

**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
)	

REPLY COMMENTS OF THE SATELLITE INDUSTRY ASSOCIATION

The Satellite Industry Association (“SIA”) hereby submits its reply to the comments of other parties in response to the above-captioned Notice of Proposed Rulemaking (the “Notice”).¹ SIA urges the Commission to take immediate steps to reform the regulatory fee structure to reflect current data and more closely align satellite industry fees with the costs and benefits of Commission regulatory activity.

I. THE RECORD SUPPORTS THE COMMISSION’S PROPOSED ALLOCATION OF INTERNATIONAL BUREAU FTEs

As shown in the SIA Comments, the Commission’s proposal to assign an appropriately justified portion of International Bureau (“IB”) full time equivalent employees (“FTEs”) to entities regulated by that bureau is fully justified by the facts and required by the underlying statute.² The Satellite Division is the only IB segment whose work focuses on

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 Comments of the Satellite Industry Association, MD Docket Nos. 13-140, 12-201 & 08-65, filed June 19, 2013 (“SIA Comments”) at 4-9.

regulation of the satellite industry, whereas both the IB’s Strategic Analysis and Negotiations Division (“SAND”) and its Policy Division perform tasks that benefit a broad range of Commission licensees.³ Given these fundamental facts, which are confirmed in the Notice,⁴ the Commission’s proposal to consider only a portion of the International Bureau as a “core licensing bureau” for purposes of fee allocation is reasonable and the only outcome consistent with the statute.⁵

Other commenters agree that this approach is supported by the evidence and required by law.⁶ For example, EchoStar and DISH emphasize that in contrast to other bureaus, “the International Bureau was never intended to and does not regulate only a specified group of Commission licensees.”⁷ Instead, “its responsibilities extend broadly to areas of policy and international negotiation that impact all FCC-regulated entities.”⁸

³ *Id.* at 5-8.

⁴ Notice at ¶¶ 15-28.

⁵ *Id.* at ¶ 18 (International Bureau FTEs must be allocated in a way “that more closely reflects the appropriate proportion of direct costs required for regulation and oversight of International Bureau regulatees,” resulting in a decreased fee allocation).

⁶ *See* Comments of EchoStar Satellite Operating Company, Hughes Network Systems, LLC, and DISH Network L.L.C., MD Docket Nos. 13-140, 12-201 & 08-65, filed June 19, 2013 (“EchoStar and DISH Comments”) at 5-7; Comments of Intelsat License LLC, MD Docket Nos. 13-140, 12-201 & 08-65, filed June 19, 2013 (“Intelsat Comments”) at 2-3; Joint Comments of the International Carrier Coalition, MD Docket Nos. 13-140, 12-201 & 08-65, filed June 19, 2013 (“International Carrier Coalition Comments”) at 2-3; Comments of the North American Submarine Cable Association, MD Docket Nos. 13-140, 12-201 & 08-65, filed June 20, 2013 (“NASCA Comments”) at 3-5; Comments of SES Americom, Inc., Inmarsat, Inc., and Telesat Canada, MD Docket Nos. 13-140, 12-201 & 08-65, filed June 19, 2013 (the “Joint Satellite Comments”) at 1-2.

⁷ EchoStar and DISH Comments at 6.

⁸ *Id.* at 7.

The few parties that challenge the straightforward proposal in the Notice to assign International Bureau FTEs based on function⁹ fail to justify their claims that International Bureau licensees should be solely responsible for the costs of personnel whose work benefits a wide variety of regulated entities. USTelecom, for example, accuses the Commission of “cherry-picking certain divisions from within the International Bureau and totally excluding them for regulatory fee purposes.”¹⁰ USTelecom completely ignores the specific evidence cited in the Notice establishing the reasoned basis for the exclusion of these FTEs:

the International Bureau’s work has expanded beyond its regulation of international licensees. It also has unique duties to assist bureaus and their regulatees throughout the Commission, and represent the Commission on a variety of international issues affecting those regulatees. In discharging these duties, the International Bureau works on matters including but not limited to spectrum use, cross-border coordination, broadband deployment, and foreign ownership. At the same time, International Bureau licensees have required less Commission oversight and regulation. Thus, the International Bureau now serves the entire Commission’s international needs, not just the specific requirements of the International Bureau regulatees.¹¹

Thus, far from “cherry-picking,” the Commission’s proposed allocation of IB FTEs is directly driven by the cost and benefit factors specified in the Communications Act.

USTelecom suggests that the Commission return to its 2012 proposal to reallocate only half of IB FTEs based on estimates by the bureau’s management regarding staff

⁹ See Comments of CTIA – The Wireless Association®, MD Docket Nos. 13-140, 12-201 & 08-65, filed June 19, 2013 (“CTIA Comments”) at 10-11; Comments of the National Association of Broadcasters, MD Docket Nos. 13-140, 12-201 & 08-65, filed June 19, 2013 (“NAB Comments”) at 3-5; Comments of the United States Telecom Association, MD Docket Nos. 13-140, 12-201 & 08-65, filed June 19, 2013 (“USTelecom Comments”) at 6-7.

¹⁰ USTelecom Comments at 7.

¹¹ Notice at ¶ 19.

workloads.¹² In its comments last year, USTelecom attacked that very proposal, claiming that it was subjective¹³ and “unsupported by data.”¹⁴ Now that the Commission has performed a detailed, objective analysis of the tasks performed by IB personnel¹⁵ that resulted in a lower allocation of FTEs to IB-regulated entities than was previously proposed, USTelecom is reversing course because it doesn’t like the outcome of that analysis. USTelecom cannot have it both ways, and the Commission should proceed with its proposed allocation of IB FTEs based on the undisputed facts set forth in the Notice.¹⁶

CTIA’s opposition to the Commission’s intended assignment of IB FTEs is similarly flawed. CTIA claims that the Commission “fails to provide a governing standard” in favor of its proposal to reduce the allocation of direct IB FTEs.¹⁷ But the basis for the Commission’s proposal is very clear – the FTE allocation reflects a functional analysis of the duties and responsibility of IB personnel.¹⁸ As a result, the proposal complies fully with the

¹² USTelecom Comments at 6-7, *citing 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”) at ¶ 25.

¹³ Comments of the United States Telecom Association, MD Docket Nos. 12-201 & 08-65, filed Sept. 17, 2012 at 5.

¹⁴ Reply Comments of the United States Telecom Association, MD Docket Nos. 12-201 & 08-65, filed Oct. 23, 2012 at 5.

¹⁵ Notice at ¶¶ 20-28.

¹⁶ For the same reasons, the Commission should reject NAB’s request that the Commission temporarily defer the implementation of the reallocation of International Bureau FTEs. *See* NAB Comments at 6-7. Like USTelecom, NAB makes no substantive challenge to the underlying factual justification for the proposed assignment of FTEs set forth in the Notice and therefore presents no persuasive reason for delaying the effectiveness of that assignment.

¹⁷ CTIA Comments at 11.

¹⁸ *See* Notice at ¶¶ 20-28.

Commission's statutory obligation 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."¹⁹

Some submarine cable operators suggest that the Commission should go beyond the reallocation of IB FTEs to consider shifting fee levels among the groups of fee payers within the International Bureau.²⁰ SIA agrees that, as with the distribution of FTEs among the core licensing bureaus, updating fee allocations within the IB and other core licensing bureaus is also needed. For example, commenters have asked whether the relative shares of the regulatory fee burden assigned to satellite space stations and earth stations fairly and accurately reflect current staff workloads.²¹ SIA supports comprehensive review of this issue, but it requires development and analysis of cost data that are not in the record here. Accordingly, the Commission should explore internal bureau reallocations in a future regulatory fee proceeding.

II. THE COMMISSION MUST ACCURATELY ASSIGN FTEs FOR PERSONNEL OUTSIDE THE CORE LICENSING BUREAUS

The SIA Comments describe additional Commission actions needed to ensure that both direct and indirect costs are fairly apportioned.²² First, the Commission should assign as direct costs FTEs for personnel outside the core licensing bureaus whose work focuses on a limited subset of regulatory fee payers, such as individuals that handle slamming complaints,

¹⁹ 47 U.S.C. § 159(b)(1)(A).

²⁰ NASCA Comments at 8-9; Comments of Telstra Incorporated and Australia-Japan Cable (Guam) Limited, MD Docket Nos. 13-140, 12-201 & 08-65, filed June 19, 2013 ("Telstra Comments") at 2-3.

²¹ See Reply Comments of Intelsat License LLC, MD Docket Nos. 12-201 & 08-65, filed Oct. 23, 2012 at 4-5; Reply Comments of Sirius XM Radio Inc., MD Docket Nos. 12-201 & 08-65, filed Oct. 23, 2012 at 4-5. Similarly, questions have been raised regarding fee allocations within the Media Bureau. See Comments of Sarkes Tarzian, Inc., and Sky Television, L.L.C., MD Docket Nos. 13-140, 12-201 & 08-65, filed June 19, 2013 at 3 (challenging the differential between digital VHF and digital UHF stations).

²² SIA Comments at 9-16.

pole attachment disputes, and obscenity or indecency allegations.²³ EchoStar and DISH support this effort, concurring that Commission “personnel should be attributed as direct costs when concentrations of FTEs can be identified as predominantly serving regulatory functions related to specific categories of fee payors.”²⁴

Once such allocations to direct costs are made, the Commission must address the assignment of the significant number of remaining FTEs to be treated as overhead and spread among all fee categories.²⁵ SIA’s comments propose using objective workload metrics wherever possible to assign support bureau FTEs among categories of fee payers.²⁶ If such measures are not feasible for a given bureau or office, SIA agrees that it is appropriate to use the direct cost proportions as a proxy.²⁷ However, the SIA comments demonstrate that FTEs funded by auctions should not be excluded from the core licensing bureau totals used to determine these proportions.²⁸

The Commission should immediately implement these modest steps. NASCA characterizes as “premature” any reallocation of indirect FTEs as direct costs,²⁹ but does not provide a reasoned explanation for its opposition. Instead, NASCA acknowledges that the underlying statute requires the Commission to set regulatory fees using data regarding personnel

²³ *Id.* at 9-11 (describing the limited scope of the activities of the Enforcement Bureau’s Market Disputes Resolution and Telecommunications Consumers Divisions and the personnel within the Enforcement and Consumer and Governmental Affairs Bureaus who handle matters involving obscenity, indecency and profanity).

²⁴ EchoStar and DISH Comments at 7.

²⁵ *See* SIA Comments at 12 & n.45 (noting that there is a roughly two-to-one ratio of indirect to direct FTEs).

²⁶ *Id.* at 12-13 (suggesting, for example, that FTEs for the Commissioners and staff be assigned based on the proportion of dockets from each core licensing bureau decided by the Commission).

²⁷ *Id.* at 13.

²⁸ *Id.* at 13-17.

²⁹ NASCA Comments at 12.

within both the core licensing bureaus and “other offices of the Commission,”³⁰ and emphasizes that the Commission should “rely on actual FTE data and bureau input for any further changes” to the regulatory fee structure.³¹ This is exactly what SIA is proposing – the use of concrete, objective data regarding the tasks of personnel outside the core licensing bureaus whose work focuses on specific groups of fee payers. Thus, SIA’s proposals for further reform conform to the statute and satisfy NASCA’s insistence on using hard data to support regulatory fee changes.

CTIA discusses the Commission revenues associated with auctions,³² but the data presented by CTIA reinforce SIA’s showing that entities regulated by the Wireless Telecommunications Bureau (“WTB”) are not paying their fair share of the Commission’s overhead. Specifically, CTIA’s information confirms that of the 194 auction-funded FTEs identified in the Notice, the majority (122) work for the Wireless Telecommunications Bureau.³³ Auction funds are supposed to cover “a proportional share of the general administrative costs of the Commission.”³⁴ However, as discussed above, the ratio of indirect to direct costs for regulatory fee purposes is roughly two-to-one. If auction funds are paying for only 194 total FTEs, they clearly are not covering all the indirect FTEs associated with the 122 WTB personnel who are being excluded from the Commission’s regulatory fee calculations. To correct this misallocation, the actual FTEs of each “core licensing bureau” as defined by the Commission, including the full 220 FTEs in the WTB, should be used to determine the ratios for allocation of overhead costs to regulatory fee payers.

³⁰ *Id.* at 13, quoting 47 U.S.C. § 159(b)(1)(A).

³¹ NASCA Comments at 13.

³² CTIA Comments at 2-6.

³³ *Id.* at 4 n.8 (based on Commission data, CTIA assumes that 122 of the 194 auction-funded FTEs are WTB employees).

³⁴ *Id.* at 3 n.7, quoting *Federal Communications Commission, Fiscal Year 2014 Budget Estimates Submitted to Congress* (Apr. 2013) at 41.

III. LICENSE DATA SHOULD BE USED TO ASSESS SATELLITE REGULATORY FEES

The SIA Comments explain that assessing satellite industry regulatory fees based on revenues instead of on licenses would conflict with the statute and introduce needless complications into the fee assessment process.³⁵ Other commenters agree moving to revenue-based fee assessment is not authorized by the statute or justified by the facts.³⁶ EchoStar and DISH, for example, explain that the regulatory fee schedule adopted by Congress relied on metrics that “bear a close relationship to both the regulatory services required by the licensed entity and the benefit derived directly from the regulatory process.”³⁷ In contrast, assessment based on revenues cannot be justified under the statute and would transform the fee into a tax that is beyond the Commission’s authority to impose.³⁸ Several parties also observe that using revenues to set fees would be extremely complex given the need to determine which revenues should be included in the fee calculation.³⁹

The only party to support revenue-based fee allocation is Fireweed Communications,⁴⁰ and it fails to present any supporting rationale that passes statutory muster.

³⁵ SIA Comments at 16-18.

³⁶ See Comments of the American Cable Association, MD Docket Nos. 13-140, 12-201 & 08-65, filed June 20, 2013 (“ACA Comments”) at 8-9; Comments of DIRECTV, LLC, MD Docket Nos. 13-140, 12-201 & 08-65, filed June 19, 2013 (“DIRECTV Comments”) at 18-19; EchoStar and DISH Comments at 10-12; NASCA Comments at 13-14.

³⁷ EchoStar and DISH Comments at 10.

³⁸ *Id.* at 11.

³⁹ See, e.g., ACA Comments at 8-9; EchoStar and DISH Comments at 11-13.

⁴⁰ Comments of Fireweed Communications LLC, MD Docket Nos. 13-140, 12-201 & 08-65, filed June 21, 2013 (“Fireweed Comments”) at 3-5. CTIA opposes any shift to revenue-based assessment for wireless carriers but suggests that the Commission’s proposal to combine wireless and wireline into a new ITSP category could create a “nonsensical regulatory fee category including satellite providers that offer voice services.” CTIA Comments at 8 (emphasis added). It is clear, however, that the Notice does not propose any change that would subject satellite carriers to the ITSP fee, as there is no mention of satellite carriers in the ITSP section of the

Fireweed simply asserts that the Commission can eliminate all fee categories,⁴¹ ignoring the fact that these categories were explicitly established by Congress when it adopted the regulatory fee framework. Fireweed also claims that introducing a revenue-based fee would be “simple,”⁴² even for licensees not currently required to report revenues today. This assessment is wholly unsupported and is certainly not valid for the satellite industry – the Notice expressly recognizes that a revenue-based fee system for satellites would require the Commission to determine how to account for revenue derived from foreign sources⁴³ given the international scope of satellite networks. In short, the record before the Commission demonstrates that a change to revenue-based fees for satellite networks is not justified.

IV. THE COMMISSION SHOULD CAP ANNUAL FEE INCREASES AND SEEK REFUND AUTHORITY

SIA has previously emphasized that significant rate increases should be phased in over time to ameliorate the potential adverse impact from a flash-cut implementation.⁴⁴ We noted that these harms would be particularly serious for satellite service providers, given the high level of fees they already pay and the fact that most satellite capacity is sold through long-term

document (*see* Notice at ¶¶ 11-14). This is in contrast to the 2011 regulatory fees proceeding in which the Commission explicitly proposed such a change and then rejected it. *See Assessment and Collection of Regulatory Fees for Fiscal Year 2011*, Report and Order, MD Docket No. 11-76, 26 FCC Rcd 10812, 10816-18 (2011). Thus, the FCC’s Interstate Telephone Service Provider Worksheet should continue to exclude from its ITSP regulatory fee calculation end user revenues from satellite services reported on FCC Form 499-A, Lines 416(d) and 416 (e).

⁴¹ *Id.* at 3.

⁴² *Id.* at 4-5.

⁴³ Notice at ¶ 33.

⁴⁴ Comments of the Satellite Industry Association, MD Docket Nos. 12-201 & 08-65, filed Sept. 17, 2012 (“SIA 2012 Comments”) at 23-25; Reply Comments of the Satellite Industry Association, MD Docket Nos. 12-201 & 08-65, filed Oct. 23, 2012 (“SIA 2012 Reply Comments”) at 12-14.

leases whose terms cannot be altered to cover a fee increase.⁴⁵ The proposal in the Notice to cap fee increases is consistent with these objectives and is needed to provide a “reasonable transition” given the fee structure changes being implemented.⁴⁶ SIA joins with other parties who support such relief as part of the fee structure for Fiscal Year 2013 and beyond.⁴⁷ SIA also agrees that the Commission should seek authority to award refunds when fee receipts exceed the collection amount designated by Congress.⁴⁸

V. CONCLUSION

SIA urges the Commission to implement changes to more accurately assign FTEs and improve the regulatory fee structure consistent with the suggestions made herein and in SIA’s prior comments.

Respectfully submitted,

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⁴⁵ SIA 2012 Comments at 23-24.

⁴⁶ Notice at ¶ 30.

⁴⁷ *See, e.g.*, EchoStar and DISH Comments at 13-14; Comments of the Competitive Carrier Association, MD Docket Nos. 13-140, 12-201 & 08-65, filed June 19, 2013, at 6; NASCA Comments at 10-11.

⁴⁸ *See* SIA 2012 Reply Comments at 14; USTelecom Comments at 8.