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 2014	)	MD Docket No. 14-92
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Assessment and Collection of Regulatory Fees for Fiscal Year 2013	)	MD Docket No. 13-140
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	)	
Procedures for Assessment and Collection of Regulatory Fees	)	MD Docket No. 12-201
	)	
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COMMENTS OF AVIATION SPECTRUM RESOURCES, INC.

Aviation Spectrum Resources, Inc. ("ASRI") hereby submits comments in response to the Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding.[1] ASRI applauds the Federal Communications Commission's ("Commission") efforts to "improve the Commission's regulatory fee process"[2] and "ensure a more equitable distribution of the regulatory fee burden"[3] among categories of Commission licensees. In that spirit, ASRI submits these comments to raise its concern that, under the NPRM, aviation ground licensees would experience a substantial increase in their regulatory fees that could have a significant economic impact on these licensees, particularly ASRI, which holds nearly 4,700 aeronautical enroute authorizations. Disconcertingly, the NPRM fails to justify or explain clearly the basis for this increase. ASRI submits that the proposed regulatory fee appears to be unwarranted and

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[1] *Assessment and Collection of Regulatory Fees for Fiscal Year 2014*, Notice of Proposed Rulemaking, Second Further Notice of Proposed Rulemaking, and Order, MD Docket Nos. 14-92, 13-140, 12-201 (Jun. 13, 2014) ("*NPRM*").

[2] *Id.* at ¶ 1.

[3] *Id.* at ¶ 3.

inequitable due to the limited regulatory activity in this area, and that, if adopted, the NPRM would have a dramatic and disparate impact on aviation ground licensees.

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")[4] and the sponsor of the Aeronautical Frequency Committee ("AFC").[5] 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").

I. THE NPRM DRAMATICALLY INCREASES REGULATORY FEES FOR AVIATION GROUND LICENSEES WITHOUT ANY JUSTIFICATION

In the NPRM, the Commission asserts that, for FY 2014, "it is unlikely regulatees will experience substantial increases in their regulatory fees."[6] This does not hold true for aviation ground licensees. The FY 2013 Schedule of Regulatory Fees establishes a $15 per license

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[4] 128.825 – 132.0 MHz and 136.5 – 136.975 MHz in VHF.

[5] 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.

[6] *NPRM* at ¶ 34.

annual fee for aviation ground licenses.[7] The NPRM, however, proposes to increase this fee to $35—a 133 percent increase.[8] Nowhere in the NPRM does the Commission justify or explain this dramatic and disparate rate increase. Even if it were justified, the proposed increase appears to be contradictory to the Commission's proposed 7.5 percent cap on regulatory fee rate increases.[9] At a minimum, the proposed FY 2014 regulatory fee for aviation ground licenses should be brought in line with the proposed regulatory fee rate increase cap.

The NPRM fails to identify any reason that would warrant the dramatic increase in the regulatory fee for aviation ground licenses. The NPRM explains that the Commission is required to collect $339,844,000 in regulatory fees in FY 2014.[10] Table 1 of the NPRM sets forth the allocations of FTEs by Bureau for both FY 2013 and FY 2014.[11] From there, the Commission's calculation of regulatory fees for FY 2014 becomes murkier. There is a noticeable gap in the NPRM's explanation of its fee calculations between the allocation of FTEs by Bureau and the stated revenue requirements and pro-rata fees for categories of licensees in Attachment A of the NPRM.[12] As such, there is no discernable explanation in the NPRM for the proposed $35 per license fee for aviation ground licenses that is set forth in Attachment B, nor is there a

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7 *See id*. at Attachment C.

8 *Id.* at Attachment B.

9 *See Assessment and Collection of Regulatory Fees for Fiscal Year 2013*, Report and Order, 28 FCC Rcd 12351, ¶ 21 (2013); *see also NPRM* at ¶ 34. Notably, the increase is first applicable in full to those aviation ground station licenses expiring in FY 2104. The prospect for future increases looms for those licenses expiring in FY 2015 and subsequent years—increases which most likely would be gauged on the basis of the FY 2014 fees.

10 *NPRM* at ¶ 18.

11 *Id.* at Table 1.

12 *Id.* at Attachment A.

justification for—or even a discussion of—the exceptional increase in regulatory fees for this category of licensees.

To be sure, a justification of the proposed fee increase is warranted in light of previous fee increases for this category of Commission licensee. ASRI notes that the regulatory fees for aviation ground licensees understandably increased from $10 to $15 since the Commission extended license terms from five to ten years.[13] ASRI further notes that the current fees for these licenses have remained at $15 for the last two fiscal years.[14] In the absence of any significant change in the Commission's regulatory activities relating to aviation ground licenses, the proposed 133 percent increase reflects a dramatic and surprising change from prior increases and fee determinations.

Even assuming that the proposed fee is justified, it appears contradictory to the proposed 7.5 percent cap on regulatory fee rate increases for FY 2014. Absent any justification for the disparate treatment of aviation ground licensees, the Commission should, at a minimum, bring the proposed FY 2014 regulatory fees for these licenses in line with the proposed cap on annual regulatory fee rate increases.

II. THE PROPOSED FY 2014 REGULATORY FEE FOR AVIATION GROUND LICENSEES APPEARS TO BE UNWARRANTED AND INEQUITABLE

Congress requires the Commission to collect regulatory fees from certain categories of licensees "to recover the costs of . . . enforcement activities, policy and rulemaking activities,

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[13] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2012*, Report and Order, 27 FCC Rcd 8390, Attachment B (2012).

[14] *See id; see also Assessment and Collection of Regulatory Fees for Fiscal Year 2013*, Report and Order, 28 FCC Rcd 12351, Attachment B (2013).

user information services, and international activities."[15] For aviation ground licensees, however, the NPRM's proposed regulatory fee over-recovers the costs for the Commission's relevant regulatory activities. Indeed, aviation ground licensees largely represent a self-regulating system that relieves the Commission of much of its regulatory burden and its costs. For this reason, the proposed FY 2014 regulatory fee for these licenses appears to be unwarranted and inequitable.

The Commission expends minimal resources in regulating aviation ground licenses. Compared to other services, the aviation ground service does not give rise to many rulemaking proceedings.[16] Moreover, there is little enforcement activity by the Commission related to these licenses. In the past fourteen years, the Commission has identified few violations from aviation ground licensees.[17] Indeed, in most enforcement actions relating to aeronautical frequencies, the Commission's enforcement activity was not directed at aviation ground licensees, but at others

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[15] *Id.* at ¶ 4.

[16] ASRI identifies only a handful of rulemaking activities in the aviation ground service in recent years. *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).

[17] For example, the website of the Commission's Enforcement Bureau lists only one enforcement action since 2000 pertaining to ASRI—which holds nearly 4,700 Commission licenses—as a licensee. *See* Federal Communications Commission, Enforcement Bureau, Orders, *available at* http://transition.fcc.gov/eb/Orders/2014.html.

using aeronautical frequencies in violation of the Commission's rules.[18] Such enforcement activity thus should not be charged against aviation ground licensees, but these other interests.

The reason for the paucity of regulatory activity related to aviation ground licenses is twofold. First, aviation communications operations have been refined over a period of more than 80 years. Thus, licensees are sophisticated and knowledgeable entities that usually are well-versed in FCC compliance issues. Second, aviation ground licensees shoulder much of the burden of regulating FCC compliance. ASRI, for example, employs three inspectors that, together, inspect roughly 1,000 aeronautical ground stations each year. In addition, ASRI binds its operators to comply with Commission rules through contractual agreements, and supplies operators with training resources and operating manuals that discuss FCC compliance in detail.

Consistent with the Commission's goal of ensuring the equitable distribution of the regulatory fee burden, regulatory fees for aviation ground licenses should fairly reflect the minimal regulatory activity by the Commission in regulating aviation ground licenses. Aviation ground licensees bear the burden and cost of FCC regulation—not the Commission. The NPRM's proposed regulatory fee for FY 2014 therefore appears to be unwarranted and inequitable.

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[18] *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 comply with specific technical requirements delineated in the rules in order to avoid interference to licensed aeronautical operations.

III. THE PROPOSED FY 2014 REGULATORY FEE FOR AVIATION GROUND LICENSEES IS UNDULY BURDENSOME

As explained above, the NPRM would subject aviation ground licensees to a 133 percent increase in regulatory fees. Such an increase could severely impact the economic wellbeing of these licensees. Indeed, the proposed increase would require significant and unexpected up-front payments by existing licensees that are due to renew their licenses in the next few years.

Currently, ASRI holds nearly 4,700 Commission licenses, the vast majority of which are due to be renewed over the next few years. ASRI expects to file renewal applications for 869 licenses in 2015, 851 licenses in 2016, 707 licenses in 2017, and 838 licenses in 2018. ASRI will pay regulatory fees for each of these licenses at the time renewal applications are filed, as required by Commission rules. The NPRM, if adopted as proposed, thus would 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. These new costs represent a new and unexpected regulatory liability for ASRI.

To be sure, ASRI likely would not be alone in being financially burdened by the new rates. Available records indicate that 1,662 aviation ground licenses are due to be renewed in 2015, 1,612 licenses in 2016, 1,514 licenses in 2017, and 1,791 in 2018. The new regulatory fee for aviation ground licenses thus threatens to create a significant and industry-wide financial burden.

IV. CONCLUSION

The Commission should reassess the NPRM's proposed regulatory fee for aviation ground licenses for FY 2014. The NPRM fails to justify or explain the proposed 133 percent increase in the regulatory fee for these licenses. Even if the proposed regulatory fee were justified, it appears to be contradictory to the Commission's proposed 7.5 percent cap on

regulatory rate fee increases for FY 2014. Moreover, the proposed fee appears to be unwarranted and inequitable given the minimal regulatory activity by the Commission in this area, and, if adopted, it potentially could threaten the economic wellbeing of aviation ground licensees.

Respectfully submitted,

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