

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

In the Matter of)	
)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2014)	MD Docket No. 14-92
)	
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
)	

COMMENTS OF THE SATELLITE INDUSTRY ASSOCIATION

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 Notice of Proposed Rulemaking and Second Further Notice of Proposed Rulemaking in the above-captioned proceeding (the “Notice”).¹ As discussed below, SIA urges the Commission to more closely align regulatory fees with costs, as required by the statute.

I. INTRODUCTION

SIA has participated actively at every stage of this proceeding because the level of regulatory fees for satellite network facilities is a significant cost input that affects the industry’s ability to continue to offer cost-effective services to customers.² SIA strongly supports a number

¹ *Assessment and Collection of Regulatory Fees for Fiscal Year 2014, Assessment and Collection of Regulatory Fees for Fiscal Year 2013, and Procedures for Assessment and Collection of Regulatory Fees*, Notice of Proposed Rulemaking, Second Further Notice of Proposed Rulemaking, and Order, MD Docket Nos. 14-92, 13-140, & 12-201, FCC 14-88 (rel. June 13, 2014).

² See Comments of the Satellite Industry Association, MD Docket Nos. 13-140, 12-201, & 08-65 (filed June 19, 2013) (“SIA 2013 Comments”); Reply Comments of the Satellite Industry Association, MD Docket Nos. 13-140, 12-201, & 08-65 (filed June 26, 2013) (“SIA 2013 Reply Comments”); Comments of the Satellite Industry Association, MD Docket Nos. 12-201 & 08-65,

of the proposals in the Notice for further revision to the regulatory fee structure. In particular, SIA agrees that 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, SIA urges the Commission to perform a detailed re-evaluation of the split between space station and earth station regulatory fees. However, the suggestion that DBS should be reclassified for regulatory fee purposes is both contrary to the statute and unsupported by the facts and should be rejected. SIA also identifies herein further actions the Commission should take to move toward a more equitable and transparent regulatory fee system.

II. THE COMMISSION SHOULD DIRECTLY ASSIGN CERTAIN NON-CORE-LICENSING BUREAU FTEs

SIA has long argued that the Commission's practice of assuming that all FTEs in the non-core bureaus and offices should be assigned as indirect costs and spread among all licensees is inconsistent with the underlying facts.³ SIA has demonstrated that there are personnel outside the core licensing bureaus whose work pertains only to a subset of licensees. Given the statutory mandate to link fees to regulatory costs, these FTEs must be assigned as direct costs for regulatory fee purposes.

In particular, SIA showed that employees of the Enforcement Bureau ("EB") and the Consumer & Governmental Affairs Bureau ("CGB") rarely address matters involving International Bureau ("IB") licensees, and indeed many have responsibilities that are expressly

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").

³ See, e.g., SIA 2013 Comments at 9-11; SIA 2012 Comments at 16-19; SIA 2008 Reply Comments at 7-9.

limited to specific categories of services regulated by other bureaus.⁴ The Notice here makes clear that an analysis of the work done by EB and CGB personnel confirms SIA’s analysis.⁵ Specifically, the Notice states that the “Enforcement Bureau as a whole . . . is primarily focused on enforcement activity in the wireline, wireless, and broadcast or media industries, and only occasionally addresses Act and rule violations by International Bureau licensees.”⁶ Similarly, “only a very small number” of the complaints handled by the CGB “dealt with issues handled by the International Bureau.”⁷ Accordingly, the Commission seeks comment on reallocating these EB and CGB FTEs directly to operators regulated by the Media Bureau (“MB”), Wireline Competition Bureau (“WCB”), and Wireless Telecommunications Bureau (“WTB”).⁸

As SIA has shown, classifying these FTEs as direct costs is required under the statute.⁹ Congress specified that regulatory fees should be collected to recoup the costs of specific Commission functions including enforcement and user information services.¹⁰ Thus, assigning EB and CGB costs directly to the fee payers who benefit from the work of these personnel is necessary to conform the Commission’s fee structure to the statutory mandate.

The Commission seeks comment on how these FTEs should be allocated among the three core licensing bureaus that benefit from their work.¹¹ SIA supports using the

⁴ SIA 2013 Comments at 10; SIA 2012 Comments at 16-19.

⁵ Notice at ¶ 24.

⁶ *Id.* (footnotes omitted). For example, the 114 FTEs in the Enforcement Bureau’s regional and field offices “devote nearly all of their work (with the exception of one FTE) to media/broadcast and wireless enforcement.” *See id.*, n.46.

⁷ *Id.* at ¶ 24.

⁸ *Id.* at ¶ 25.

⁹ SIA 2013 Comments at 10-11; SIA 2012 Comments at 18.

¹⁰ 47 U.S.C. § 159(a)(1).

¹¹ Notice at ¶ 25.

Commission's cost analysis to assign these FTEs. For example, since the work of the EB's regional and field offices is almost evenly split between MB and WTB licensees,¹² the Commission should assign half of these FTEs to each of these two bureaus. The Commission should similarly assign FTEs from elsewhere in the EB and in the CGB based on a review of the work performed by those employees.¹³ The proportional allocation of these FTEs among the MB, WTB, and WCB should be established based on this cost analysis and can be revisited in the future when the Commission again updates the FTE numbers for regulatory fee purposes.

The Notice also seeks comment on whether FTEs in other non-core-licensing bureaus and offices should be treated as direct FTEs.¹⁴ SIA reiterates its support for a comprehensive cost-based review to assign such FTEs directly wherever possible. Thus, SIA agrees with the Commission that it makes sense to review the work performed by OET to determine to what extent it benefits the licensees of each core bureau.¹⁵

The Commission should apply this approach to other FTEs as well. For example, SIA has suggested that FTEs in the Commissioners' offices could reasonably be allocated among the core licensing bureaus based on the number of proceedings from each bureau decided by the Commission in a given year.¹⁶ The same methodology should be used to apportion FTEs in other bureaus and offices based on objective workload metrics. We are not advocating a return

¹² *Id.* at n.46.

¹³ It is not clear from the Notice to what extent the Commission has already performed this review. For example, the Notice indicates that EB personnel rarely address issues involving IB licensees, but does not provide data regarding the breakdown of activities of EB FTEs outside the regional and field offices that involve wireline, wireless and broadcast/media issues. *See id.* at ¶ 24. Nor does the Notice supply details regarding what percentages of complaints handled by the CGB relate to each of the wireline, wireless and broadcast/media industries.

¹⁴ Notice at ¶ 26.

¹⁵ *Id.*

¹⁶ SIA 2013 Comments at 12; SIA 2012 Comments at 20.

to time-card based tracking of Commission activities, but simply suggesting that for 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.¹⁷ Only through analysis of such data can the Commission shape its regulatory fee framework to comply with the statutory requirements.

III. THE COMMISSION SHOULD REBALANCE THE FEE BURDEN BETWEEN SPACE AND EARTH STATION LICENSEES

SIA also supports a cost-based rebalancing of the assignment of IB FTEs as between space station and earth station licensees. SIA has argued that the current split of costs between these categories, which has not been revisited since 1999, does not reflect the significant streamlining of space station regulation that has occurred in the past decade and a half.¹⁸ Accordingly, SIA believes that space station licensees currently bear an unfairly high share of the IB regulatory fee burden.¹⁹

SIA urges the Commission to undertake a review of these costs to determine how to more equitably apportion costs between space station and earth station licensees. In the context of that review, the Commission should also consider whether to adopt different classifications of earth stations for regulatory fee purposes, as suggested in the Notice.²⁰ For example, the Commission's application fee framework differentiates among a number of earth station categories, with lower fees for single stand-alone facilities and higher fees applicable to

¹⁷ SIA 2013 Comments at 12-13.

¹⁸ See Written *Ex Parte* Presentation of the Satellite Industry Association, MD Docket Nos. 13-140, 12-201, and 08-65 (filed February 5, 2014) (“SIA February Ex Parte”) at 1-2.

¹⁹ *Id.* at 1.

²⁰ Notice at ¶ 29.

VSAT networks and other blanket license applications.²¹ The Commission may want to similarly distinguish among these categories of earth stations for regulatory fee purposes.

The Notice also requests comment on whether the allocation of International Bureau costs between cable landing licensees and space and earth station licensees should be modified.²² As SIA has previously emphasized, any such revisions must be made only as part of a comprehensive analysis of cost allocations within the International Bureau and based on a fully developed factual record.²³

IV. THE RECORD DOES NOT SUPPORT RECLASSIFYING DBS FOR REGULATORY FEE PURPOSES

The Notice asks whether the Commission should fundamentally alter the way regulatory fees are assessed on DBS providers by including them in the cable television and IPTV category and imposing a per subscriber fee.²⁴ SIA opposes any such radical change in the regulatory fee categories established by Congress.

In particular, as SIA members have demonstrated, the only legitimate premise for reclassifying DBS would be a significant change in the underlying regulatory structure applicable to DBS operations.²⁵ However, no such change has occurred.²⁶

²¹ See 47 C.F.R. § 1.1107.

²² Notice at ¶ 28.

²³ SIA 2013 Reply Comments at 6.

²⁴ Notice at ¶¶ 41-46.

²⁵ See, e.g., Comments of DIRECTV LLC, MD Docket Nos. 13-140, 12-201, & 08-65 (filed June 19, 2013) (“DIRECTV 2013 Comments”) at i & 3-12; Reply Comments of DIRECTV LLC, MD Docket Nos. 13-140, 12-201, & 08-65 (filed June 26, 2013) (“DIRECTV 2013 Reply Comments”) at 2-6; Comments of EchoStar Satellite Operating Company and Hughes Network Systems, LLC, and DISH Network L.L.C., MD Docket Nos. 13-140, 12-201, & 08-65 (filed June 19, 2013) (“EchoStar/DISH 2013 Comments”) at 19; Reply Comments of EchoStar Satellite Operating Company and Hughes Network Systems, LLC, and DISH Network L.L.C., MD Docket Nos. 13-140, 12-201, & 08-65 (filed June 26, 2013) (“EchoStar/DISH 2013 Reply Comments”) at 5-6.

The observation in the Notice that certain functions performed by the Media Bureau also apply to DBS operations²⁷ may be accurate, but it ignores the fact that many other aspects of the Media Bureau’s regulation of cable television systems today have no relevance to DBS.²⁸ The Notice makes no attempt to quantify the extent to which the work of MB FTEs responsible for regulating the thousands of systems in the cable industry also benefits the two DBS providers. The Commission cannot justify imposing on DBS operators costs of regulatory activities that relate solely to cable systems. Given that the statute requires that regulatory fees be based on the costs of regulatory activities, the fact that DBS services compete with cable systems is irrelevant to the fee analysis.²⁹

Furthermore, the impact on other regulatory fee payers of DBS reclassification must be considered. The Notice mentions that reclassifying DBS would remove 18 satellites from the geostationary satellite fee payer category.³⁰ But the costs associated with IB oversight of these DBS satellites cannot legitimately be added to the regulatory fee burden borne by other geostationary satellite licensees.

The Notice also seeks comment on whether any reclassification of DBS operators should extend to providers of direct-to-home (“DTH”) services using non-DBS satellites.³¹ No party has suggested such a change, nor has there been any demonstration that the facts would warrant it. In particular, there is no evidence that DTH providers themselves – much less their suppliers of fixed-satellite service capacity – benefit from the regulatory functions performed by

²⁶ *See id.*

²⁷ Notice at ¶ 42.

²⁸ *See, e.g.*, DIRECTV 2013 Comments at 12-17; EchoStar/DISH 2013 Comments at 18-20.

²⁹ *See, e.g.*, DIRECTV 2013 Comments at 12-13.

³⁰ Notice at ¶ 44.

³¹ *Id.* at ¶ 45.

the Media Bureau. Again, the degree to which there is competition between the ultimate services provided to end users is irrelevant to the statutory regulatory fee analysis. Instead, the Commission must focus on cost causation factors, and those factors do not support including DTH in any regulatory fee restructuring.

V. THE COMMISSION SHOULD CONTINUE TO PURSUE OTHER IMPROVEMENTS IN THE REGULATORY FEE FRAMEWORK

SIA urges the Commission to take additional steps to make the regulatory fee structure more equitable and Commission processes more transparent.

A. Indirect Costs Must Be Allocated Fairly

As SIA has previously emphasized, fair allocation of the costs of indirect FTEs is critical because the indirect or overhead portion of the fee burden substantially exceeds direct regulatory costs.³² In particular, SIA has shown that for purposes of establishing the proportions used to assign indirect FTEs, the Commission should take into account all WTB FTEs, including those funded by auctions.³³ This change is needed to more fairly and accurately assign indirect FTEs and ensure that licensees that benefit from auctions pay their fair share of the Commission's overhead.

B. Efforts to Streamline the Space Station and Earth Station Regulatory Frameworks Should Be Taken into Account in Future Fee Calculations

SIA and its members have been engaged in a multi-year process to suggest changes to the Part 25 satellite communications regulatory framework.³⁴ Earlier this year, the Commission announced the implementation of many changes to the Part 25 rules designed to streamline the regulatory processes of the Commission for the benefit of the public and the

³² SIA 2013 Comments at 11-12.

³³ *Id.* at 13-16; SIA 2013 Reply Comments at 7.

³⁴ *Comprehensive Review of Licensing and Operating Rules for Satellite Services*, IB Docket No. 12-267.

Commission staff.³⁵ That work continues in the Commission's recent Process Reform proceeding.³⁶ In order to accurately assess the services provided to licensees, the burden on the Commission staff, and overall costs associated with annual regulation, SIA urges the Commission to take these changes and any future streamlining into account in setting space and earth station regulatory fees.

C. Any Significant Satellite Fee Increases Should Be Phased in Over Time

As SIA has previously indicated, any shift in cost allocations that results in a substantial increase in satellite regulatory fees should be phased in to ameliorate the adverse effects on the satellite industry.³⁷ Because the bulk of satellite capacity is sold under long-term agreements, satellite operators are not able to immediately adjust rates to cover a large increase in applicable fees.³⁸ Phasing in fee changes over time will allow satellite operators an opportunity to modify their rate structures in response to higher fee costs.

D. The Commission Should Pursue Authority to Refund Excess Fees

SIA and other parties have also urged the Commission to seek all necessary authority from Congress to address over-collection of regulatory fees.³⁹ Specifically, the Commission should pursue the ability to refund excess regulatory fee payments or offset them against current fee liabilities.

³⁵ See Public Notice, International Bureau Adopts Policy of Granting Interim Waiver of Certain Requirements for Space Station Applications, DA 14-90, Report No. SPB-255 (Jan. 28, 2014).

³⁶ *FCC Seeks Public Comment on Report on Process Reform*, GN Docket No. 14-25, DA 14-199 (rel. Feb. 14, 2014).

³⁷ SIA 2012 Comments at 23-25.

³⁸ *Id.* at 24.

³⁹ See, e.g., SIA 2013 Reply Comments at 10 & n.48.

E. The Commission Should Make Regulatory Fee Data More Accessible

Finally, SIA supports ongoing efforts to improve access to data relating to regulatory fee assessment and collection. For example, the Commission should adopt its proposal to make regulatory fee waiver information available on the Commission's website.⁴⁰

VI. CONCLUSION

For the foregoing reasons and those presented in its prior pleadings, SIA urges the Commission to adopt its proposals to reallocate FTEs in non-core-licensing bureaus directly where appropriate and to perform a detailed re-evaluation of the split between earth station and space station regulatory fees. The Commission should also reform other aspects of the fee framework and make regulatory fee information more accessible. However, the suggested reclassification of DBS services for regulatory fee purposes should be rejected.

Respectfully submitted,

SATELLITE INDUSTRY ASSOCIATION



Patricia A. Cooper
President
1200 18th Street, NW, Suite 1001
Washington, DC 20036
(202) 503-1561

July 7, 2014

⁴⁰ Notice at ¶ 35.