

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

In the Matter of)	
)	
Assessment and Collection of Regulatory)	MD Docket No. 22-223
Fees for Fiscal Year 2022)	

REPLY COMMENTS OF THE SATELLITE COALITION

O3b Limited, SES Americom, Inc., Telesat Canada, and WorldVu Satellites Limited d/b/a OneWeb (collectively, the “Satellite Coalition”) hereby reply to comments regarding the proposed regulatory fees for Fiscal Year 2022.¹ The record confirms that the Commission should establish new fee categories to make the fee regime more fair and mitigate the harms of imposing a growing burden on a subset of the parties that benefit from Commission activities while others avoid contributing to the costs of that work. The record also dictates that the Commission undertake a review of the 75% of its total costs that are assigned as indirect and revisit the 80/20 split of fees for non-geostationary orbit (“NGSO”) satellite networks, which is based on outmoded facts.

I. ADOPTING THE NEW FEE CATEGORIES PROPOSED BY THE SATELLITE COALITION IS JUSTIFIED AND WORKABLE

The Satellite Coalition² and other commenters³ stress that broadening the fee base is necessary to comply with the Congressional direction that the Commission’s review of the fee structure must consider “factors that are reasonably related to the benefits provided to the payor of the fee by the Commission’s activities.”⁴ These parties amply demonstrate that there are administratively practical measures that can be used to reach industry segments not paying their fair share of regulatory costs

¹ *Assessment and Collection of Regulatory Fees for Fiscal Year 2022*, Report and Order and Notice of Proposed Rulemaking, FCC 22-39 (rel. June 2, 2022) (“*Notice*”).

² Comments of O3b Limited, SES Americom, Inc., Telesat Canada, and WorldVu Satellites Limited d/b/a OneWeb, MD Docket No. 22-223, filed July 5, 2022 (“*Satellite Coalition Comments*”) at 1. Unless otherwise indicated, all citations herein are to comments filed July 5, 2022, in MD Dkt No. 22-223.

³ See Comments of the Satellite Industry Association (“*SIA Comments*”) at 3-4; Comments of the National Association of Broadcasters (“*NAB Comments*”) at 1-2; Joint Comments of the State Broadcasters Associations (“*State Associations Comments*”) at 10.

⁴ 47 U.S.C. § 159(d).

today⁵ and highlight the harms of permitting “free riders” to continue actively pursuing and obtaining Commission benefits without bearing an appropriate portion of the related costs.⁶ Opponents of widening the fee base provide no valid reason why companies that have enjoyed huge commercial success resulting from Commission regulatory activities⁷ should be exempt from supporting the Commission’s work.

The Satellite Coalition Comments propose adding four categories of payors that benefit from Commission activity and meet the threshold for adopting new fees discussed in the *Notice*⁸: (1) holders of experimental licenses; (2) broadband internet access service providers; (3) holders of equipment authorizations; and (4) database administrators that charge fees to enable unlicensed operations.⁹ The record supports adding these new categories to the fees framework.

For example, SIA expressly endorses the idea of regulatory fees for experimental licensees, who benefit from the work performed by full-time equivalent (“FTE”) employees in the Office of Engineering and Technology (“OET”) but may not contribute at all to Commission costs related to experimental activities.¹⁰ The FTEs that work on experimental licensing are easily identifiable, and SIA agrees with the Satellite Coalition that if the calculated annual fee amount for experimental licensees is relatively small, the fee could be collected for the entire license term in advance.¹¹

The record justifies imposing fees on broadband internet service providers also. As the Satellite Coalition Comments observe, the Commission has already calculated the FTEs that work on

⁵ See Satellite Coalition Comments at 3-4; SIA Comments at 3; NAB Comments at 1-2.

⁶ See Satellite Coalition Comments at 5-6; NAB Comments at 4-5.

⁷ See Letter of Consumer Technology Association *et al.* (“Unlicensed Spectrum Interests Letter”) at 1 (unlicensed spectrum “generates \$95.8 billion per year in incremental sales value”). See also Comments of CCIA, DiMA, INCOMPAS and Internet Association, MD Docket No. 21-190, filed Oct. 21, 2021 (“Internet Trade Associations 2021 Comments”) at 2 (discussing value of unlicensed spectrum to the U.S. economy), resubmitted in MD Docket No. 22-223.

⁸ *Notice* at ¶ 12.

⁹ Satellite Coalition Comments at 2.

¹⁰ SIA Comments at 3.

¹¹ Satellite Coalition Comments at 2 & n.10; SIA Comments at 3. This is the approach the Commission takes with respect to a number of fee categories – collecting the regulatory fee up front at the time an application is filed. See *Notice* at 36.

broadband policy,¹² negating the notion it is administratively too difficult to assign FTEs to specific classes of beneficiaries. The costs of any of these FTEs that are currently classified as indirect should be recovered via a new broadband provider fee category and assessed based on broadband access revenues or some other relevant measure of market presence.¹³ The NAB Comments explain that the “Commission has the relevant information necessary to define the [broadband internet service provider] fee category and establish a basis for assessing fees,” since the Commission has defined what constitutes a “broadband internet access service” and has the means to collect subscriber numbers and revenue data.¹⁴

Commenters support extending fees to users of unlicensed spectrum as well. Specifically, fees can be imposed on manufacturers that must obtain equipment authorizations and via the database administrators that manage access to unlicensed spectrum.¹⁵ Neither the Satellite Coalition nor other proponents of a regulatory fee for unlicensed services are proposing that the Commission levy fees directly on end users, contrary to the overblown rhetoric of unlicensed industry interests.¹⁶

Objections by self-interested parties seeking to retain their free rider status and avoid contributing fairly to the Commission’s costs are wholly unavailing. Critically, these parties do not dispute that they benefit from Commission activities, which under applicable court precedent interpreting the RAY BAUM’S Act¹⁷ is the essential element for determining whether a regulatory fee assessment is authorized.¹⁸ The fact that unlicensed spectrum users may not be awarded Commission

¹² Satellite Coalition Comments at 3 & n.11 (the Commission’s budget submitted to Congress identified 550 FTEs that work on the “100 Percent” broadband goal). *See also* NAB Comments at 13-14.

¹³ Satellite Coalition Comments at 3-4 & n.12. *See also* NAB Comments at 21 & n.63.

¹⁴ NAB Comments at 23-24 & nn.73, 74. Indeed, the Commission already collects deployment and subscriber count data for broadband internet access providers through FCC Form 477 and the FCC’s Broadband Data Collection system.

¹⁵ Satellite Coalition Comments at 4; NAB Comments at 26.

¹⁶ *See* Internet Trade Associations 2021 Comments at 4.

¹⁷ Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, 132 Stat. 1084, Division P – RAY BAUM’S Act of 2018, Title I, § 103 (2018) (“RAY BAUM’S Act”).

¹⁸ *See* Satellite Coalition Comments at 3 & n.8, State Association Comments at 13 & n.20, both *quoting Telesat Canada, et al. v. FCC*, 999 F.3d 707, 713 (D.C. Cir. 2021) (“*Telesat*”) (under the language of the revised statute “benefits – not licenses – should be the touchstone for whether it is reasonable for the FCC to collect regulatory fees”).

licenses or granted interference protection¹⁹ is therefore irrelevant, as these factors do not determine whether unlicensed users benefit from Commission activities. Indeed, as the record makes clear, even before the RAY BAUM’S Act took effect the Commission adopted a regulatory fee for the “RespOrgs” that administer toll free numbers – parties that do not use spectrum at all – based on a determination that Commission FTEs expend significant effort on regulatory matters benefitting those entities.²⁰

Nor do observations that unlicensed operations serve the public interest²¹ and that some entities subject to new fees may already pay regulatory fees for other operations²² justify continuing to allow these parties to evade contributing their fair share of Commission costs. The Commission’s overarching mandate under the Communications Act is to regulate all communications services consistent “with the public interest, convenience, and necessity,”²³ and unlicensed services are not unique in their contributions to the U.S. economy and consumer welfare. Furthermore, many current regulatory fee payors, including satellite operators, are covered by multiple fee categories.²⁴

Similarly, the claim that “unlicensed spectrum users do not impose discrete duties on the Commission”²⁵ is simply false. For example, the 6 GHz proceeding – touted by unlicensed interests as a success story in enabling new applications and innovations²⁶ – required Commission staff to analyze numerous technical studies and thousands of pages of pleadings to determine whether the proposed unlicensed operations could compatibly co-exist with incumbent licensed uses of the spectrum. Moreover, pursuant to the 6 GHz rules and other regulatory regimes to enable unlicensed operations,

¹⁹ See Unlicensed Spectrum Interests Letter at 2 (unlicensed spectrum users “receive no protection from harmful interference nor a vested right to use any particular frequency”).

²⁰ See Satellite Coalition Comments at 4 & n.15; NAB Comments at 23 & n.72.

²¹ Unlicensed Spectrum Interests Letter at 2; Internet Trade Associations 2021 Comments at 1-2.

²² Internet Trade Associations 2021 Comments at 5.

²³ See, e.g., 47 U.S.C. § 302(a).

²⁴ For example, Direct Broadcast Satellite operators pay both space station fees and per subscriber fees levied on cable television systems and other video providers. See Notice at ¶ 12.

²⁵ Unlicensed Spectrum Interests Letter at 2.

²⁶ *Id.* at 2 & n.5.

the Commission promulgates certification standards, reviews proposals, and approves the database administrators that manage spectrum use.²⁷ The direct beneficiaries of all that Commission work are the very unlicensed service providers who are attempting to escape responsibility for the costs.

Finally, the suggestion that the Commission can only calculate regulatory fees based on FTEs in the “core licensing bureaus,” which would exclude personnel in OET and other bureaus and offices,²⁸ is inconsistent with the plain language of the RAY BAUM’S Act. As the Satellite Coalition and other commenters note, Congress expressly instructed the Commission to assess regulatory fees based on FTEs “within the bureaus and offices of the Commission,”²⁹ without regard to whether those FTEs have licensing responsibility.³⁰

In short, the record demonstrates that the Commission should proceed expeditiously to adopt new fee categories as proposed by the Satellite Coalition and others. The current system requires entities that fit into existing fee categories to shoulder the burden of FTEs whose work primarily benefits others that pay no fees. This inequitable fee burden disincentivizes expansion of service to customers³¹ and mandates that parties subject to fees cross-subsidize their competitors, skewing the free market for communications services.³² Broadening the fee base will promote core Commission objectives by enhancing both the fairness and sustainability of the regulatory fees framework.³³

II. THE COMMISSION SHOULD REVISE ITS INDIRECT FTE ASSIGNMENTS

In addition to adopting new fee categories, the Commission should reassess how indirect FTE costs are distributed. As the Satellite Coalition and other commenters demonstrate, indirect costs today

²⁷ See, e.g., *Unlicensed Use of the 6 GHz Band; Expanding Flexible Use in Mid-Band Spectrum Between 3.7 and 24 GHz*, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 3852 (2020) at 3870-71, ¶¶ 48-50 (describing the process to certify 6 GHz automated frequency coordination system administrators).

²⁸ See Internet Trade Associations 2021 Comments at 7.

²⁹ 47 U.S.C. § 159(d).

³⁰ See, e.g., Satellite Coalition Comments at 4-5; SIA Comments at 2; State Association Comments at 12.

³¹ See Satellite Coalition Comments at 6.

³² See *id.*; NAB Comments at 4-5 & n.11.

³³ See, e.g., *Notice* at ¶ 11 (discussing the Commission’s goal of ensuring that its “assessment of regulatory fees is fair, administrable, and sustainable”).

represent roughly 75% of regulatory fee amounts.³⁴ These costs are especially burdensome for the satellite industry, as some satellite companies pay millions of dollars per year solely to cover indirect FTE costs.³⁵

A number of commenters observe that the Commission's practice of assuming that all FTEs outside the core licensing bureaus should be assigned based on the proportional number of direct FTEs in each bureau is a vast oversimplification that distorts the regulatory fee burden.³⁶ The Commission can improve the fairness of the fee system by reviewing whether FTEs in offices or divisions currently assigned as overhead to all fee payors could instead be associated with specific groups of payors based on the work performed. SIA, for example, notes that FTEs in the Office of Economics and Analytics work mainly on auction-related items that have no relevance to the satellite industry.³⁷ The Commission can and should reassign those FTEs to the categories of regulatory fee payors that benefit from that work.

The Commission has demonstrated its ability to perform the additional analysis needed to assign currently indirect FTEs more accurately. For instance, the Commission in 2014 determined that Enforcement Bureau regional and field office investigations "were almost evenly split between wireless and broadcast-related cases"³⁸ and 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."³⁹ The Commission also recognized that only about 1% of the informal complaints handled by the Consumer and Governmental Affairs Bureau dealt with satellite-related issues, and these involved compliance with

³⁴ See Satellite Coalition Comments at 5-6 & n.22, citing Notice at ¶ 18; NAB Comments at 7-8.

³⁵ Satellite Coalition Comments at 6.

³⁶ See, e.g., SIA Comments at 4; NAB Comments at 7-8; State Association Comments at 13.

³⁷ SIA Comments at 4-5.

³⁸ *Assessment and Collection of Regulatory Fees for Fiscal Year 2014*, Notice of Proposed Rulemaking, Second Further Notice of Proposed Rulemaking, and Order, 29 FCC Rcd 6417 (2014) ("FY 2014 Notice") at 6425 n.46.

³⁹ *Id.* at 6426, ¶ 24.

rules administered by the Media Bureau, not the International Bureau.⁴⁰ To make cost assignments more equitable, the Commission proposed to reassign FTEs from the Enforcement and Consumer and Governmental Affairs Bureaus to align with the actual work performed by these personnel.⁴¹ The Commission then did a complete turnaround, however, deciding not to correct these misallocated FTEs,⁴² and more recent decisions have suggested that using workload data to determine how to assign FTEs is infeasible⁴³ – even though this is exactly what the Commission did before the FY 2014 Notice.

The record confirms that a more tailored assignment of indirect costs is eminently practical, as the Commission’s own budgeting process shows it is able to identify what FTEs are associated with its various policy goals.⁴⁴ Furthermore, other federal agencies take great efforts to track costs by industry segment and ensure fees align with those costs.⁴⁵ By undertaking a reassessment of whether FTEs currently classified as indirect can be assigned directly to one or more categories of fee payors, the Commission can greatly improve the fee structure’s fairness.

III. THE RECORD CONFIRMS THE NEED TO REVISIT THE “80/20” SPLIT BETWEEN “OTHER” AND “LESS COMPLEX” NSGO SYSTEMS

The Satellite Coalition Comments discuss the Communications Act mandate that the Commission adjust its fee schedule each year to take into account fluctuations in the number of FTEs in its bureaus and offices.⁴⁶ The *Notice* conflicts with this requirement by proposing to maintain last year’s 80/20 split for regulatory fees between “other” and “less complex” NGSO satellite systems without examining current conditions.⁴⁷

⁴⁰ *Id.* at 6426, ¶ 24 & n.51.

⁴¹ *Id.* at 6427, ¶ 27 & Table 2.

⁴² *Assessment and Collection of Regulatory Fees for Fiscal Year 2014*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 10767, 10780, ¶ 31 (2014).

⁴³ *See, e.g., Assessment and Collection of Regulatory Fees for Fiscal Year 2019*, Report and Order and Further Notice of Proposed Rulemaking, 34 FCC Rcd 8189, 8194-95, ¶ 14 (2019).

⁴⁴ *See* Satellite Coalition Comments at 3-4 & n.11.

⁴⁵ *See* NAB Comments at 5-6 & nn.13-15.

⁴⁶ Satellite Coalition Comments at 7.

⁴⁷ *Id.* at 7-8.

The Satellite Coalition Comments show that baseline assumptions on which the Commission relied previously to justify an 80/20 split are no longer accurate. For example, the Commission determined that the defining characteristic of “less complex” NGSO systems is that they communicate with fewer than 20 U.S. earth stations. Although IBFS does not identify all points of communication, one can see that at least two systems classified as less complex communicate with more than 20 FCC-licensed antennas,⁴⁸ and it is likely others do, too, as it has become increasingly common for such systems to associate with “ground station-as-a-service” organizations that have elaborate ground infrastructure⁴⁹ or to downlink data directly to user terminals, including more ubiquitous mobile terminals.⁵⁰

Meanwhile, other distinctions the Commission assumed to exist in 2021 between the subcategories of NGSO satellite systems are breaking down, as the Earth Exploration Satellite Service (“EESS”) fleets that represent the majority of the “less complex” category increasingly develop a global presence, have significant spectrum needs involving a variety of frequency bands, and use those frequencies for a wide range of services.⁵¹

In short, the NGSO industry is converging, with EESS systems mirroring similar supporting infrastructure as other NGSO constellations.⁵² One EESS system, Astro Digital, is even a participant in a “Little LEO” processing round.⁵³ Meanwhile the relevance of processing rounds to the Commission’s allocation of resources to NGSO constellations in the fixed-satellite service (“FSS”) is decreasing, with concrete sharing criteria in place, and the largest FSS processing rounds having already occurred.⁵⁴

⁴⁸ *Id.* at 9-10 & n.36.

⁴⁹ *Id.* at 11 & n.42.

⁵⁰ *Id.* at 11 & n.43.

⁵¹ *Id.* at 13-15 & n.53.

⁵² *Id.* at 15-17.

⁵³ *Id.* at 16-17 & n.58.

⁵⁴ *Id.* at 17-18.

Moreover, the “less complex” subcategory has been stripped of its least resource-intensive space stations, *i.e.*, the so-called “small satellite” systems, leaving only systems that demand relatively more Commission oversight in the “less complex” subcategory for FY 2022 and going forward.⁵⁵ In its comments, Orbital Sidekick urges the Commission to treat systems as “small satellites” for regulatory fee purposes even if they are not authorized through the streamlined procedures for those systems but instead apply through the regular Part 25 licensing process.⁵⁶ Accepting this argument would exclude from the “less complex” NGSO category even more satellite systems that fall on the “less complex” range of the scale, leaving only systems that require more Commission oversight in that category. This outcome would further blur the lines between the “other” and “less complex” categories, reinforcing the need for the Commission to revisit the 80/20 ratio and the basis for its fee differentiation between “other” and “less complex” NGSO systems.

Given these facts and consistent with its statutory obligation to update its regulatory fee assessments to reflect benefits from FCC activities, the Commission should consider whether the 80/20 ratio should be substantially revised, or indeed whether the subcategories of “other” and “less complex” NGSO systems should be eliminated altogether.

IV. CONCLUSION

For the foregoing reasons and those set forth in the Satellite Coalition Comments, the Commission should: adopt new fee categories to recover costs from parties who benefit from Commission efforts but do not cover their fair share of costs; perform a more detailed review of FTEs currently classified as indirect to determine whether they can be assigned more accurately; and revisit

⁵⁵ *Id.* at 19-20.

⁵⁶ Comments of Orbital Sidekick, Inc. at 1.

its prior determination that the NGSO revenue requirement should be split on an 80/20 basis between the “other” and “less complex” categories, or whether a split can be justified at all.

Respectfully submitted,

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July 18, 2022