration of regulatory fees somewhat easier.³²

In any event, however, the Notice demonstrates that the predictions regarding the difficulty of assigning International Bureau FTEs based on a functional analysis were simply wrong. The Commission sets forth in the Notice a straightforward calculation of the number of International Bureau FTEs that are attributable to international licensees.³³ This calculation can easily be replicated in future years in order to reflect changes in the levels of Commission staffing over time.

³⁰ Thus, for example, the Bureau's international efforts relating to spectrum would need to be exclusively focused on satellite services, instead of licensed and unlicensed terrestrial wireless services.

³¹ *See, e.g.*, Comments of the United States Telecom Association, MD Docket Nos. 12-201 & 08-65, filed Sept. 17, 2012 at 5-6; Comments of Verizon and Verizon Wireless, MD Docket Nos. 12-201 & 08-65, filed Sept. 17, 2012 at 4.

³² SIA 2012 Reply Comments at 6.

³³ *See* Notice at ¶¶ 23 & 27.

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.³⁴ 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.³⁵

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."³⁶ Accordingly, the Commission seeks comment on whether the work of some personnel who are categorized as

³⁴ *Id.* at ¶ 32.

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

³⁶ *Id.* at ¶ 29.

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

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.³⁸ For example, the Enforcement Bureau has divisions whose work is focused on specific industries, including the Market Disputes Resolution Division³⁹ and the Telecommunications Consumers Division.⁴⁰ 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.⁴¹ 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."⁴² 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

³⁷ *Id.*

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

³⁹ 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).

⁴⁰ 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).

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

⁴² *Id.*

information are among the Commission functions whose costs Congress specified should be collected through regulatory fees.⁴³ 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.⁴⁴ Fair

⁴³ 47 U.S.C. § 159(a)(1).

⁴⁴ 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,⁴⁵ 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.⁴⁶ 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.⁴⁷ 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

⁴⁵ *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.

⁴⁶ *See* SIA 2012 Comments at 19-21; SIA 2008 Reply Comments at 3.

⁴⁷ *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 auctions⁴⁸ 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

⁴⁸ Notice at n.12.

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

Whatever the validity of this rationale for excluding the auction FTEs from the Commission's calculations to determine direct costs,⁵⁰ 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.⁵¹ However, by excluding FTEs funded by auctions in determining this proportion, the Commission significantly understates the actual size of the Wireless Telecommunications Bureau.⁵² This

⁴⁹ *See id.*

⁵⁰ 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.

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

⁵² 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.⁵³ 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,⁵⁴ 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

⁵³ Notice at ¶ 33.

⁵⁴ 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").

“to reflect additions, deletions, or changes” to the services regulated by the Commission based on Commission rulemaking proceedings or changes in law.⁵⁵ There have been no such “additions, deletions, or changes” to regulated satellite services that would warrant a shift to revenue-based fees.

Furthermore, setting satellite industry regulatory fees based on licenses is preferable for practical reasons. This approach is predictable and easy to administer and enforce. The Commission’s database contains complete and current information regarding the number of licensed satellites and earth stations in service. As a result, calculating the per license fees needed to collect the required annual amount is clear-cut, and it is similarly easy to identify and pursue parties who have not submitted the required payments.

In contrast, setting fees based on revenues would require the Commission to develop a formula for determining what revenues are subject to the fee assessment. Unlike most other Commission licensees, satellites have multinational coverage, so the Commission would be required to determine how to treat revenue from foreign sources. Because the Commission does not have independent data on satellite industry revenues, accurately predicting the regulatory fee percentages needed to obtain the required amounts would be difficult, if not impossible. As a result, the Commission could find that the amount collected differs significantly from the target total.

Thus, continuing to use licenses to assess satellite industry regulatory fees is straightforward and supported by the statute, while shifting to a revenue-based assessment would introduce significant and unwarranted complications with no corresponding benefits. Under

⁵⁵ 47 U.S.C. § 159(b)(3).

these circumstances, departing from the policy decision Congress made to use license-based fees for satellite industry members cannot be justified.

VI. CONCLUSION

For the foregoing reasons and those presented in its prior pleadings, SIA urges the Commission to adopt its proposal to include only a fraction of International Bureau FTEs in setting satellite industry regulatory fees. In addition, the Commission should make every effort to minimize indirect costs by assigning FTEs outside the core bureaus as direct costs and to fairly allocate the remaining support bureau FTEs. The Commission should continue to collect satellite industry regulatory fees on a per-license basis.

Respectfully submitted,

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