

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

FILE

JUN 7 2004

OFFICE OF
MANAGING DIRECTOR

Michael F. Morrone, Esq.
Keller and Heckman LLP
1001 G Street, N.W., Suite 500 West
Washington, DC 20001

Re: SNC Telecommunication, LLC
Request for Waiver of Application Fee
Fee Control No. 0206268120167001

Dear Mr. Morrone:

This is in response to your request dated June 24, 2002, submitted on behalf of SNC Telecommunication, LLC (SNC), licensee of station WPOI 466, serving the Alaska 1-Wade Hampton RSA market, for a waiver and refund of the filing fee associated with a petition for relief filed by SNC under section 109(b) of the Communications Assistance for Law Enforcement Act (CALEA). Our records reflect that you paid the \$5,000.00 application fee at issue here.

The Commission has discretion to waive filing fees upon a showing of good cause and a finding that the public interest will be served thereby.¹ We construe our waiver authority under section 8 of the Communications Act, 47 U.S.C. §158(d)(2), narrowly and will grant waivers on a case-by-case basis to specific applicants upon a showing of "extraordinary and compelling circumstances."²

You state that a denial of the refund request would cause SNC financial hardship. You state that "[w]ith a subscriber base of merely 133 customers, SNC . . . does not derive the income necessary to cover large filing fees such as the one required for CALEA Section 109(b) petitions." You state that "SNC is losing approximately \$45,000.00 per month." In support of your request, you submit a copy of SNC's profit and loss statement for the period ending May 2002.

¹ See 47 U.S.C. §158(d)(2); 47 C.F.R. §1.1117(a); *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 5 FCC Rcd 3558, 3572-73 (1990).

² See *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 2 FCC Rcd 947, paras. 70, 87-88 (1987); *Sirius Satellite Radio, Inc.*, 18 FCC Rcd 12551 (2003).

In establishing its fee program, the Commission recognized that in certain instances payment of a fee may impose an undue financial hardship upon a licensee. The Commission therefore decided to grant waivers or reductions of its fees in those instances where a petitioner presents a "compelling case of financial hardship."³ The Commission has stated that regulates can establish financial need by submitting:

[I]nformation such as a balance sheet and profit and loss statement (audited, if available), a cash flow projection . . . (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. 10 FCC Rcd at 12761-62.

In reviewing a showing of financial hardship, the Commission relies upon a licensee's cash flow as opposed to the entity's profits, and considers whether the station lacks sufficient funds to pay the fee and maintain service to the public. Thus, even if a station loses money, any funds paid to principals, deductions for depreciation, or similar items are considered funds available to pay the fees.⁴ SNC's profit and loss statement indicates that SNC suffered a financial loss for the relevant period that was only partially offset by depreciation and salaries that may have been paid to officers.⁵ We therefore find that SNC has shown good cause to warrant a waiver of the application fee and we grant your request.

If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark A. Reger
Chief Financial Officer

³ See *Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5346 (1994), on recon., 10 FCC Rcd 12759 (1995) (*Implementation of Section 9 Reconsideration*).

⁴ See *Implementation of Section 9 Reconsideration*, 10 FCC Rcd at 12761-62.

⁵ Because the line item for salaries ("payroll expenses") on SNC's profit and loss statement does not indicate whether the amounts represent payments to principals, we assume just for purposes of this calculation that they do represent payments to principals and we therefore consider them to be funds available to pay the application fee.

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BEFORE THE

Federal Communications Commission

WASHINGTON, DC 20554

In the Matter of

SNC TELECOMMUNICATION, LLC

**Communications Assistance for
Law Enforcement Act**

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TRS No. 820924

CC Docket No. 97-213

To: The Commission

PETITION FOR WAIVER OF FILING FEE

SNC Telecommunication, LLC ("SNC"), by its attorneys, in accordance with Section 1.3 of the Federal Communications Commission's ("Commission") Rules, 47 C.F.R. §1.3, hereby respectfully requests a waiver of the filing fee imposed for petitions for relief under Section 109(b) of the Communications Assistance for Law Enforcement Act ("CALEA").

I. BACKGROUND

SNC is the licensee of station WPOI 466, serving Market CMA315-A, RSA Alaska 1 - Wade Hampton ("Alaska 1 RSA") in the vicinity of Nome, Alaska. Alaska 1 RSA is composed of largely rural and isolated communities. Station WPOI 466 consists of but one analog site situated in Nome. SNC's facilities were deployed on July 1, 1999. As of June 1, 2002, SNC was serving a total of 133 subscribers. Based upon estimates from its supplier, it will cost SNC a minimum of \$300,000 to upgrade its system to become CALEA compliant. SNC is currently operating on analog facilities manufactured by Harris Canadian, Inc. ("Harris"). To become

CALEA compliant, SNC must purchase a new digital switch to replace its current analog switch, and then further upgrade that new equipment to conform to the uncontested electronic surveillance capabilities associated with the industry interim standard, *i.e.* the J-STD-025 ("J-Standard"), that serves as the "safe harbor" standard under Section 107(a)(2) of CALEA,¹ as well as the contested packet-mode communications capability of the J-Standard and the FBI's punch list capabilities. SNC is filing with the instant petition a Petition for Relief Under Section 109(b) of CALEA and has paid the applicable \$5,000 filing fee therewith.² A copy of that petition is attached as Exhibit A. SNC respectfully requests a waiver of the \$5,000 filing fee associated with its CALEA Section 109(b) petition.

II. DISCUSSION

A. Basis for a Waiver of the Filing Fee

The Commission may grant a waiver for "good cause shown."³ Under Sections 1.925(b)(3)(i) and (ii) of the Commission's Rules, alternative standards have been established for justifying rule waiver grants. Either (1) the "underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest" or (2) "in view of the unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest or the applicant has no reasonable alternative."⁴ SNC respectfully submits that the payment of a \$5,000 filing fee for a Section 109(b) petition as

¹ See 47 U.S.C. § 1006(a)(2).

² See 47 C.F.R. § 1.1105

³ 47 C.F.R. § 1.3.

⁴ 47 C.F.R. § 1.925(b)(3)(i), (ii).

applied to it would be contrary to the public interest and unduly burdensome. Further, SNC has no reasonable alternative but to seek a waiver of that fee due to the size of the fee and its impact on small carriers such as SNC. Thus, as will be demonstrated herein, the instant petition meets one of the two alternative standards for issuance of a waiver.

B. Payment of the \$5,000 Filing Fee is Unduly Burdensome and Contrary to the Public Interest.

SNC is a very small carrier in the isolated Nome, Alaska area. As demonstrated in the associated Petition for Relief Under Section 109(b), SNC does not have the financial resources to implement the CALEA requirements on its single cell site analog system and has asked the Commission for a determination that CALEA compliance is not "reasonably achievable."⁵ With a subscriber base of merely 133 customers, SNC also does not derive the income necessary to cover large filing fees such as the one required for CALEA Section 109(b) petitions. SNC understands that the likely impetus for the imposition of such large filing fees is to demonstrate a carrier's sincerity in petitioning the Commission for relief under section 109(b) and to discourage the filing of frivolous petitions for CALEA relief. SNC further appreciates the importance of ensuring law enforcement access to communications. However, where a small, isolated carrier such as SNC can demonstrate a disproportionate impact under the CALEA requirements and can likewise show the undue burden that compliance with CALEA would entail, the imposition of such large filing fees would only exacerbate that burden. Additionally, forcing SNC to submit a fee of such magnitude as a prerequisite to presenting such a legitimate case is contrary to the public interest. Where a carrier like SNC meets the steep statutory requirements for relief—which SNC aims to demonstrate through its Petition for Relief Under

⁵ 47 U.S.C. §1008(b).

Section 109(b)—it is also unlikely to be in a position to easily pay a \$5,000 petition filing fee. Imposition of such requirement in the context of a carrier like SNC is, therefore, contrary to the public interest.

C. SNC Has No Reasonable Alternative.

SNC is not in a position financially to implement the CALEA requirements. The costs associated with that implementation would significantly increase the burdens on SNC and on SNC's customers. SNC also has no alternative but to request the instant waiver. Indeed, SNC's payment of the Section 109(b) petition filing fee alone equates to a cost to SNC of \$37 per customer. A copy of SNC's latest profit and loss statement is attached as Exhibit B. From the information presented on that Exhibit, the Commission will readily discern that SNC is losing approximately \$45,000 per month. Hence, SNC has no reasonable alternative, given its financial situation, but to file the Section 109(b) petition. It should not be penalized financially for having to initiate that step.

III. CONCLUSION

The foregoing demonstrates and explains the special circumstances that warrant a grant of the waiver sought herein and satisfies the Commission's requirements for a showing thereof. Accordingly, SNC respectfully submits that good cause has been manifested for the fee waiver requested. No Declaration of an officer of SNC is attached, because all facts stated in the instant petition were derived from SNC's Petition for Relief Under Section 109(b), which has been attested to by Jacquelin Lythgoe, SNC's Executive Vice President.

Respectfully submitted,

SNC TELECOMMUNICATION, LLC

By: _____

Michael F. Morrone

Its Attorney

Keller and Heckman LLP
1001 G Street, NW, Suite 500 West
Washington, DC 20001
202-434-4124 (Telephone)
202-434-4646 (Facsimile)
morrone@khlaw.com (e-mail)

Date: June 24, 2002

CERTIFICATE OF SERVICE

I, Cassandra Hall, a secretary in the office of Keller and Heckman LLP, 1001 G Street, NW, Suite 500 West, Washington DC 20001, do hereby certify that a copy of the foregoing PETITION FOR WAIVER OF FILING FEE was served on this 24th day of June, 2002, via electronic mail or first class, U.S. Mail, postage prepaid to the following parties:

Marlene H. Dortch, Secretary
Federal Communications Commission
ATTN: CALEA 107(c)
Office of the Secretary
445 12th Street, SW
Washington, D.C. 20554

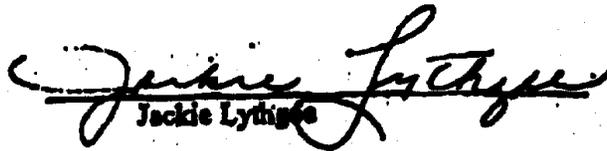
Qualex International
Room CY- B402
445 12th Street, SW
Washington, DC 20554.
(qualexint@aol.com)

CALEA Implementation Section
14800 Conference Center Drive Suite 300
Chantilly, Virginia 20151-0450

Cassandra Hall

DECLARATION OF JACQUELINE LYTHGOE

I, Jacqueline Lythgoe, Executive Vice President of SNC Telecommunications, LLC, do hereby declare under penalty of perjury that I have read the foregoing PETITION FOR RELIEF UNDER SECTION 109(B) OF CALEA and that the facts stated therein are true and correct, to the best of my knowledge, information and belief.


Jackie Lythgoe

Dated: June 20, 2002

KELLER AND HECKMAN LLP

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 SUITE 500 WEST
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 FAX 202.484.4648
 WWW.KHLAW.COM

WRITER'S DIRECT ADDRESS

Michael F. Morrone
 (202) 434-4124
 morrone@khlaw.com

June 24, 2002

VIA OVERNIGHT DELIVERY

Federal Communications Commission
 Post Office Box 385994
 Pittsburgh, Pennsylvania 15251-5994

Re: **SNC TELECOMMUNICATION, LLC;**
Cellular Radiotelephone Service; Alaska RSA 1 (Market 314A)
Petition for Relief Under Section 109(b) of the
Communications Assistance for Law Enforcement Act (CALEA);
Petition for Waiver of Filing Fee

Dear Sir/Madame:

Transmitted herewith, on behalf of SNC Telecommunication, LLC ("SNC"), are an original and one copy of the FCC Form 159, Remittance Advice. Associated with the Form 159 is a check drawn to the order of the FCC in the amount of \$5,000.00 to cover the filing fee of the above-referenced Petition for Relief Under Section 109(b) of CALEA, 47 U.S.C. §1008(b). Also enclosed is a Petition of Waiver of the \$5,000 CALEA filing fee.

The purpose of the instant Petition for Relief Under Section 109(b) is to request a determination by the Commission that compliance with Section 103 of CALEA, 47 U.S.C. §1002, is not "reasonably achievable" in the case of SNC. SNC understands that the Commission will have up to one year from the date of receipt to render such a decision. The Petition for Waiver of Filing Fee asks the Commission to waive the \$5,000 filing fee associated with the Petition for Relief.

The Commission is asked to date stamp the enclosed copy of the FCC Form 159 to confirm receipt of this filing. Please return the stamped copy to this office in the self-addressed, stamped-envelope that is enclosed.

Should any questions or concerns arise during the processing of this petition, the Commission is requested to communicate directly with the undersigned.

Very truly yours,


 Michael F. Morrone

Enclosure

READ INSTRUCTIONS CAREFULLY BEFORE PROCEEDING		FEDERAL COMMUNICATIONS COMMISSION REMITTANCE ADVICE		Approved by OMB 5010-0009 Page No. <u>1</u> of <u>1</u>	
(1) LOCKBOX # 358120				SPECIAL USE FCC USE ONLY	
SECTION A - PAYER INFORMATION					
(2) PAYER NAME (If paying by credit card, enter name exactly as it appears on your card) SNC TELECOMMUNICATION, LLC				(3) TOTAL AMOUNT PAID (All Dollars and cents) \$5,000.00	
(4) STREET ADDRESS LINE NO. 1 6927 OLD SEWARD HIGHWAY					
(5) STREET ADDRESS LINE NO. 2 SUITE 202					
(6) CITY ANCHORAGE				(7) STATE AK	(8) ZIP CODE 99510
(9) DAYTIME TELEPHONE NUMBER (include area code) (907)349-7188			(10) COUNTRY CODE (if not in U.S.A.)		
FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED					
(11) PAYER (FRN) 0004625496			(12) PAYER (TIN) 829177188		
IF PAYER NAME AND THE APPLICANT NAME ARE DIFFERENT, COMPLETE SECTION B IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C)					
(13) APPLICANT NAME					
(14) STREET ADDRESS LINE NO. 1					
(15) STREET ADDRESS LINE NO. 2					
(16) CITY				(17) STATE	(18) ZIP CODE
(19) DAYTIME TELEPHONE NUMBER (include area code)			(20) COUNTRY CODE (if not in U.S.A.)		
FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED					
(21) APPLICANT (FRN)			(22) APPLICANT (TIN)		
COMPLETE SECTION C FOR EACH SERVICE. IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET					
(23A) CALL SIGNATURE ID WP01468		(24A) PAYMENT TYPE CODE CLEA		(25A) QUANTITY 1	
(26A) FEE DUE FOR (PTC) \$5,000.00		(27A) TOTAL FEE \$5,000.00		FCC USE ONLY	
(28A) FCC CODE 1		(29A) FCC CODE 2			
(23B) CALL SIGNATURE ID		(24B) PAYMENT TYPE CODE		(25B) QUANTITY	
(26B) FEE DUE FOR (PTC)		(27B) TOTAL FEE		FCC USE ONLY	
(28B) FCC CODE 1		(29B) FCC CODE 2			
SECTION D - CERTIFICATION					
(30) CERTIFICATION STATEMENT I, <u>TIMOTHY J. FELSHAUSGA</u> , certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief. SIGNATURE: _____ DATE: <u>4/24/04</u>					
SECTION E - CREDIT CARD PAYMENT INFORMATION					
(31) <input type="checkbox"/> MASTERCARD		MASTERCARD/VISA ACCOUNT NUMBER: _____		EXPIRATION DATE: _____	
<input type="checkbox"/> VISA		I hereby authorize the FCC to charge my VISA or MASTERCARD for the service(s)/authorization herein described. SIGNATURE: _____ DATE: _____			

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RAMIS ACCOUNTS RECEIVABLE - (C) DSG, Inc.
RECEIPTS DETAIL REPORT
SORTED BY TRANSACTION DATE, CD No., FEE CONTROL No.

PAGE 1
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14:18:48

CD No.	CD DATE	FEE CONTROL No.	FRN	PAYER NAME	TRANSACTION DATE	RECEIPT AMOUNT
560496	6/26/02	0206268120167001	0004525408	SNC TELECOMMUNICATION, LLC	6/25/02	\$5,000.00

PTC: CLEA
Applicant Name: SNC TELECOMMUNICATION LLC
Address: 6927 OLD SEWARD HIGHWAY

Seq: I Call Sign: WPOI466 FCC Code 1:
QTY: 1 Applied Amt: 5000.00 FCC Code 2:

Tin Number: 0920177189

Total Applied: \$5,000.00 Total Receipt: \$5,000.00