

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

AUG 16 2006

OFFICE OF  
MANAGING DIRECTOR

Cherie R. Kiser, Esq.  
Sara Leibman, Esq.  
Mintz Levin Cohn Ferris Glovsky  
and Popeo, P.C.  
701 Pennsylvania Ave., N.W.  
Washington, D.C. 20004

Re: Telco Group, Inc.  
FY 2005 Regulatory Fee Waiver Request  
Fee Control No. 0509068365404013

Dear Counsel:

This is in response to your request dated March 24, 2006 (*Request*), for a waiver of the regulatory fees for Fiscal Year (FY) 2005, filed on behalf of Telco Group, Inc. (Telco). Our records reflect that Telco paid the \$999,861.90 FY 2005 regulatory fees. For the reasons stated herein, we grant Telco a partial waiver of the FY 2005 regulatory fees.

You claim that the Commission's rules require Telco, a "very small telecommunications carrier in the United States[,]"<sup>1</sup> to pay "regulatory fees in an amount that is both grossly excessive and out of proportion to that required of other carriers[.]"<sup>2</sup> You assert that although Telco "pays regulatory fees based on its status as a[n] interstate telecommunications provider, its regulatory fees are calculated based on interstate and international revenues[; a]s a result, because Telco . . . earns substantial revenues internationally, it is required to pay a significant portion of its U.S. interstate service revenues in regulatory fees."<sup>3</sup> You allege that requiring Telco to fund "a significant proportion of the total regulatory fee burden . . . cannot be considered fair, equitable or nondiscriminatory, particularly when its activities impose little, if any demands on Commission resources" and places Telco "at a severe competitive disadvantage as a provider of interstate services."<sup>4</sup>

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<sup>1</sup> *Request* at 2.

<sup>2</sup> *Id.* at 1.

<sup>3</sup> *Id.* at 2.

<sup>4</sup> *Id.* Contrary to your assertion that the Commission granted Telco's request for FY 2004 regulatory fee relief "on these same factors[.]" the Office of Managing Director (OMD) granted Telco a partial waiver of the FY 2004 regulatory fees based on financial hardship and found the additional grounds that Telco raised in support of the waiver request to be moot. See Letter from Mark A. Reger, Chief Financial Officer, OMD, to Ms. Cherie R. Kiser, Esq. and Ms. Tara M. Corvo, Esq. (Mar. 15, 2005).

You also assert that payment of the regulatory fees would cause Telco "significant financial hardship" and that it "cannot pay these fees if it is to continue as an ongoing U.S. business."<sup>5</sup> In support, you submit a document entitled "Telco Group, Inc. Combined Statements of Operations (Unaudited)," which provides income data for 2004 (*2004 Statement of Income*),<sup>6</sup> and an Internal Revenue Service 2005 Wage and Tax Statement (Form W-2) for Samer Tawfik, who you state is the sole officer of Telco.<sup>7</sup> In a subsequent communication,<sup>8</sup> you submit a document entitled "Telco Group, Inc. Combined Statements of Operations (Unaudited)," which provides income data for the first six months of 2005 (*2005 Statement of Income*).<sup>9</sup> In another communication, you confirm that "[h]alf the amount on Mr. Tawfik's 2005 W-2 reflects the [administrative] expenses attributable to his compensation for the first six months of 2005 [as reflected on the *2005 Statement of Income*]."<sup>10</sup>

The Commission may waive, reduce, or defer regulatory fees only upon a showing of good cause and a finding that the public interest will be served thereby.<sup>11</sup> The Commission, in establishing a regulatory fee program, recognized that in certain instances payment of a regulatory fee may impose an undue financial hardship upon a licensee. The Commission therefore decided to grant waivers or reductions of its regulatory fees in those instances where a "petitioner presents a compelling case of financial hardship."<sup>12</sup> 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 regulatory 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. The Commission imposes a cap of \$500,000.00 on waivers for regulatees asserting bankruptcy or otherwise claiming financial hardship.<sup>13</sup>

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<sup>5</sup> *Request* at 3.

<sup>6</sup> The *2004 Statement of Income* also provides income data for 2003.

<sup>7</sup> *Request* at 3, n.7.

<sup>8</sup> See Email from Sara Leibman to Joanne Wall (May 25, 2006).

<sup>9</sup> The *2005 Statement of Income* also provides income data for 2004.

<sup>10</sup> See Email from Sara Leibman to Joanne Wall (May 26, 2006).

<sup>11</sup> See 47 U.S.C. §159(d); 47 C.F.R. §1.1166.

<sup>12</sup> See *Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5346 (1994), *recon. granted*, 10 FCC Rcd 12759 (1995).

<sup>13</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 2003, Report and Order* 18 FCC Rcd 15985, 15990 (2003) (stating that in computing the cap, the

With respect to your request for regulatory fee relief on the grounds of financial hardship, our review of the record, including Telco's *2005 Statement of Income* as it reflects Telco's income for the first six months of calendar year 2005, indicates that the financial losses that Telco suffered during that time were fully offset by its depreciation deduction and the compensation paid to its sole officer, Mr. Tawfik, which the Commission considers as funds available to pay the fees. Nevertheless, the funds available are insufficient to fully pay the FY 2005 fees. Therefore, we grant Telco a partial waiver of the regulatory fees for FY 2005 in the amount of \$500,000.00, as limited by the Commission's waiver cap.<sup>14</sup>

You have also requested confidential treatment of the material that you submitted with your request for fee relief. Pursuant to section 0.459(d)(1) of the Commission's rules, 47 C.F.R. §0.459(d)(1), we do not routinely rule on requests for confidential treatment until we receive a request for access to the records. The records are treated confidentially in the meantime. If a request for access to the information submitted in conjunction with your regulatory fee is received, you will be notified and afforded the opportunity to respond at that time.

A check made payable to the maker of the original check, and drawn in the amount of \$500,000.00, will be sent to you at the earliest practicable time. If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark Stephens  
Acting Chief Financial Officer

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Commission "will aggregate all subsidiaries and other affiliated entities of a particular regulatee[, and] . . . will aggregate the total Section 8 application fees and Section 9 regulatory fees for a given fiscal year, including Section 9 fees due in a fiscal year but paid prior to the due date.").

<sup>14</sup> Because we grant Telco a waiver of the regulatory fees based on financial hardship, we do not reach the additional grounds you raise in support of the waiver request.

March 24, 2006

## FOR PUBLIC INSPECTION

Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

**Attn: Regulatory Fee Waiver/Reduction Request**

Dear Ms. Dortch:

Telco Group, Inc. ("Telco Group"), by its attorneys and pursuant to 47 U.S.C. § 159(d) and 47 C.F.R. § 1.1166, hereby requests a reduction in, or waiver of, its regulatory fees for 2005, due to the excessive and disproportionate regulatory fee burden that Telco Group faces and the resulting financial hardship that affects Telco Group's ability to continue in the market as a U.S. company.<sup>1/</sup> As set forth below, Telco Group further requests confidential treatment of certain information submitted with this request.

**Telco Group's Assessed Regulatory Fees Impose a Disparate Burden on Telco Group.** The Commission's current rules require Telco Group to pay regulatory fees in an amount that is both grossly excessive and out of proportion to that required of other carriers. The Commission should waive or reduce Telco Group's fees in order to ensure the fair and reasonable application of its rules and promote the public interest in ensuring competitive neutrality.<sup>2/</sup> The Commission granted Telco Group's request for a reduction of its regulatory fee payments for the previous year (2004) based on these same factors. As discussed below, Telco Group's interstate gross revenues have declined significantly since that grant, but the regulatory fee assessment has increased. Thus, Telco Group respectfully requests that the Commission provide the relief requested herein.

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<sup>1/</sup> Telco Group paid the assessed regulatory fees in full on September 1, 2005.

<sup>2/</sup> See *Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking*, 19 FCC Red 10805, ¶ 1 (2004); *Federal-State Joint Board on Universal Service, Midwest Wireless Iowa, LLC Petition for Waiver of Sections 54.313(d) and 54.314(d) of the Commission's Rules and Regulations*, 19 FCC Red 10484, ¶ 8 (2004) (noting the Commission's goal of competitive neutrality).

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Federal Communications Commission  
Office of Secretary

The amount that Telco Group is required to contribute is vastly disproportionate to its stature in the marketplace. Although Telco Group pays regulatory fees based on its status as an interstate telecommunications provider, its regulatory fees are calculated based on interstate and international revenues. As a result, because Telco Group earns substantial revenues internationally, it is required to pay a significant portion of its U.S. interstate service revenues in regulatory fees. Under the Commission's calculations, Telco Group faces a payment of approximately \$ \_\_\_\_\_ for 2005 -- nearly 11% of its interstate service revenues.<sup>3/</sup>

Telco Group's regulatory fee burden cannot be considered fair or reasonable under any standard. The *entire amount* the FCC seeks to collect in regulatory fees for 2005 is approximately \$281 million. Telco Group's share -- \_\_\_\_\_ -- represents a very significant percentage of the total fund, even though Telco Group is a very small carrier in the United States compared to the thousands of other, much larger telecommunications carriers, cable operators, broadcast stations, and other licensed entities, which should be equitably sharing the burden of these fees. Telco Group understands that fee burdens cannot be tied precisely to the level of burden a carrier or type of entity places on the Commission's resources.<sup>4/</sup> However, a requirement that Telco Group fund such a significant proportion of the total regulatory fee burden, encompassing such a significant portion of its revenues, cannot be considered fair, equitable or nondiscriminatory, particularly when its activities impose little, if any, demands on Commission resources,<sup>5/</sup> and payment of these excessive fees places Telco Group at a severe competitive disadvantage as a provider of interstate services.<sup>6/</sup>

**Payment of the Regulatory Fees Has Caused Telco Group Financial Hardship.** Requiring Telco Group to shoulder a disproportionate regulatory fee burden substantially hinders Telco Group's ability to provide competitive telecommunications services. Telco Group's

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<sup>3/</sup> This percentage is based on Telco Group's 2004 interstate service revenues of \_\_\_\_\_ and its regulatory fee assessment of \_\_\_\_\_. Significantly, Telco Group's interstate service revenues decreased by 45 percent, from \_\_\_\_\_ in 2003 to \_\_\_\_\_ in 2004. By contrast, the Commission's regulatory fee assessment against Telco Group increased from \_\_\_\_\_ to \_\_\_\_\_ over that same time period.

<sup>4/</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, Report and Order, MD Docket No. 04-73, FCC 04-146, ¶¶ 5-12 (rel. Jun. 24, 2004) (rejecting arguments that regulatory fees should be based on the costs for the level of Commission regulatory activity attributable to that service).

<sup>5/</sup> Telco Group provides long distance services primarily using dial-around calling and prepaid calling cards. It holds no FCC licenses.

<sup>6/</sup> See, e.g., *AT&T Corp. v. Pub. Util. Comm'n. of Texas*, 373 F.3d 641 (5th Cir. 2004) (Texas Public Utility Commission's practice of taxing revenues from both interstate and intrastate calls for the state universal service fund was inequitable and discriminatory because it placed multijurisdictional carriers at a competitive disadvantage within the state; fact that carrier could not show that the amount of the fee outweighed the revenues held not to defeat its claim of discrimination). It "is the Commission's policy to grant individual waivers where imposition of the regulatory fee would be inequitable or would impinge on a regulatee's ability to serve the public." *Commission Addresses Issues Raised on Reconsideration of the FY 1994 Report and Order (MD Docket No. 94-19)*, Report No. DC 95-91 (1995).

regulatory fee obligation of approximately \_\_\_\_\_, combined with its 2005 TRS Fund obligations of \_\_\_\_\_ and its USF obligations of \_\_\_\_\_, total over \_\_\_\_\_, even though it earned only slightly over \_\_\_\_\_ last year in interstate service revenues. This means that these three fees alone constitute over 42 percent of Telco Group's gross revenues from interstate services.

Payment of the assessed regulatory fees would cause Telco Group significant financial hardship. As demonstrated in the attached Schedules of Selling, General and Administrative Expenses<sup>7/</sup> (the "Schedules"), regulatory fees are an extremely high expense for Telco Group, and far exceed the normal costs of operating a business, such as rent. As noted in the Schedules, Telco Group decreased significantly its administrative, customer service, insurance and repairs and maintenance expenses in 2004, partially to help to compensate for its enormous regulatory fee expenses, which has had an adverse affect on Telco Group's day-to-day operations.

Telco Group cannot pay these fees if it is to continue as an ongoing U.S. business. As demonstrated in the attached Combined Statements of Operations and Balance sheets,<sup>8/</sup> Telco Group has continued to experience losses with respect to revenue. Indeed, between 2003 and 2004, Telco Group's interstate services revenues declined by \_\_\_\_\_, almost a 45 percent decrease, while its regulatory fee assessment has actually increased. In addition, Telco Group's total current liabilities exceed its total current assets. While Telco Group paid the assessed regulatory fees on time in order to avoid incurring the extraordinary late fee imposed even when a carrier submits a request for a reduction in fees, in so doing, it has rendered itself severely short of cash to pay current liabilities due.

Granting Telco Group's request will help enable Telco Group to remain a healthy competitor of telecommunications services in both the interstate and international markets and thus will serve the public interest. The Commission has frequently endorsed the public interest value in preserving and promoting a vibrant competitive telecommunications marketplace.<sup>9/</sup> Telco Group simply cannot pay a disproportionate amount of regulatory fees and remain competitive with other providers that hold a far greater market share in the United States but are required to contribute far less. Further, these high payment obligations hinder Telco Group's ability to compete outside the United States, and so contravene the Commission's efforts to promote and encourage competition in the international and interstate markets.<sup>10/</sup> If Telco

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<sup>7/</sup> See Attachment 1. Also attached is a 2005 W-2 Form for Telco Group's sole officer, Samer Tawfik.

<sup>8/</sup> See Attachment 1.

<sup>9/</sup> See, e.g., *Low-Volume, Long Distance Users*, 15 FCC Rcd. 6298, ¶ 11 (1999) ("the Commission's goal is to bring to all Americans the benefit of a robust and competitive communications marketplace" because "competition has created greater choice and value for many consumers."); *Federal-State Joint Board on Universal Service*, 12 FCC Rcd. 87, ¶ 2 (1996) (noting goal of establishing rules that will enhance rather than distort competition consistent with the procompetitive goals of the 1996 Act).

<sup>10/</sup> See, e.g., *2000 Biennial Regulatory Review – Policies and Procedures Concerning the International, Interexchange Marketplace, Report and Order*, 16 FCC Rcd 10647, ¶ 6 (2001) ("the Commission has

Group's request is not granted, it will have to assess whether there is any economic basis for continuing to operate in the United States. It is unlikely that it could justify doing so. As the Commission has recognized, where payment of regulatory fees causes financial hardship that will affect an entity's ability to serve the public, a waiver of or reduction in regulatory fees is appropriate.<sup>11/</sup>

**Request for Confidential Treatment.** Pursuant to section 0.457(d) of the Federal Communications Commission's ("Commission's") rules and regulations, Telco Group further requests confidential treatment of the financial information contained in this letter request and its attachments. 47 C.F.R. § 0.457(d)(1)-(2).

The information for which Telco Group seeks confidential treatment consists of financial data about Telco Group's operations that customarily would be guarded from competitors and would not be made routinely available for public inspection. *See* 47 C.F.R. § 0.457(d)(2). It includes Telco Group's revenues from the provision of interstate services and Telco Group's resulting regulatory payment obligations, as well as detailed financial information from its Balance Sheets and Schedule of Expenses. The Commission recognizes the confidential nature of this information when it collects such information from telecommunications carriers.<sup>12/</sup>

The Freedom of Information Act ("FOIA") protects such information from disclosure because the information includes "trade secrets and commercial or financial information . . . [that is] privileged or confidential."<sup>13/</sup> Public disclosure of this information could be used by competitors of Telco Group and could result in competitive harm. As such, the information falls within the scope of section 0.457 of the Commission's rules and should be afforded protection from public inspection.

In the event that Telco Group's request for confidential treatment is denied, Telco Group respectfully requests notice of that determination prior to making the confidential version of this letter request available to the public.

In accordance with the Commission's rules, an original and four (4) copies of the public version, and one (1) copy of the confidential version of this filing are being filed with the Office of the Secretary today.

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worked diligently to further competition in the international exchange marketplace").

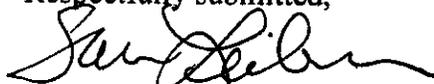
<sup>11/</sup> *Implementation of Section 9 of the Communications Act Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year*, 10 FCC Rcd 12759, ¶ 13 (1995).

<sup>12/</sup> *See Instructions for Completing the Worksheet for Filing Contributions to Telecommunications Relay Service, Universal Service, Number Administration, and Local Number Portability Support Mechanisms*, Telecommunications Reporting Worksheet, FCC Form 499-A at 26-27 (April 2004) (instructing filers that they may request nondisclosure of the revenue information contained on Form 499-A).

<sup>13/</sup> 5 U.S.C. § 552(b)(4).

Please date stamp the enclosed return copy and return it in the envelope provided.  
Should you have questions or require additional information, please contact the undersigned.

Respectfully submitted,



Chérie R. Kiser

Sara Leibman

Counsel, Telco Group, Inc.

cc: Andrew S. Fishel, Managing Director  
Claudette Pride, Chief, Revenues and Receivables Operations Group