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

In the Matter of	)	
	)	
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

Patricia A. Cooper
President
Satellite Industry Association
1200 18th Street, N.W., Suite 1000
Washington, DC 20036

Dated: September 17, 2012

SUMMARY

The Satellite Industry Association ("SIA") strongly agrees that fundamental reform of the Commission's regulatory fee allocation structure is warranted. Space station regulatory fees are among the highest for any fee category, and satellite operators have repeatedly demonstrated over the years that these fees cannot be justified given the tiny percentage of the Commission's resources devoted to regulating satellite networks.

Unfortunately, though, the Notice does not address critical flaws in the current fee framework and suggests an approach that would perpetuate, not correct, the disconnect between the requirements of the regulatory fee statute and the Commission's fee assessment methodology. In particular, although the Notice pays lip service to the importance of ensuring that the fee system is consistent with the language of Section 9, the Commission makes no attempt to ensure that costs are assigned among regulatory fee payers in a way that conforms to the statute.

Section 9 obligates the Commission to develop regulatory fees based on full time equivalent employees ("FTEs") for the four types of activities expressly identified by Congress: enforcement, policy and rulemaking, user information services, and international. Yet the Notice does not even mention the need to separate costs for these activities from costs for activities such as application processing that are not intended to be covered by regulatory fees.

Instead, the Notice proposes a highly simplified approach to allocating FTEs to various regulatory fee categories. Specifically, the Notice suggests that all FTEs within a core licensing bureau should be assigned as direct costs to fee payers licensed by

that bureau and that all FTEs outside the core licensing bureaus should be considered as overhead.

Clearly such an approach cannot be squared with the statute and would unfairly burden satellite operators. The International Bureau – which had not yet been created at the time the regulatory fee statute was adopted – is now the core licensing bureau for satellite networks but also employs FTEs with broad responsibilities for a range of Commission licensees. Furthermore, even within the bureau's Satellite Division, a significant portion of the work performed involves application processing, not one of the activities for which regulatory fees are to be collected. Thus, assessing the full costs of the International Bureau on a small subset of regulatory fee payers would clearly be unjustified.

Similarly, treating all non-core licensing bureau FTEs as overhead would thwart the statutory objective by failing to link costs for the activities defined in Section 9 to the specific categories of regulatory fee payers who benefit from those activities. Instead, the Commission must assign directly to fee payers the costs of Commission FTEs outside the core licensing bureaus whose work is nevertheless focused on a specific subset of licensees and must distribute the remaining FTEs fairly among fee categories based on proportionate use of those resources.

Calculating regulatory fees in a manner consistent with the language of Section 9 should result in a decrease in the fees payable by satellite networks, consistent with the limited Commission resources associated with ongoing satellite regulation. In the event, however, that the Commission adopts changes that result in a significant increase in satellite system regulatory fees, the Commission should defer or phase in

implementation of the higher rates. The delay will allow the Commission to take into account workload changes resulting from ongoing streamlining of satellite regulation. In addition, it will give satellite operators the opportunity to adjust their prices to recover the additional costs to the extent doing so is possible given the existence of long term contracts and the high degree of competition.

TABLE OF CONTENTS

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

In the Matter of	)	
	)	
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

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 proposals for reform of the Commission's framework for assessing regulatory fees on satellite network licensees and other entities regulated by the Commission.

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 fifteen years ago, SIA has become the unified voice of the U.S. satellite industry on policy, regulatory, and legislative issues affecting the satellite business.[2]

---

[1] *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, FCC 12-77 (rel. July 17, 2012).

[2] SIA Executive Members include: Artel, Inc.; 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 S.A.; and Space Systems/Loral. SIA Associate Members include: ATK Inc.; Cisco; Cobham SATCOM Land Systems; Comtech EF Data Corp.; DRS

A change in the Commission's regulatory fee structure that would result in significant increases in fees paid by satellite operators would have industry-wide implications, and could harm consumers by negatively affecting the ability of satellite networks to offer cost-effective broadband and other communications and media services. Thus, SIA members have a strong interest in the proposals discussed in the Notice.

I. INTRODUCTION

The Notice invites comment on proposals for reform of the policies and procedures pursuant to which regulatory fees are assessed.[3] The Commission observes that the original fee structure and amounts were adopted by Congress in 1994[4] in order to recover the costs of Commission "enforcement activities, policy and rulemaking activities, user information services, and international activities."[5] The Commission states that it has not revised the data on which regulatory fees are based since 1998, when an accounting system that had been developed to allocate regulatory fee costs was abandoned.[6] This proceeding is intended to serve as the mechanism for a "comprehensive analysis of all the substantive and procedural aspects" of the regulatory fee program.[7]

Technologies, Inc.; Eutelsat, Inc.; GE Satellite; Globecomm Systems, Inc.; Glowlink Communications Technology, Inc.; iDirect Government Technologies; Inmarsat, Inc.; Marshall Communications Corporation.; MTN Government Services; NewSat America, Inc.; Orbital Sciences Corporation; Panasonic Avionics Corporation; Spacecom, Ltd.; Spacenet Inc.; TeleCommunication Systems, Inc.; Telesat Canada; TrustComm, Inc., Ultisat, Inc.; ViaSat, Inc., and XTAR, LLC. Additional information about SIA can be found at www.sia.org.

[3] Notice at ¶ 1.

[4] *Id.*

[5] *Id.* at ¶ 4, *quoting* 47 U.S.C. § 159(a)(1).

[6] Notice at ¶¶ 2 & 15.

[7] *Id.* at ¶ 2.

Satellite network operators have long been concerned that their regulatory fees are disproportionately high given the very small portion of Commission resources attributable to ongoing regulation of the satellite industry.[8] We have been hampered in our ability to explore these concerns by the very limited information the Commission has disclosed about the basis for its regulatory fee allocations.[9] Accordingly, SIA urges the Commission to be more forthcoming regarding the assumptions underlying its analysis as it undertakes this fundamental reassessment of the Commission regulatory fee structure.

In updating the calculations underlying assignment of costs to regulatory fee categories, moreover, the Commission must ensure that regulatory fee assessments conform to the statutory mandate that costs be related to the benefits to the fee payer from regulatory activities specified in Section 9. SIA believes that existing space station regulatory fees – among the highest per license fees for any category[10] – are excessive today and do not fairly represent

[8] SIA raised these concerns during a previous phase of this proceeding. *See* Reply Comments of the Satellite Industry Association, MD Docket No. 08-65, RM-11312, filed Oct. 27, 2008 ("SIA 2008 Reply Comments").

[9] In a recent report to Congress, the Government Accountability Office highlighted this lack of transparency, 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] For FY 2012, the fee per operational geostationary satellite is $132,875, and the fee for a non-geostationary satellite orbit ("NGSO") network is $143,150. *See Assessment and Collection of Regulatory Fees for Fiscal Year 2012*, Report and Order, MD Docket No. 12-116, FCC 12-76 (rel. July 19, 2012) at Attachment C. Space station fees are higher than any other per license fee with the exception of the fees of $212,750 paid by submarine cable landing licensees with the highest system capacity, 20 Gbps or greater. *See id.* This per system fee was adopted as part of a 2009 revision to the fee methodology for providers of international bearer circuits. *See Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Second Report and Order, MD Docket No. 08-65, FCC 09-21 (rel. March 24, 2009). Prior to that decision, all providers of international bearer circuits were subject to a per circuit fee. Because the 2009 reform applied

the level of Commission resources being expended for satellite regulatory activities beyond the processing of space station licensing applications.[11] The Commission is obligated to address this inequity by implementing an approach to collection of regulatory fees that ensures that the direct and indirect costs of regulatory activities are fairly apportioned.

SIA is alarmed by statements in the Notice suggesting that revising the fee structure could lead to a significant increase in the fees payable by satellite networks. These statements reflect calculations based on unfounded assumptions regarding the fraction of the overall resources of the Commission attributable to oversight of the satellite industry. As discussed below, given the small and decreasing level of Commission staff time associated with post-licensing regulation of satellite operations, any proposal to materially increase regulatory fees for satellite systems would conflict with the statute's requirement that fees reflect underlying costs for specified regulatory activities. In the event the Commission disregards these arguments and opts to nevertheless impose a significant increase in regulatory fees for satellite networks, it must defer or phase in implementation of the change to give satellite operators the opportunity to adjust their rates to recover the added costs if possible given competitive forces and typical long-term service contracts.

---

only to submarine cable licensees, satellite operators continue to pay per circuit fees for international bearer circuits in addition to their fees as space station licensees.

[11] Application fees, which are already extraordinarily high – $120,005 for a GSO space station initial application and $413,295 for a NGSO system initial application – are supposed to correlate with the work the Commission will do to process those applications to final decision. Thus, application processing efforts on the Commission's part must remain separate from the calculation of resources attributed to regulatory fees.

II. ANY REVISIONS TO THE REGULATORY FEE FRAMEWORK MUST BE BASED ON SECTION 9

The Notice requests comment on the overarching goals that should be set to frame the Commission's reform of the regulatory fee program.[12] In re-evaluating the regulatory fee structure, the Commission states that it will be "guided first and foremost by Congress's direction in section 9."[13] Again, that section specifies the types of activities for which regulatory fees are to be collected and requires that fees reflect the benefits provided to fee payers. The Commission also suggests three additional objectives for the regulatory fee assessment framework: fairness, administrability, and sustainability.[14]

SIA concurs that Section 9 must be the lynchpin of any effort to reform the regulatory fee framework. Specifically, the Commission must focus on whether and to what extent a given category of fee payers benefits from the activities that generate regulatory fee costs, and must allocate the costs accordingly.

SIA recognizes that it is impossible to precisely match fees to the underlying costs.[15] However, the statute obligates the Commission to take reasonable actions to ensure that the regulatory fee program conforms to Section 9 by reflecting the share of Commission resources expended for regulatory activities attributable to each category of fee payers. As discussed below, this requires the Commission to closely scrutinize both the direct and indirect costs associated with regulatory activities on behalf of the various classes of fee payers and to

[12] Notice at ¶ 13.

[13] *Id*.

[14] *Id*. at ¶¶ 14-16.

[15] *See* SIA 2008 Reply Comments at 8.

rely on the resulting data – not on simplifying assumptions – to establish proportionate fee amounts.

SIA has no objection to the Commission's proposal to pursue the additional objectives of fairness, administrability and sustainability as it seeks to reform the regulatory fee structure. As the Commission appropriately recognizes, though, these goals "must work within the statute, not against it."[16] SIA strongly agrees – the Commission cannot violate the statutory mandate in order to achieve other goals not specified by Congress. Thus, the reform process must be driven by the critical task of aligning fees to costs.[17]

III. INCREASING THE SATELLITE INDUSTRY'S SHARE OF REGULATORY FEES WOULD VIOLATE THE STATUTE

The statute requires the Commission to allocate both the direct and indirect costs of the activities specified in Section 9 by determining the classes of fee payers to which those costs are attributable. As noted above, satellite licensees already pay among the highest per-station/per-system regulatory fees. The Commission cannot continue to charge these fees – much less consider any material increase to them – without clear evidence indicating that the fees accurately reflect the satellite industry's share of costs for the activities specified in the statute.

[16] Notice at ¶ 17.

[17] SIA was also surprised to learn from the recent GAO Report that the Commission has routinely collected more in regulatory fees than it was required to, by an average of $6.7 million per year. *See* GAO Report at 28. This suggests that in updating the regulatory fee structure to track costs more closely as mandated by Section 9, the Commission should revisit the assumptions it uses regarding the amounts likely to be collected going forward.

A. Satellite Regulation Requires a Small and Decreasing Portion of Commission Resources

The facts do not support a conclusion that the satellite industry is responsible for a materially larger proportion of the Commission's regulatory activities today than was the case when the regulatory fee system was adopted. To the contrary, in the years since the Commission last performed a substantive review of the cost basis for regulatory fees, measures have been implemented that reduce the satellite industry's reliance on Commission resources, and further streamlining is being undertaken.

The bulk of the Commission activity required in connection with a given satellite occurs at the time of initial licensing or when a change to a satellite license is proposed. In each of these cases, substantial application fees are paid to cover the costs of evaluating and acting on these requests. The Commission does not devote significant resources to ongoing oversight of satellites once they are authorized. Indeed, once a satellite is launched and on-station, it often remains at that location for several years – requiring little or no additional Commission resources.

Furthermore, the Commission has taken major steps to streamline licensing and regulation for both space and earth stations. In 2003, the Commission implemented a major change in its satellite licensing procedures, moving from a processing round system for geostationary systems to a first-come, first-served approach.[18] This change alone dramatically

[18] *See Amendment of the Commission's Space Station Licensing Rules and Policies*, First Report and Order and Further Notice of Proposed Rulemaking, IB Docket No. 02-34, 18 FCC Rcd 10760 (2003) ("First Space Station Reform Order") at ¶ 1 (explaining that the "procedures we adopt today significantly revamp the licensing process that we have used since the early 1980s" and "will allow us to act on applications dramatically faster than we can now").

reduced the Commission resources associated with space station licensing, cutting the time for granting satellite licenses to a fraction of its prior duration.[19]

Later that year, the Commission put in place several additional reforms to simplify space and earth station licensing in a number of respects. The Commission adopted an SIA proposal for a new "fleet management" rule that gave satellite operators flexibility to reassign spacecraft among their licensed orbital locations without the need for prior Commission approval.[20] The Commission explicitly noted that this change would "expedite grant of modification applications that do not involve increased interference potential" and would allow the Commission to devote "fewer administrative resources to satellite fleet management modification requests."[21] In the same decision, the Commission revised the rules to facilitate modification of earth station licenses as necessary to reflect relocation of a spacecraft pursuant to the fleet management framework.[22] The Commission also eliminated the licensing requirement

[19] *See id.* (new approach will allow processing time to be reduced from "the current two-to-three years to *less than one year*") (emphasis in original).

[20] *See Amendment of the Commission's Space Station Licensing Rules and Policies, 2000 Biennial Regulatory Review – Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations,* Second Report and Order in IB Docket No. 02-34, Second Report and Order in IB Docket No. 00-248, 18 FCC Rcd 12507 (2003) ("Second Space Station Reform Order") at ¶ 7. Initially, the fleet management procedure was available only to fixed-satellite service licensees, but it was later extended to direct broadcast satellite ("DBS") and Digital Audio Radio Service ("DARS") licensees as well. *See Amendment of the Commission's Space Station Licensing Rules and Policies, 2000 Biennial Regulatory Review – Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations,* Fourth Report and Order, 19 FCC Rcd 7419 (2003) ("Fourth Space Station Reform Order") at ¶ 1.

[21] Second Space Station Reform Order at ¶ 7.

[22] *Id.* at ¶¶ 10-12.

for receive-only earth stations communicating with foreign-licensed satellites that appear on the Commission's Permitted Space Station List.[23]

Subsequent decisions in these proceedings adopted further changes to expedite processing of satellite filings. The Commission implemented a standardized form for technical data required in support of space station license applications, eliminated outdated rules, and introduced a new form for routinely-licensed earth stations eligible for action under the International Bureau's auto-grant procedure.[24] The Commission also permitted NGSO system operators to activate in-orbit spare spacecraft covered by their blanket licenses without prior Commission authorization.[25]

A related series of Commission orders made substantial changes to the earth station licensing process. These revised policies were focused on increasing the number of applications that qualify for routine processing and expediting action on applications that do not qualify for routine processing.[26] In other targeted proceedings, the Commission facilitated the

---

[23] *Id.* at ¶¶ 20-22.

[24] *See Amendment of the Commission's Space Station Licensing Rules and Policies, 2000 Biennial Regulatory Review – Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations,* Third Report and Order and Second Further Notice of Proposed Rulemaking in IB Docket Nos. 02-34 and 00-248, 18 FCC Rcd 13486 (2003) ("Third Space Station Reform Order") at ¶ 1.

[25] *See* Fourth Space Station Reform Order at ¶ 1.

[26] *See 2000 Biennial Regulatory Review – Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations, Amendment of Part 25 of the Commission's Rules and Regulations to Reduce Alien Carrier Interference Between Fixed-Satellites at Reduced Orbital Spacings and to Revise Application Procedures for Satellite Communication Services*, Fifth Report and Order in IB Docket No. 00-248, and Third Report and Order in CC Docket No. 86-496, 20 FCC Rcd 5666 (2005) ("Fifth Earth Station Reform Order") at ¶ 1 (noting that the "rules adopted in this Order today will greatly facilitate the provision of broadband Internet access services, by streamlining the procedures for licensing the types of earth station antennas often

authorization of earth stations on vessels at sea and on land vehicles by adopting rules for regular licensing of these services.[27]

Further significant streamlining is under way now. As part of its overall plan for retrospective review of existing rules pursuant to Executive Order 13579, the Commission is preparing to begin a comprehensive reassessment of Part 25.[28] This effort is in part an outgrowth of substantial work done by SIA to develop a set of regulatory reforms for satellite network licensing. SIA has suggested elimination of unnecessary rules, correction of inconsistencies among provisions, and updating the technical standards to reflect current technology. The Commission has prepared a rulemaking proposal to explore Part 25 reform, and Chairman

---

used for such services"); *2000 Biennial Regulatory Review – Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations,* Sixth Report and Order and Third Further Notice of Proposed Rulemaking, 20 FCC Rcd 5593 (2005) ("Sixth Earth Station Reform Order") at ¶ 1 (proposing updated technical standards to allow Commission "to license more earth station applications routinely, expediting the provision of satellite services to consumers and enhancing the types of services available); *2000 Biennial Regulatory Review – Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations, Streamlining the Commission's Rules and Regulations for Satellite Applications and Licensing Procedures,* Eighth Report and Order and Order on Reconsideration, 23 FCC Red 15099 (2008) ("Eighth Earth Station Reform Order") at ¶ 1 (this order further streamlines "the Commission's non-routine earth station processing rules, by adopting a new earth station procedure that will enable the Commission to treat more applications routinely than is possible under the current earth station procedures").

[27] *See Procedures to Govern the Use of Satellite Earth Stations on Board Vessels in the 5925-6425 MHz/3700-4200 MHz Bands and 14.0-14.5 GHz/11.7-12.2 GHz Bands*, IB Docket No. 02-10, Report and Order, FCC 04-286, 20 FCC Rcd 674 (2005); *Amendment of Parts 2 and 25 of the Commission's Rules to Allocate Spectrum and Adopt Service Rules and Procedures to Govern the Use of Vehicle-Mounted Earth Stations in Certain Frequency Bands Allocated to the Fixed-Satellite Service,* IB Docket No. 07-101, Report and Order, FCC 09-64, 24 FCC Rcd 10414 (2009).

[28] *See* Federal Communications Commission, Final Plan for Retrospective Analysis of Existing Rules (May 18, 2012) at 38-39 ("The Commission has conducted meetings with stakeholders to assist in developing proposals to update and streamline the requirements for earth and space stations. As a result of rapidly changing technology, the Commission has identified these rules as ripe for comprehensive revision.").

Genachowski has placed the item on the tentative agenda for the September Commission meeting.[29]

Thus, significant regulatory changes have been implemented during the last decade to expedite processing of space and earth station applications, and to ease the oversight the Commission needs to have on active licenses, with additional measures under active consideration. These streamlining efforts significantly reduce the Commission resources needed to oversee satellite network operations. Moreover, as discussed in more detail below, the diminishing costs for those resources are currently covered by the substantial application fees satellite system operators pay, meaning there is little "cost" in the post-licensing arena.

In other areas as well, there has been a decrease in Commission resources relied upon to support commercial satellite network operations. For example, tasks associated with coordination of commercial satellites that were previously performed by Commission personnel largely have been shifted to private operators. Satellite operators prepare all necessary filings with the ITU, and the annual number of administration-level international coordination meetings has been dwindling. Furthermore, when those meetings do occur, a significant portion of the agenda typically deals with coordination of federal, not commercial, satellite networks, and commercial operators typically do all of the work associated with their systems. Commercial satellite operators should not be expected to bear the costs of Commission activities that benefit federal satellite networks.

---

[29] *See* Public Notice, FCC Announces Tentative Agenda for September Open Meeting (Sept. 7, 2012) at 1 (items on September 28 meeting agenda include "Comprehensive Review of Licensing and Operating Rules for Satellite Services: Advancing the Commission's regulatory reform efforts, the Commission will consider a Notice of Proposed Rulemaking to update, streamline, or eliminate earth and space station licensing requirements, reducing regulatory burdens on licensees and accelerating delivery of new satellite services to consumers.").

As a result of these changes, the Commission has been able to do much more with less.[30] Further, refocusing of staff activities away from matters relating to maintenance of licenses can be expected as additional streamlining measures are implemented. In short, the evidence suggests a reduction – not an increase – in the level of Commission costs attributable to regulatory activities involving the satellite industry.

It is important for achievement of the Commission's "fairness" objective for more information to be provided regarding how many FTEs in the Satellite Division are devoted to activities for which regulatory fees are payable – as opposed to pre-licensing activities for which application processing fees are submitted. Without this information, which is not in the Notice, there can be no real transparency and no expectation that the fees ultimately (or even currently) charged to space station licensees are fairly assessed.

B. Only a Fraction of the International Bureau's FTEs Can Be Considered Direct Costs for Space and Earth Station Licensees

The Commission seeks comment on whether to allocate all costs of the "core licensing bureaus," including the International Bureau, as direct costs for fee payers regulated by those bureaus.[31] SIA strongly opposes such an approach because it would burden satellite network fee payers with costs for International Bureau personnel who have no direct satellite-specific duties. This result would directly violate the principles underlying the regulatory fee system. Instead, the Commission must set direct costs for satellite network fee payers based on the mandate of Section 9, using only appropriate FTEs in the Satellite Division.

---

[30] For example, just since 2008, the size of the Satellite Division has contracted by more than 5%. In the SIA 2008 Reply Comments, SIA noted that the International Bureau's website listed thirty-eight employees under the Satellite Division (*see id*. at 5); today there are thirty-six. *See* http://transition.fcc.gov/ib/sd/.

[31] Notice at ¶ 19.

The proposal to allocate all FTEs of a core licensing bureau to the entities regulated by that bureau is based on an assumption that is simply incorrect with respect to the International Bureau. Specifically, the Commission asserts that "the work of the employees in the core bureaus and offices is primarily focused on the industry segment regulated by each bureau."[32] Based on this assumption, the Commission proposes to consider as direct costs for licensed entities all the FTEs associated with each of the licensing bureaus.[33]

However, the International Bureau is not the "Satellite Bureau." The only International Bureau employees whose work is "primarily focused" on the satellite industry are found in the Satellite Division, and therefore only Satellite Division FTEs can fairly be considered direct costs for satellite regulatory fee payers. Even then, not all Satellite Division FTEs can be counted for purposes of determining regulatory fee amounts because a significant portion of the division's workload involves application processing. Again, data that will provide transparency and enable a fair result is required. The other two divisions of the International Bureau simply have no direct satellite-specific responsibilities. As a result, the FTEs of those divisions must be excluded from satellite licensees' direct costs.

The Notice explicitly acknowledges that the International Bureau may require an exception to the proposed Commission policy of allocating all FTEs within a core licensing bureau as direct costs for the payers regulated by that bureau. The Commission observes that the work of the International Bureau's Strategic Analysis and Negotiations Division ("SAND") "covers services outside of the Bureau's direct regulatory activities."[34]

---

[32] *Id.* at ¶ 21.

[33] *Id.*

[34] *Id.* at ¶ 26.

> For example, this Division has primary responsibility for leading the Commission's international representation in bilateral meetings, multilateral meetings, and cross-border spectrum negotiations with Canada and Mexico on spectrum sharing arrangements, and notifications to the International Telecommunications Union (ITU), as well as participation in ITU Study Groups. Though focused on the international community, this international work covers the entire gamut of the Commission's regulatory responsibilities.[35]

As SIA has previously noted,[36] the International Bureau's Policy Division similarly has responsibility for a range of subjects not specific to satellite network regulation. According to the division's website:

> The Policy Division conducts international spectrum rulemakings, develops international telecommunications policy, licenses international telecommunications facilities, including submarine cables and provides expertise on foreign ownership issues. The Division's focus in developing international telecommunications policy is to achieve low calling rates for U.S. consumers and to facilitate competition in the provision of international services. In performing its functions, the Division coordinates with, provides guidance to, and shares it expertise within the FCC and with other U.S. agencies.[37]

Thus, like those of SAND, the FTEs of the Policy Division reflect regulatory activities for multiple classes of regulatory fee payers and cannot fairly be assigned to satellite network licensees.

It is not surprising that the roles and responsibilities of the International Bureau do not conform to the more limited concept of a "core licensing bureau" for purposes of

---

[35] *Id.* *See also* SIA 2008 Reply Comments at 6 n.9 (discussing SAND's role in activities that affect a variety of Commission licensees).

[36] *See id.*

[37] *See* http://transition.fcc.gov/ib/pd/.

regulatory fee assessment. When Congress created the regulatory fee system, the International Bureau did not exist, and licensing of satellite networks was handled by personnel within what was then the Common Carrier Bureau. In forming the International Bureau, the Commission consolidated under a single subdivision of the Commission individuals directly responsible for licensing matters involving satellite networks and undersea cables together with personnel whose work involved a much broader scope of regulated entities.[38] The decision to combine these functions for organizational purposes clearly was not intended to exempt entities regulated by other bureaus from bearing the costs related to the "international activities" for which regulatory fees are to be collected under the express terms of Section 9.

The Notice states that the International Bureau itself "has estimated that as much as one half of the FTEs in the Bureau work on matters covering services other than international services."[39] Accordingly, the Commission seeks comment on an allocation of FTEs that would reflect this ratio, by assessing the direct FTEs of the International Bureau and the other licensing organizations as follows: "International Bureau, 61 FTEs, representing 10.97% of total FTEs in the four core bureaus; Media Bureau, 208.72 (37.54%); Wireline Competition Bureau, 175.64 (31.59%); and Wireless Telecommunications Bureau, 110.64 (19.9%)."[40]

SIA agrees that no more than half of the International Bureau's FTEs can reasonably be attributed to entities like satellite networks that are licensed by the International Bureau. Accordingly, we urge the Commission to allocate the International Bureau FTEs among the core licensing bureaus in the manner set forth in paragraph 27 of the Notice. By assigning

[38] *See* Notice at ¶ 5 n.5.

[39] *Id.* at ¶ 27.

[40] *Id.*

the costs of the International Bureau FTEs equitably among all categories of fee payers that benefit from the Commission's international activities, this approach conforms to the requirements set by Congress.

C. FTEs for Personnel Outside the Core Licensing Bureaus Must Be Attributed as Direct Costs Where Appropriate

Like the suggested approach to allocation of FTEs within the four core licensing bureaus discussed above, the Notice's proposed treatment of FTEs outside the core bureaus rests on an unsupported and incorrect assumption. Specifically, the Commission states that:

> because the work of employees in the non-core bureaus supports the work of all the core bureaus, the FTE costs of these non-core bureaus and offices should all be treated as indirect costs and allocated among each of the core bureaus in the same percentage as that bureau's direct FTE percentage is to the total direct FTE costs of all the core bureaus.[41]

Once again, the flawed premise leads the Commission to an invalid tentative conclusion. As SIA has previously demonstrated, there are significant numbers of employees outside the core licensing bureaus whose work does not in fact support the work of all the core bureaus but instead is focused on a specific subset of regulatory fee payers.[42] The Commission cannot abdicate its statutory responsibility to attribute the costs of these FTEs to the classes of fee payers that are the beneficiaries of this expenditure of Commission resources.

For example, as SIA observed in its 2008 filing, there are divisions within the Enforcement Bureau whose work is limited to issues relating to specific categories of regulatory

[41] *Id.* at ¶ 21.

[42] SIA 2008 Reply Comments at 8.

fee payers.[43] The role of the Market Disputes Resolution Division is confined to handling complaints against common carriers and pole attachment disputes. Accordingly, the FTEs of the Commission employees who staff this division should be assessed as direct costs for telecommunications carriers and cable operators instead of being added to the costs for satellite licensees and others. Similarly, the FTEs associated with the Enforcement Bureau's Telecommunications Consumers Division should be assigned as direct costs to the telecommunications carriers whose behavior is monitored and regulated by those personnel.

The Notice summarily dismisses SIA's arguments regarding appropriate allocation of the FTEs in these divisions of the Enforcement Bureau in a footnote. Specifically, the Commission claims that "while it may be true at a given point in time" that employees in these parts of the Commission are not involved in regulating satellite licensees,

> at another time all members of that division may be engaged in an investigation involving satellite providers, or certain members engaged in investigations or other activity affecting satellite providers, either directly or indirectly.[44]

This suggestion is completely implausible. SIA is not aware of <u>any</u> investigation or activity <u>ever</u> undertaken by either of these two divisions that involved a satellite services provider.[45] This is not surprising because the specific defined roles of these two divisions of the

---

[43] *See id.*

[44] Notice at n.14.

[45] A search in the Commission's database for actions involving the Market Disputes Resolution Division turned up only decisions involving payphone compensation, pole attachment disputes, and resolution of complaints involving telephone access charges, carrier common line, and transport and termination payments. Similarly, a search for actions involving the Telecommunications Consumers Division turned up solely items relating to slamming, CPNI enforcement, unsolicited faxes, prerecorded advertising calls, do-not-call list compliance, and deceptive marketing of calling cards and other consumer communications services.

Enforcement Bureau do not involve oversight of satellite operations.[46] In light of the divisions' history and limited scope of responsibility, there is absolutely no basis for the Commission's assertion that at some point all the members of either of these divisions might suddenly be involved in investigating a satellite service provider.

Under these circumstances, the Commission's proposals to treat FTEs of the Market Disputes Resolution Division and Telecommunications Consumers Division as overhead simply do not square with the explicit command of the statute. Contrary to the suggestion in the Notice, Section 9 does not instruct the Commission to consider only FTEs within the core licensing bureaus in assessing direct costs for purposes of regulatory fee calculations.[47] Instead, the statutory language expressly states that FTEs in "other offices of the Commission" are to be taken into account.[48]

Of course, at the time the statute was adopted, the Enforcement Bureau did not yet exist.[49] Instead, the personnel responsible for monitoring and enforcing rules relating to common carriers worked for the Common Carrier Bureau. As with the creation of the International Bureau, the Commission's decision to consolidate personnel with enforcement responsibilities in a single bureau for efficiency reasons clearly was not meant to alter the

[46] In contrast, the Enforcement Bureau's Spectrum Enforcement Division handles matters relating to all Commission entities that use radio frequencies, so staff from this segment of the Bureau typically manages the rare case in which there is any type of enforcement action against a satellite company.

[47] *See id.* at ¶ 5.

[48] 47 U.S.C. § 159(a)(1).

[49] The Enforcement Bureau was not established until 1999. *See* Press Release, FCC Reshapes for the Future - Establishes New Enforcement And Consumer Information Bureaus To Be Effective November 8, 1999 (rel. Oct. 26, 1999).

allocation of costs for the enforcement activities for which regulatory fees are to be collected under Section 9.

Nor can the Commission rely on ease of administration to justify requiring all regulatory fee payers to bear the costs of Commission employees whose role is limited to defined classes of providers. The Notice alleges that attempting to assign costs of FTEs outside the core bureaus on a task-specific basis would be unworkable,[50] but that is not what SIA is suggesting. Instead, SIA proposes simply that the Commission review 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 to the regulated entities whose operations are the focus of that work.

D. Remaining Indirect Costs Must Be Fairly Apportioned

Once the Commission has assigned as direct costs the FTEs of personnel both inside and outside the core licensing bureaus whose responsibilities are related to specific classes of fee payers, the Commission must determine how the remaining overhead costs should be apportioned. Here, too, costs must be assigned in a way that reflects causation, not simply based on assumptions.

These allocation issues are critical because FTEs outside the core licensing bureaus represent almost two-thirds of the total Commission FTEs.[51] With the overhead component of regulatory fees so high, the distribution of that overhead among the fee categories will have a substantial impact on fee amounts.

---

[50] Notice at ¶ 20.

[51] *See id.* at ¶ 24 (noting that there are a total of 556 FTEs combined in the four core bureaus and 1000 FTEs in the support bureaus and offices).

Accordingly, the Commission must ensure that with respect to areas of the Commission that have broad responsibility for all regulated entities, costs are not disproportionately attributed to satellite industry fee payers. For example, very few satellite-focused items are voted on by the Commissioners in any given year.[52] Similarly, a tiny proportion of the proceedings before the Enforcement Bureau's Spectrum Enforcement Division concern satellite licensees. Furthermore, satellite entities are not typically required to seek equipment authorization, so they rarely if ever have any contact with the Office of Engineering and Technology's Laboratory Division. SIA expects that an analysis of the work performed by other Commission segments, such as the Consumer and Government Affairs Bureau or the Experimental Licensing Branch with the Office of Engineering and Technology, would show that only a very small proportion of the matters they handle involve satellite-related issues or applications.

When it assigns the costs for these FTEs, the Commission must use actual data reflecting the relative share of these costs related to various categories of fee payers. SIA is not proposing that the Commission attempt to return to a highly detailed time card-based analysis. The Notice expresses concern that:

> Any attempt to redistribute . . . indirect costs on a task-by-task basis would be neither consistent nor workable, requiring us to assign more costs to certain divisions of support bureaus or offices for certain licensees at a given point in time, and then reassign these costs as the work of that division changes from month to month, week to week, or even day to day.[53]

[52] According to the International Bureau's database of public orders, only one item from the International Bureau has been decided at the Commission level so far in 2012. *See* http://transition.fcc.gov/Document_Indexes/International/2012_index_IB_Order.html (listing a July 2012 reconsideration order in the ESV proceeding as the only entry with an FCC document number).

[53] Notice at ¶ 20.

SIA agrees that the Commission should not attempt to make such frequent and minute changes to cost allocations.

There is no reason, however, to make the perfect the enemy of the good – using objective measures to determine distribution of overhead costs each year would allow the Commission to fulfill its obligation to use a cost basis for assessing regulatory fees without requiring significant administrative effort. Thus, for example, FTEs in the Commissioners' offices could be distributed among regulatory fee categories by determining the relative proportion of Commission level decisions associated with each of the core licensing bureaus. A similar approach could be taken to apportion the costs of the Spectrum Enforcement Division. Absent available objective data that would support such a calculation with respect to a specific bureau or office, the Commission could rely on a distribution estimate performed by the management of that bureau or office.[54] By undertaking this analysis, the Commission can ensure that fee payers who more heavily use Commission resources pay their fair share of the related costs.

SIA does not believe that this approach would result in major changes in the fees due from various categories of payers from year to year. Although there would be fluctuations in the level of overhead attributable to a given class of fee payers, there is no reason to expect that these shifts would be extreme. More importantly, however, this approach would ensure that the fee changes are tied to the underlying costs, as required under the statute.

[54] The Commission suggests a similar approach for the reallocation of FTEs within a given core licensing bureau. *See id.* at ¶ 34.

E. Costs Covered by the Substantial Application Fees Paid by Satellite Licensees Must Be Excluded from Regulatory Fee Calculations

Finally, the Commission must also ensure that satellite licensing costs are excluded from any regulatory fee calculations. As SIA has previously explained, the largest investment of FCC resources attributable to a given satellite system is expended during processing of the initial license application.[55] Satellite applicants already pay substantial fees to cover these costs. Specifically, the application fee for a license for a geostationary satellite is currently $120,005, and the fee for an NGSO satellite network is $413,295.[56] These are by far the highest fees paid by any license applicants. In contrast, the highest fee for an application filed with the Media Bureau is $4350,[57] and no fee for a Wireless Bureau license application is more than $785.[58]

The statute makes clear that regulatory fees are to be collected only for a defined set of activities that does not include licensing functions.[59] Assessing both application fees and regulatory fees to cover the same licensing-related costs would allow double-recovery. Accordingly, the Commission must ensure that licensing costs are not included when calculating amounts to be collected through satellite system regulatory fees.

[55] SIA 2008 Reply Comments at 3.

[56] *See* 47 C.F.R. § 1.1107.

[57] *See* 47 C.F.R. § 1.1104.

[58] *See* 47 C.F.R. § 1.1102.

[59] 47 U.S.C. § 159(a)(1).

IV. THE COMMISSION SHOULD DEFER OR PHASE IN ANY SIGNIFICANT INCREASE IN SATELLITE REGULATORY FEES

Based on the factors outlined above, SIA believes that any legitimately cost-based reassessment of regulatory fees will not produce a material increase for space station operators; in fact, given the shrinking amount of Commission resource time focused on satellites, one would expect instead a reduction of regulatory fees. However, if the Commission disregards the factual analysis provided above, and opts to nevertheless adopt changes that substantially increase satellite regulatory fees, the Commission should at a minimum ameliorate the potential adverse impact on the satellite industry by avoiding a flash-cut implementation of the increase. Instead, any major increase should either be deferred or phased in over time.[60]

Grant of such relief is consistent with the Commission's fee reform goals. As the Commission discusses in the Notice (at ¶ 15), it previously abandoned a system of cost accounting due in part to the "unpredictability and rapid shifts in fee rates that it created for fee payors." A system that allows extreme changes in fees from year to year makes planning for significant expenditures impossible and frustrates an operator's ability to set service rates at a level that will cover the underlying costs.

These adverse impacts would be particularly serious in the satellite industry. As noted above, satellite networks already pay among the highest per station regulatory fees of any category, and these fees are paid by a small group of space station licensees. Consequently, any major jump in the applicable fees would represent an annual cost impact of millions of dollars for the largest satellite operators. Furthermore, a significant increase in Commission regulatory fees for satellite networks could have an industry-wide snowball effect, since other

[60] To be fair, SIA is willing to endorse a reasonable phase-in over time of any major decrease in regulatory fees for space stations (GSO and NGSO) as well.

administrations typically look to the U.S. to serve as an example and could implement similar fee increases domestically.

These added costs would need to be recovered from satellite service customers. However, the bulk of satellite network capacity is sold pursuant to long-term agreements that can span a decade or more. The service rates reflected in existing agreements were based on the operators' reasonable expectations that the regulatory fee portion of their cost structure would not change dramatically over the course of the contract. With lengthy contract terms, operators are not in a position to implement an immediate rate adjustment to cover a huge fee increase. Instead, such changes cannot be effected for any given customer until the end of that customer's contract period.

Under these circumstances, a delayed or phased in implementation of fee increases is clearly appropriate. Deferral would allow the Commission to take into account the effect of the significant streamlining effort currently under way with respect to the Part 25 satellite rules. As discussed above, the Commission is preparing to initiate a comprehensive review of the satellite regulatory framework, based in part on significant input provided by SIA. This undertaking is part of the Commission's overall effort to review existing rules.[61]

The Part 25 changes under consideration will reduce the Commission resources needed for oversight of satellite network operators. SIA is concerned that if the Commission acts now to implement any significant fee increase for satellite networks, the effect will be to lock in unnecessarily high fees for a potentially quite lengthy period, given the rarity with which the Commission has revisited the underlying fee structure in the past. By deferring effectiveness of a satellite fee increase until this streamlining proceeding has been completed, the Commission

[61] *See* Federal Communications Commission, Final Plan for Retrospective Analysis of Existing Rules (May 18, 2012).

can instead base its regulatory fee decisions on data that reflect a more realistic long-term understanding of the regulatory costs associated with satellite networks going forward.

At a minimum the Commission should limit the harm to the satellite industry of a major regulatory fee increase by gradually implementing the rate changes. Phasing in fee changes over an extended period will to permit satellite operators to make the necessary rate adjustments to cover the added costs.

V. CONCLUSION

SIA supports the Commission's decision to overhaul and update the regulatory fee structure. However, unless the revised structure is based on concrete data regarding the fee payer categories that benefit from the work of the Commission, the end result will be no closer than the current system to fulfilling the statutory intent. Accordingly, SIA urges the Commission to take the steps outlined above to ensure that regulatory fees for satellite networks are fairly aligned with the underlying costs.

Respectfully submitted,

SATELLITE INDUSTRY ASSOCIATION

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

September 17, 2012