

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

JUN 15 2009

OFFICE OF
MANAGING DIRECTOR

Michael D. Easterly
Chief Executive Officer
Legacy Media Memphis, LLC
4060 #D Peachtree Road, NE
Box 331
Atlanta, GA 30319-3020

Re: KWAM(AM)
Memphis, TN
FY 2008 Regulatory Fee
Fee Control No. RROG-09-00011561

Dear Mr. Easterly:

This letter responds to your request (*Request*) filed on behalf of Legacy Media Memphis (Legacy), licensee of Station KWAM(AM), Memphis, Tennessee, for waiver of the fiscal year (FY) 2008 regulatory fee, and the associated penalty for late payment of the regulatory fee. Our records reflect that Station KWAM(AM) has paid neither the \$3,325.00 FY 2008 regulatory fee nor the \$831.25 penalty.¹ For the reasons stated herein, we grant your request.

You claim that “[w]e have yet to achieve profitability at KWAM[.]”² You submit Legacy’s income statement for the 2008 calendar year (*Financial Statement*).³

¹ You assert that you paid the FY 2008 regulatory fee for Station KWAM(AM) and, in support, you provide a copy of an American Express statement for “Card Activity for Michael D. Easterly” (*American Express Statement*) reflecting a \$2,975.00 payment on August 29, 2008, to “FCC 000000001 Washington DC.” Our records reflect that the Office of Managing Director applied Legacy’s \$2,975.00 payment to Station KWAM(AM)’s then-outstanding FY 2007 regulatory fee and penalty for late payment, totaling \$2,975.00. This leaves the FY 2008 regulatory fee and late payment penalty outstanding.

² *Request* at 1.

³ *Request*, Attachment (Legacy Media Memphis Income Statement for the Twelve Months Ending December 31, 2008).

In establishing a regulatory fee program, the Commission 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."⁴ 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 and deductions for depreciation and amortization are considered funds available to pay the fees.

Our review of the record, including Legacy's *Financial Statement*, indicates that Legacy suffered a \$318,179.34 financial loss in calendar year 2008, that was only partially offset by funds payable to principals (assuming that all the otherwise unidentified payroll expenses were funds payable to principals), and that there were no deductions attributable to depreciation and amortization. Given that Legacy suffered a financial loss in calendar year 2008, we grant your request for a waiver of the FY 2008 regulatory fee and the associated penalty for late payment of the fee.

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

Sincerely,



Mark Stephens
Chief Financial Officer

⁴ See *Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5346 (1994), *recon. granted*, 10 FCC Rcd 12759 (1995).

LEGACY MEDIA MEMPHIS, LLC.

copy

RR03-09-00011561

COPY

Federal Communications Commission
Attn: Revenue and Receivables Operations Group
445 12th Street, SW Room 1A767
Washington, D.C. 20554

Attn: Monique

Ladies and Gentlemen:

This is in response for an urgent demand for payment of 2008 Registration Fee for KWAM 990 in Memphis Tn.

The payment of the base fee of \$ 2,975.00 on August 29, 2008 is evidenced here by a copy of my American Express Statement for August, 2008. If you require any further evidence of this, please let me know.

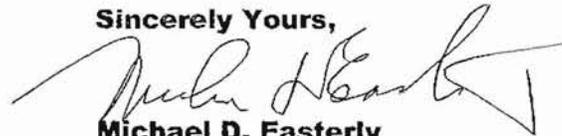
TOP 2007 Reg Fee's cleared

We had requested a waiver of the first 25% penalty fee by a written communications to St. Louis. We likewise confirm that request, along with the request for the waiver of the fee applied to the enclosed statement, which obviously has been paid.

~~Our earlier request for a waiver of the penalty was based on our financial hardship. We have yet to achieve profitability at KWAM, and I enclose a year end 2008 income statement evidencing this fact.~~

~~I would greatly appreciate confirmation of receipt of this letter, via mail, email (east816@aol.com) or telephone (404-808-1130). Many thanks for this courtesy.~~

Sincerely Yours,



Michael D. Easterly
CEO-Legacy Media Memphis LLC

cc: Federal Communications Commission
P.O. Box 979088
St. Louis, MO. 63197-9000

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

JUN 15 2009

OFFICE OF
MANAGING DIRECTOR

Joe Pedicino
Chief Executive Officer and General Manager
Legacy Media of South Atlanta, LLC
42 Main Street, Suite 1A
P.O. Box 925
Senoia, GA 30276

Re: WEKS(FM)
FY 2008 Regulatory Fee
Fee Control No. RROG-09-00011565

Dear Mr. Pedicino:

This letter responds to your request dated February 25, 2009 (*Request*) filed on behalf of Legacy Media of South Atlanta, LLC (Legacy), licensee of Station WEKS(FM), for waiver of the penalty for late payment of the fiscal year (FY) 2008 regulatory fee. Our records reflect that Station WEKS(FM) has paid neither the \$1,225.00 FY 2008 regulatory fee nor the associated \$306.25 penalty. For the reasons stated herein, we waive the late payment penalty.

You claim that you paid the FY 2008 regulatory fee and late payment penalty for Station WEKS(FM) in the amount of \$1,437.50 on August 21, 2008. Our records reflect that the Office of Managing Director applied Legacy's payment to Station WEKS(FM)'s then-outstanding FY 2007 regulatory fee and penalty for late payment, totaling \$1,437.50. This leaves the FY 2008 regulatory fee and late payment penalty (totaling \$1,531.25) outstanding.¹

You assert that WEKS(FM) is small, struggling station and you submit Legacy's profit and loss statement for the 2008 calendar year (*Financial Statement*).² In a subsequent communication, you state that none of Legacy's principals received compensation in 2008.³ You say that as the general manager of Station WEKS(FM) earning \$96,000.00, you were the only officer of Legacy to receive compensation in calendar year 2008. You

¹ You do not request a waiver of the FY 2008 regulatory fee. See Email from Joe Pedicino to Joanne Wall (April 13, 2009) (*April 13 Email*) ("We . . . are only asking for a waiver of the penalties . . . attached to the fee. We do not feel right in asking for the fee[s] themselves to be waived[.]").

² See *Request* at 1 and Attachment ("Legacy Media South Atlanta LLC, Profit & Loss, January through December 2008").

³ See *April 13 Email*.

state that the only other employees to make more than \$24,000.00 were two salespeople who were on commission and earned \$52,000.00 and \$40,000.00, respectively.⁴

The Communications Act of 1934, as amended, requires the Commission to assess a penalty of 25 percent on any regulatory fee not paid in a timely manner.⁵ It is the obligation of the licensees responsible for regulatory fee payments to ensure that the Commission receives the fee payment no later than the final date on which regulatory fees are due for the year.⁶ Your request does not indicate or substantiate that Legacy met this obligation by paying the FY 2008 regulatory fee by the September 25, 2008, due date for filing the fee.⁷ Our review of the record, however, including Legacy's *Financial Statement*, indicates that Legacy suffered a \$284,698.00 financial loss in calendar year 2008, that was only partially offset by a \$60,000.00 depreciation deduction and a \$96,000.00 salary paid to the corporation's general manager. Given that Legacy suffered a financial loss in calendar year 2008, we find that Legacy has provided sufficiently compelling reason to support a waiver of Legacy's penalty for late payment of the FY 2008 regulatory fee.⁸ We therefore grant your request for a waiver of the penalty.

Payment of the \$1,225.00 FY 2008 regulatory fee for Station WEKS is now due.⁹ The regulatory fee should be submitted, together with a Form 159 (copy enclosed) within 30

⁴ *Id.*

⁵ 47 U.S.C. §159(c)(1).

⁶ *See* 47 C.F.R. §1.1164.

⁷ *See Public Notice, Payment Methods and Procedures for Fiscal Year 2008 Regulatory Fees*, 23 FCC Rcd 12849 (2008).

⁸ *See generally Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5346 (1994) (the Commission recognized that in certain instances payment of a regulatory fee may impose an undue financial hardship upon a licensee and therefore decided to grant waivers or reductions of its regulatory fees in those instances where a "petitioner presents a compelling case of financial hardship"), *reconsideration granted*, 10 FCC Rcd 12759, 12761-2762 (1995) (regulatees can establish financial need by submitting "a balance sheet and profit . . . a cash flow projection . . . 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").

⁹ *See supra* paragraph 2.

Joe Pedicino, CEO & General Manager

3.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Stephens', with a large, stylized initial 'M'.

 Mark Stephens
Chief Financial Officer

Enclosure

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

JUN 10 2009

OFFICE OF
MANAGING DIRECTOR

Simpson Tian
Controller
Koncept International, Inc.
625 Fair Oaks Ave.
#383
South Pasadena, CA 91030

Re: Koncept International, Inc. ✓
FY 2008 Regulatory Fee
Fee Control No. RROG-09-00011592

Dear Mr. Tian:

This letter responds to your request filed on March 16, 2009 (*Request*), on behalf of Koncept International, Inc. (Koncept) for waiver of the fiscal year (FY) 2008 regulatory fee, and the associated penalty for late payment of the regulatory fee. Our records reflect that Koncept has paid neither the \$16,781.00 FY 2008 regulatory fee nor the \$4,195.25 penalty. For the reasons stated herein, we deny your request.

You assert that you have a cash flow problem because one of your biggest customers owes Koncept more than one million dollars in 2007.¹ You submit a profit and loss statement for the 2008 calendar year (*Financial Statement*).²

In establishing a regulatory fee program, the Commission 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."³ 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 and deductions for depreciation and amortization are considered funds available to pay the fees.

¹ *Request* at 1.

² *Request*, Attachment (Koncept International, Inc. Profit & Loss, January through December 2008). You also submit other financial statements, but we consider the profit and loss statement for the 2008 calendar year as the most relevant financial statement for purposes of considering your request for waiver of the FY 2008 regulatory fee.

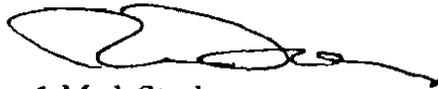
³ See *Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5346 (1994), *recon. granted*, 10 FCC Rcd 12759 (1995).

Our review of the record, including Konzept's *Financial Statement*, indicates that Konzept suffered a \$145,973.72 financial loss in the 2008 calendar year which was fully offset by a \$96,000.00 salary paid to one principal (specifically, the corporation's chief executive officer) and a \$85,634.44 depreciation deduction which are amounts that the Commission considers as funds available to pay the regulatory fee. In other words, the loss resulted from the principal's salary and the depreciation deduction. We therefore deny your request for waiver of the FY 2008 regulatory fee on the grounds of financial hardship.

The Communications Act of 1934, as amended, requires the Commission to assess a late charge penalty of 25 percent on any regulatory fee not paid in a timely manner. It is the obligation of the licensees responsible for regulatory fee payments to ensure that the Commission receives the fee payment no later than the final date on which regulatory fees are due for the year. Your request does not indicate or substantiate that Konzept met this obligation for the 2008 fiscal year. Payment of the penalty, as well as the 2008 regulatory fee, is now due. The regulatory fee and the associated late payment penalty, totaling \$20,976.25, should be filed together with a Form FCC 159 (copy enclosed) within 30 days from the date of this letter.

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

Sincerely,



✓ Mark Stephens
Chief Financial Officer

Enclosure



NRUG - 01-00011010

625 Fair Oaks Ave., #383, South Pasadena, CA 91030 Tel: 626-403-6519 Fax: 626-403-0170

March 5, 2009

COPY

FCC, Revenue and Receivables Operations Group

Re: 08RE005408

Dear Sirs,

Since one of our biggest customers owes us more than one million dollars in 2007, this causes our cash flow problem. Actually we are unable to pay the outstanding Regulatory Fees. You can understand our financial hardship from the enclosed financial statement.

Therefore we ask for the balance can be waived or at least allow us to make payment when we recover from the financial hardship.

Thank you for your help.

Sincerely,

A handwritten signature in black ink, appearing to read 'Simpson Tian'.

Simpson Tian
Controller
Koncept International, Inc.

RECEIVED

MAR 16 2009

**Financial Operations
Center**

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

JUN 15 2009

OFFICE OF
MANAGING DIRECTOR

Jim Rouse, Owner
WOOW-AM, WTOW-AM
405 Evans Street
Post Office Box 8361
Greenville, North Carolina 27834-8361

Re: WOOW-AM, Greenville, North Carolina ✓
WTOW-AM, Washington, North Carolina
Request for Waiver of Regulatory Fees
Fee Control No. RROG-09-00011630

Dear Mr. Rouse:

This responds to your March 2, 2009 request for waiver of the fiscal year (FY) 2008 regulatory fee for radio stations WOOW-AM, Greenville, North Carolina (WOOW), and WTOW-AM, Washington, North Carolina (WTOW), on account of financial hardship.¹ Our records show that the FY 2008 regulatory fee and late penalty for WOOW, which total \$1,093.75, have been paid. Our records also show that the FY 2008 regulatory fee and late penalty for WTOW, which total \$968.75, are outstanding. As explained below, your request is denied.

In your Request, you state that WOOW and WTOW are experiencing financial hardships "due to the current economy."² More specifically, you state that "[w]ith the entire nation almost in a recession, advertisers are just not wanting to advertise with small [AM] stations."³ You also state that for a second quarter of 2008 (*i.e.*, the period of April 2008-June 2008), WTOW "had to shut down due to technical and repair problems with the transmitter/tower."⁴ As to both stations, you state that accounts payable has exceeded accounts receivable by 80 percent for the past seven months (*i.e.*, the period of July 2008-February 2009).⁵ Finally, you state that "just in order to keep [WTOW] maintained and running for the sake of the communities, we sometimes have to take revenue from [WOOW]."⁶

In establishing a regulatory fee program, the Commission recognized that in certain instances payment of a regulatory fee may impose an undue financial hardship upon a

¹ Letter from Jim Rouse to Federal Communications Commission (dated March 2, 2009) (Request).

² Request at 1.

³ Request at 1.

⁴ Request at 1.

⁵ Request at 1.

⁶ Request at 2.

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." See Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5346 (1994), recon. granted, 10 FCC Rcd 12759 (1995). Regulatees can establish financial hardship by submitting:

information 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 12762.

In reviewing a showing of financial hardship, the Commission relies upon a licensee's cash flow, as opposed to the entity's profits, to determine 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, as well as deductions for depreciation and amortization and similar items that do not affect cash flow, are considered funds available to pay the fees.

In the absence of such documentation, or other relevant showing, to support your general assertions concerning the stations' financial hardship, you have failed to establish a compelling case for relief. Therefore, your request for waiver is denied. Payment of the WTOW FY 2008 regulatory fee in the amount of \$775.00, plus a penalty of \$193.75 for late payment of the regulatory fee is now due. The regulatory fee and the late charge penalty (i.e., \$968.75) should be filed with a Form FCC 159 (copy enclosed) within 30 days from the date of this letter. However, insofar as you may be relying on financial hardship, in lieu of payment, you may refile the request for relief together with appropriate supporting documentation and a request to further defer payment of the fee, within 30 days from the date of this letter.

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

Sincerely,



Mark Stephens
Chief Financial Officer

Enclosure

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

JUN 10 2009

OFFICE OF
MANAGING DIRECTOR

Robert J. Rini
Jonathan E. Allen
Counsel to SATV10, LLC Debtor in Possession
Rini Coran, PC
1615 L Street, NW, Suite 1325
Washington, DC 20036

Re: KTRG (TV), Del Rio, Texas ✓
Request for Waiver of FY 2008
Regulatory Fees
Fee Control No. RROG-09-00011654

Dear Counsel:

You have filed a Petition¹ requesting deferral and waiver of the fiscal year (FY) 2008 regulatory fee for KTRG (TV), Del Rio, Texas (KTRG), on account of financial hardship. By letter dated February 24, 2009, we denied your previous such request for lack of appropriate supporting documentation.² Our records show that the FY 2008 regulatory fee in the amount of \$33,525.00 has not been paid. As explained below, your request is granted.

In your Petition, you reiterate the claim made in your previous waiver request that “[w]hile SATV10 continues to diligently work towards construction of the digital television facility for KTRG,” completion of construction has been delayed by “severe financial constraints.”³ More specifically, you indicate that the Commission has granted SATV10 an extension of time to construct the station’s digital facility due to financial hardship on three occasions, and that the costly DTV construction obligations led to a Chapter 11 bankruptcy filing last January.⁴ In support of your request, among other things, you now attach revenue and expense documentation for SATV10, LLC for the period covering FY 2008.⁵

¹ SATV10, LLC Debtor in Possession Further Request for Waiver of FY 2008 Regulatory Fees (filed March 25, 2009) (Petition) (redacted version). You have requested confidential treatment of an unredacted version of your Petition also filed on March 25, 2009. 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 fees is received, you will be notified and afforded the opportunity to respond at that time.

² Letter from Mark Stephens, Chief Financial Officer, Federal Communications Commission to Robert J. Rini, Jonathan E. Allen, Counsel to SATV10, LLC, Rini Coran, PC (dated February 24, 2009).

³ Petition at 6 (redacted version).

⁴ Petition at 3 (redacted version); *see* Petition at Attachment, Declaration of Barbara Laurence, President of SATV10, LLC Debtor in Possession at 1 (redacted version).

⁵ *See* Petition at Exhibit A – Balance Sheet and Financials at 1-3 (consisting of “Monthly Schedule of Revenues and Expenses for the [Eight] Months Ending [December] 31, 2007” and “Monthly Schedule of Revenues and Expenses For the Twelve Months Ending December 31, 2008”).

As we previously advised, in establishing a regulatory fee program, the Commission 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." See Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5346 (1994), recon. granted, 10 FCC Rcd 12759 (1995). Regulatees can establish financial hardship by submitting:

information 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 12762.

In reviewing a showing of financial hardship, the Commission relies upon a licensee's cash flow, as opposed to the entity's profits, to determine 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, as well as deductions for depreciation and amortization and similar items that do not affect cash flow, are considered funds available to pay the fees.

Our review of the financial showing and supporting affidavits you submitted with this renewed waiver request indicates that SATV10 experienced a financial deficit in 2008, without regard to payments made to any principal or officer of the corporation, or any deduction for depreciation or amortization. We find this showing constitutes a compelling case of financial hardship. Therefore, your request for a waiver of the regulatory fee for FY 2008 is granted. This waiver, however, is limited to the FY 2008 regulatory fee. If KTRG continues to experience financial hardship, you may request waivers of the fees for succeeding years accompanied by appropriate supporting documentation.

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

Sincerely,



Mark Stephens
Chief Financial Officer

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

JUN 15 2009

FILE

OFFICE OF
MANAGING DIRECTOR

Mr. Norman R. Hurlburt
Shalom Translators, Inc.
Post Office Box 92
Black River Falls, WI 54615

Re: FM Translator Station W272AC
Fee Control No. RROG-09-00011295

Dear Mr. Hurlburt:

This is in response to your request dated June 11, 2007 (*Request*) and supplemented on January 8, 2009,¹ for waiver of the fiscal years (FYs) 2007 and 2008 regulatory fees filed on behalf of Shalom Translators, Inc. (Shalom), licensee of FM translator station W272AC (the Station). Our records reflect that Shalom did not pay the \$345.00 FY 2007 regulatory fee and the associated \$86.25 penalty for late payment of the fee, or the \$365.00 FY 2008 regulatory fee and the associated \$91.25 penalty. For the reasons set forth below, we deny your request.

You state that Shalom “is a not for profit entity in every practical sense, though it has never filed papers for recognition as such with the federal government.”² You say that “[a]ll income raised has been by donation and has gone directly to the operation of the [Station].”³ You say that on July 20, 2005, the building where the Station was operated was sold and the new owners removed the translator, tower, and antenna; you aver that the Station has not operated since that time and Shalom has no intention of renewing operations.⁴ You claim that “[a] previous attempt to officially notify the FCC of the station status ended in frustration over trying to find a proper method of doing so” and that “[b]eing all volunteers with many other things to do, the notification procedure got delayed and essentially dropped.”⁵ You admit that you “should have been more persistent in notifying the FCC of the shutdown . . . [and that you] may be liable for the

¹ See Letter from Norman R. Hurlburt to FCC (January 8, 2009) (*Letter*).

² *Request* at 1.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

fee[.]”⁶ In your *January 2009 Letter*, you state that because you have not received a response to your *Request*, you will not be remitting any payments.⁷

Regarding your statement that Shalom is a nonprofit organization “in every practical sense,” the Commission’s rules provide that entities that qualify as tax-exempt, nonprofit organizations under section 501 of the Internal Revenue Code or have other government certification or documentation of non-profit status are exempt from the requirement to pay regulatory fees.⁸ The Commission’s records do not reflect that Shalom has filed documentation establishing its qualifications as a tax-exempt, nonprofit organization as required under section 1.1162(c) of the rules.⁹ We therefore find that Shalom has failed to establish that it qualifies as a nonprofit, tax-exempt entity under section 1.1162(c) of the rules.

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.¹⁰ Our records reflect that Shalom was the licensee of the Station at the time the FYs 2007 and 2008 regulatory fee payment obligations attached (*i.e.*, Shalom was the licensee on or before October 1, 2006, and October 1, 2007, respectively¹¹) and that the Commission granted Shalom’s request for renewal of its license for the Station on November 26, 2004, giving them authority to operate until December 1, 2012. We therefore find that Shalom is responsible for payment of the FYs 2007 and 2008 regulatory fees.

⁶ *Id.*

⁷ *Id.*

⁸ See 47 C.F.R. §1.1162(c) (“a nonprofit entity is defined as: an organization duly qualified as a nonprofit, tax exempt entity under section 501 of the Internal Revenue Code, 26 U.S.C. 501; or an entity with current certification as a nonprofit corporation or other nonprofit entity by state or other governmental authority”).

⁹ See 47 C.F.R. §1.1162(c)(1).

¹⁰ See 47 U.S.C. §159(d); 47 C.F.R. §1.1166; see also *Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, Report and Order*, 9 FCC Rcd 5333, 5344 (1994), *on recon.*, *Memorandum Opinion and Order*, 10 FCC Rcd 12759, 12761 (1995) (*1995 Memorandum Opinion and Order*) (regulatory fees may be waived, deferred, or reduced on a case-by-case basis in extraordinary and compelling circumstances upon a clear showing that a waiver would override the public interest in reimbursing the Commission for its regulatory costs).

¹¹ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, FCC 08-182, 2008 WL 33189672, para. 76 (released: Aug. 8, 2008); *Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, 22 FCC Rcd 15712, 15727 (2007).

Although you state in the *Request* and in the *Letter* that the Station ceased operation on July 20, 2005, you failed to send the *Request* and the *Letter* to the Audio Division of the Media Bureau as all licensees are clearly required to do by section 73.1750 of the Commission rules.¹² Because you failed to follow the Commission's requirements for discontinuing a radio station's operations, the license was therefore not cancelled. Even though the Station may be composed of busy volunteers, the Commission has repeatedly held that "[l]icensees are expected to know and comply with the Commission's rules and regulations[, including the procedures for canceling unwanted licenses,] and will not be excused for violations thereof, absent clear mitigating circumstances."¹³ Finally, we note that, even if you had sent the *Letter* to the Media Bureau in accordance with the rules, the *Letter* is dated June 11, 2007, which is more than eight months after Shalom's obligation to pay the FY 2007 regulatory fee had already attached on October 1, 2006. For these reasons, we find that you have failed to establish the extraordinary and compelling circumstances that would warrant a waiver and we deny your request for waiver of the FYs 2007 and 2008 regulatory fees.

The Communications Act of 1934, as amended, requires the Commission to assess a penalty of 25 percent on any regulatory fee not paid in a timely manner.¹⁴ It is the obligation of the licensees responsible for regulatory fee payments to ensure that the Commission receives the fee payment no later than the final date on which regulatory fees are due for the year.¹⁵ Your request does not indicate or substantiate that Shalom met this obligation by paying the FYs 2007 and 2008 regulatory fees by the September 19, 2007, and September 25, 2008, due dates, respectively, for filing the fees.¹⁶ Payment of the penalties, as well as the regulatory fees for FYs 2007 and 2008, is now due. The regulatory fees and the associated late payment penalties, totaling \$887.50, should be filed together with a Form FCC 159 (copy enclosed) within 30 days from the date of this letter.

¹² 47 C.F.R. §73.1750 ("The licensee of each station shall notify by letter the FCC in Washington, DC, Attention: Audio Division, . . . Media Bureau, of the permanent discontinuance of operation at least two days before operation is discontinued.").

¹³ See *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), citing *Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970).

¹⁴ 47 U.S.C. §159(c)(1).

¹⁵ See 47 C.F.R. §1.1164.

¹⁶ See *Public Notice, FY 2007 Regulatory Fees Due No Later Than September 19, 2007* (Aug. 13, 2007); *Public Notice, Fee Filer Now Available for Regulatory Fees*, 22 FCC Rcd 16051, 16051 (Aug. 23, 2007); *Public Notice, Payment Methods and Procedures for Fiscal Year 2008 Regulatory Fees*, 23 FCC Rcd 12849 (2008).

Mr. Norman R. Hurlburt

If you have any questions concerning the regulatory fees, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Stephens', with a large, sweeping initial 'M' and a trailing flourish.

 Mark Stephens
Chief Financial Officer

Enclosure

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

JUN 15 2009

OFFICE OF
MANAGING DIRECTOR

Scott Morris, Esq.
Trilogy International Partners
155 108th Avenue NE, Suite 400
Bellevue, WA 98004

Re: Trilogy International Enterprises ✓
Fiscal Year 2008 Regulatory Fee
Fee Control No. RROG-09-00010848

Dear Mr. Morris:

This is in response to your request dated September 24, 2008 (*Request*), supplemented on March 24, 25, and 27, 2009,¹ filed on behalf Trilogy International Partners (Trilogy) for a waiver or reduction of the fiscal year (FY) 2008 Interstate Telecommunications Service Provider (ITSP) regulatory fee. Our records reflect that you have not paid the \$20,804.00 regulatory fee or the \$5,201.00 penalty for late payment of the regulatory fee.² For the reasons stated below, we grant your request to the extent stated herein.

You assert that Trilogy is an international long distance connecting carrier that provides only foreign communications services and that it has no local or interstate revenues.³ You therefore maintain that Trilogy is not an interstate carrier and “cannot legally be compelled” to pay ITSP fees.⁴ You aver that even if Trilogy were an interstate carrier, Trilogy’s only customers are other carriers and that “it has no individual end-users.”⁵

¹ See Emails from Scott Morris, Esq., to Joanne Wall (Mar. 24, 2009 (*March 24 Email*), Mar. 25, 2009, and Mar. 27, 2009).

² The Commission calculated the \$20,804.00 regulatory fee and the associated \$5,201.00 penalty based on Trilogy’s FCC Form 499-A, Telecommunications Reporting Worksheet, dated March 31, 2008 (*March 2008 Form 499-A*). See also Federal Communications Commission Interstate Telephone Service Provider (ITSP) Regulatory Fee Bill [for Trilogy International Enterprises, LLC] (Aug. 28, 2008) (*ITSP Bill*).

³ *Request* at 1 (citing *March 2008 Form 499-A*).

⁴ *Id.* (citing *ITSP Bill*).

⁵ *Id.* (citing *Regulatory Fees Fact Sheet, What You Owe – Interstate Telecommunications Service Providers (ITSP) for FY 2008* (August 2008) (*ITSP Fact Sheet*) (“Interstate service providers that provide service to only other carriers are also exempt from paying ITSP regulatory fees.”)).

Alternatively, you claim that a revised FCC Form 499-A that Trilogy filed on February 11, 2009 (*February 2009 Form 499-A*), “shows corrected . . . amounts . . . [that] should . . . result in a lower ITSP for [Trilogy.]”⁶

The Commission assesses a regulatory fee on ITSPs based on interstate and international end-user revenues as reported on the licensee’s FCC Form 499-A, Telecommunications Reporting Worksheet (Form 499-A).⁷ The Commission has defined an ITSP for purposes of the regulatory fee as including “all providers of local and telephone services to end users” and has determined that “covered services” for purposes of the ITSP regulatory fee include “toll services.”⁸

On its *February 2009 Form 499-A* (which revises the *March 2008 Form 499-A*), Trilogy identifies itself as a provider of toll services⁹ and reports international end-user revenues relevant to the calculation of the ITSP FY 2008 regulatory fee in the amount of \$1,197,335.00.¹⁰ As a provider of toll services reporting international end-user revenues,

⁶ See *March 24 Email* (stating that the Universal Service Administrative Company has accepted the *February 2009 Form 499-A*); see also *ITSP Fact Sheet* (ITSPs “will continue to owe the original bill amount until USAC accepts . . . [a] revised FCC Form 499-A filing”).

⁷ See 47 C.F.R. §1.1154 (“Carriers: 1. Interstate Telephone Service Providers (per interstate and international end-user revenues (*see* FCC Form 499-A) (Fee amount: .00314)); see also *Assessment and Collection of Regulatory Fees for Fiscal Year 2008, Report & Order*, FCC 08-182, para. 38 (released Aug. 8, 2008) (the Form 499-A “is filed each year on April 1 with the interstate revenues from the previous year; the ITSP regulatory fee is based on billed interstate and international end-user revenues.”). ITSPs calculate their FY 2008 regulatory fees based upon calendar year 2007 revenue information reported on Form 499-A. See *ITSP Fact Sheet* at 3. Form 499-A is the worksheet used by the Commission and licensees to determine contribution amounts to the Telecommunications Relay Service, Universal Service, Number Administration, and Local Number Portability Support Mechanisms.

⁸ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2001, Report & Order*, 16 FCC Rcd 13525, Attachment F, para. 34 (2001) (*2001 Report and Order*); see also *ITSP Fact Sheet* (identifying telecommunications providers subject to the ITSP fee as including toll service providers); see also Telecommunications Reporting Worksheet, FCC Form 499-A (2008) [Instructions] at 27 (“Toll service revenue categories: Toll services are telecommunications services, wireline, wireless, or interconnected VoIP services, that enable customers to communicate outside of local exchange calling areas. Toll service revenues include intrastate, interstate, and international long distance services.”).

⁹ See *February 2009 Form 499-A* at lines 105 and 417.

¹⁰ See *id.* at lines 412(e), 420(d), and 420(e); see also *FCC Form 159-W Interstate Telephone Service Provider Worksheet* at lines 1-4, and 14. The *FCC Form 159-W*

we find that Trilogy owes a FY 2008 ITSP regulatory fee of \$3,759.63 (*i.e.*, \$1,197,335.00 times .00314). Your assertion that Trilogy is not an interstate carrier does not persuade us otherwise given that the Commission has defined an ITSP for purposes of the regulatory fee as a provider of toll services reporting international end-user revenues and Trilogy identifies itself as such on its *February 2009 Form 499-A*.

The Communications Act of 1934, as amended, requires the Commission to assess a penalty of 25 percent on any regulatory fee not paid in a timely manner.¹¹ It is the obligation of the licensees responsible for regulatory fee payments to ensure that the Commission receives the fee payment no later than the final date on which regulatory fees are due for the year, *i.e.*, September 25, 2008, for FY 2008.¹² Your request does not indicate or substantiate that Trilogy met this obligation. Payment of the \$3,759.63 regulatory fee and the \$939.90 penalty, totaling \$4,699.54 is now due. The FY 2008 regulatory fee and the late payment penalty should be filed with a Form FCC 159 (copy enclosed) within 30 days from the date of this letter.

If you have any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark Stephens
Chief Financial Officer

Enclosure

Interstate Telephone Service Provider Worksheet is used by licensees to calculate the ITSP regulatory fee based upon information from the licensee's Form 499-A.

¹¹ 47 U.S.C. §159(c)(1).

¹² See 47 C.F.R. §1.1164.

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

JUN 24 2009

OFFICE OF
MANAGING DIRECTOR

Charles H. Helein, Esq.
The CommLaw Group
Helein & Marashlian, LLC
1483 Chain Bridge Road
Suite 301
McLean, VA 22101

Re: Triton Telecom Inc. ✓
Request for Waiver of Application Fees
Fee Control No. RROG-08-00010278

Dear Mr. Helein:

This is in response to your request dated April 4, 2008 (*Request*), on behalf of Triton Telecom Inc. (Triton) for a waiver of the overseas cable construction fee associated with an application to construct a submarine cable between Miami, Florida, and Isla Verde, Puerto Rico (*Application*).¹ Our records reflect that you have not filed the section 214 application for overseas cable construction and paid the \$14,415.00 application fee or paid the \$1,620.00 common carrier cable landing license fee associated with the *Application*.² For the reasons stated herein, we deny your *Request*.

You state that “[t]he Communications Act of 1934 defines States of the United States and the United States as inclusive of the Commonwealth of Puerto Rico.”³ You maintain that “[c]ommunications services/traffic between the United States and Puerto Rico have always been regulated as domestic interstate communications by the Commission.”⁴

¹ *Application*, SCL-LIC-INTR2008-00751 (filed Mar. 31, 2008).

² See 47 U.S.C. §158(g), *Schedule of Application Fees, Common Carrier Services*, (17.a.) Section 214 Overseas Cable Construction Fee and (17.b.i.) Section 214 Common Carrier Cable Landing License Fee; see also 47 C.F.R. §§1.1107(2.a.) and 1.1107(2.b.i.).

³ *Request* at 1 (citing 47 U.S.C. §153(40) (“The term ‘State’ includes . . . the Territories and possessions”), 47 U.S.C. §153(51) (“The term ‘United States’ means the several States and Territories, . . . and the possessions of the United States, but does not include the Canal Zone.”), 47 U.S.C. §397(16) (for purposes of Part IV of Title III of the Communications Act of 1934, as amended (Communications Act), “[t]he term ‘State’ includes . . . the Commonwealth of Puerto Rico”)).

⁴ *Id.* (citing *Manual for Filing Section 43.61 Data in Accordance with the FCC’s Rules and Regulations*, FCC Report 43.61, at 7 (June 1995) (*Section 43.61 Manual*) (“Domestic U.S. points are the 50 states, the District of Columbia, and Puerto Rico.”), 2005 *International Bureau Report*, 2005 *Section 43.82 Circuit Status Data*, at 2 (Jan. 2007)

Nevertheless, you say that when the *Application* “was filed with the filing fee of \$965 for Domestic Cable Construction pursuant to 47 U.S.C. §158(g)(17)(c), the Commission’s electronic filing system would not process the application . . . [and] we were informed that it was necessary to submit the fee of \$14,415 applicable for Overseas Cable Construction pursuant to 47 U.S.C. §158(17)(a).”⁵

You assert that because the Commission is required by the Cable Landing License Act of 1921 to obtain the State Department’s approval before issuing a license to land or operate submarine cables in the United States,⁶ “it is clear that the [referenced] submarine cables were cables that linked foreign shores with the United States and not domestic points, such as points between States of the United States, inclusive therefore of Puerto Rico.”⁷ You note that “[e]xpressly exempted from the operation of these requirements were any terminals both of which were within the [continental] United States;”⁸ however, you argue that because “[i]n 1921, Hawaii and Alaska were not part of the United States[,] Congress’s use of the terms [*sic*] ‘continental’ United States reflected the recognition that there were no off-shore states at the time and that recognition in no way detracts from Congress’ substantive intent to exempt from the cable landing license requirements, cables that linked terminals wholly within the United States.”⁹ You maintain that “[i]n 1934 when the Communications Act was enacted, Puerto Rico was defined as a State and hence terminals in the continental U.S., in this case, Miami, linked to Puerto Rico, another State, links terminals wholly within the United States.”¹⁰ You claim that “[a]s

(*Section 43.82 International Bureau Report*) (“U.S. domestic points are the 50 states, the District of Columbia, and Puerto Rico. Off-shore U.S. points include U.S. possessions”), and *Public Notice, FCC Releases 2005 International Traffic Data, Table 4, Reporting Requirements for Facilities-Based and Facilities-Resale Services* (Apr. 24, 2007) (*Section 43.61 Public Notice*) (identifying Puerto Rico as a “Domestic U.S. Point”).

⁵ *Request* at 2.

⁶ This statement is incorrect. The Cable Landing License Act of 1921 gives the President authority to issue licenses to land or operate submarine cables. Executive Order No. 10530 delegates to the Commission the President’s authority under the Cable Landing License Act, with the proviso that “no such license shall be granted or revoked by the Commission except after obtaining approval of the Secretary of State and such advice from any executive department or establishment of the Government as the Commission may deem necessary.” Exec. Ord. No. 10530 §5(a) (May 10, 1954), reprinted as amended in 3 U.S.C. §301.

⁷ *Id.* (citing 47 U.S.C. §§34-39 and 308(c).)

⁸ *Id.* at 2.

⁹ *Id.*

¹⁰ *Id.*

such[,] the construction of the cable between Miami and Puerto Rico . . . involves Domestic Cable Construction, the filing fee for which is \$965 under 47 U.S.C. §158[g](17)(c).¹¹ Although you state that “[n]either Congress nor the Commission has defined the term ‘overseas’ in this context . . . , in common usage, ‘overseas’ means foreign points.”¹² You claim that “overseas submarine cables are those connecting foreign countries to the U.S. and not two states . . . [and t]he fact that one such ‘state’ is offshore is not relevant.”¹³ You assert that the Commission “has no authority to apply the higher overseas fees to Triton’s cable to Puerto Rico because Puerto Rico is not an overseas location, but a U.S. ‘State’ . . . [and therefore should be subject to] the much lower application fee for domestic cable construction[.]”¹⁴ In summary, you claim that Triton is not required to pay the \$14,415.00 overseas cable construction fee but, instead, should only pay the \$965.00 common carrier domestic cable construction fee under section 8 of the Communications Act and section 1.1105(2.a.) of the rules.

We deny your request for waiver.¹⁵ Section 1 of the Cable Landing License Act¹⁶ prohibits any person from landing or operating in the United States “any submarine cable directly or indirectly connecting the United States with any foreign country, or connecting one portion of the United States with any other portion thereof, unless a written license to land or operate such cable has been issued by the President of the United States.”¹⁷ Section 1 states that “[t]he conditions of this Act shall not apply to cables, *all of which, including both terminals, lie wholly within the continental United*

¹¹ *Id.*

¹² *Id.* (citing *The World Book Encyclopedia Dictionary* at 1 and 1383 (1963)).

¹³ *Id.* at 3.

¹⁴ *Id.*

¹⁵ 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. *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). 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.” *See Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 2 FCC Rcd 947, 958 (1987); *Sirius Satellite Radio, Inc.*, 18 FCC Rcd 12551 (2003).

¹⁶ *See* 47 U.S.C. §§34-39.

¹⁷ 47 U.S.C. §34; *see also* Exec. Ord. No. 10530 §5(a).

States.”¹⁸ Because Triton’s proposed cable would not lie wholly within the continental United States but, instead, would connect Miami, Florida with Isla Verde, Puerto Rico (a territory outside the continental United States), the Cable Landing License Act requires Triton to obtain authorization to land and operate the proposed cable.¹⁹

Nor do we find persuasive your argument that the statute’s exemption for cables connecting points wholly within the continental United States simply reflects the fact that there were no non-contiguous states in 1921. The Cable Landing License Act defines “United States” as including “all territory, *continental or insular*, subject to the jurisdiction of the United States of America” (emphasis added), while providing an exception to the licensing requirement for cables that “lie wholly within the *continental* United States.” Read together, these statutory provisions unambiguously demonstrate that Congress was cognizant of offshore territories but deliberately chose to exempt from the licensing requirement only those cables connecting points within the continental United States.

Section 1.767(e) of the Commission’s rules requires applicants for common carrier cable landing licenses (such as Triton) to pay the fees for both a common carrier landing license and overseas cable construction.²⁰ Triton is therefore required to pay both the \$1,620.00 common carrier cable landing license fee and the \$14,415.00 overseas cable construction fee. Although you do not specifically request waiver of the \$1,620.00 common carrier cable landing license fee, your assertion that Triton is not required to file an application to land and operate the proposed cable under the Cable Landing License Act because Puerto Rico was “defined as a State” when the Communications Act was enacted in 1934 is incorrect. At the time, Puerto Rico was (and is) a territory of the United States.²¹ Further, although sections 3 and 397(16) of the Communications Act

¹⁸ *Id.*, emphasis added.

¹⁹ See 47 C.F.R. §1.767 (setting forth application requirements for cable landing licenses).

²⁰ See 47 C.F.R. §1.767(e) (see also 47 C.F.R. §§1.1107(2.a) and 1.1107(2.b.i)); see also 47 C.F.R. §63.22(c) (requirement to file a section 214 application under section 63.18(e)(3) to construct, acquire, or operate lines in any new major common carrier facility project).

²¹ See *Balzac v. Porto Rico* (258 U.S. 308) (1922) (finding that Puerto Rico is a territory rather than a part of the Union and that the U.S. constitution did not apply in Puerto Rico); see also *Downes v. Bidwell*, 182 U.S. 244, 287 (1901) (“the island of Porto [sic] Rico is a territory appurtenant and belonging to the United States, but not a part of the United States”); see also U.S. Const. art. IV, § 3, cl. 2 (“The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States . . .”). Today, Puerto Rico, officially known as the Commonwealth of Puerto Rico, is a self-governing unincorporated territory of the United States. The United States conferred commonwealth status on Puerto Rico

define “State” and “United States” to include Puerto Rico, section 3 does so only “[f]or the purposes of this [Communications Act],”²² while section 397(16) does so only “[f]or the purposes of this part [i.e., Part IV of Title III of the Communications Act],”²³ and not for purposes of the Cable Landing License Act. Moreover, as discussed above, even if Puerto Rico were a state, because the proposed cable would land in Puerto Rico and thus would not lie “wholly within the continental United States[,]” Triton would not be exempt from the section 1 licensing requirement. Nor does the fact that the State Department is required to approve licenses granted under the Cable Landing License Act establish that a cable connecting Miami, Florida, and Puerto Rico is “wholly within the continental United States” and therefore exempt from the licensing requirement, as you maintain.²⁴ We therefore conclude that Triton is required to pay the \$1,620.00 common carrier cable landing license fee.

Finally, we also reject your argument that Triton should pay the common carrier domestic cable construction fee because Puerto Rico is defined as a “U.S. domestic point” for purposes of the *Section 43.61 Manual*, *Section 43.82 International Bureau Report* and the *Section 43.61 Public Notice*. The *Schedule of Fees* as set forth in Section 8 of the Communications Act represents a fair approximation by Congress as to how the Commission’s costs of providing regulatory services should be distributed.²⁵ In contrast, the Commission uses the traffic and revenue data required by section 43.61 “to analyze the U.S. international telecommunications market.”²⁶ Similarly, the circuit-status data

in 1950, allowing Puerto Ricans to draft their own constitution establishing the Commonwealth of Puerto Rico, which Puerto Rico did in 1952.

²² See 47 U.S.C. §153.

²³ See 47 U.S.C. §397.

²⁴ As part of its review of individual applications, the Department of State, pursuant to Executive Order No. 10530, referred to *supra* in notes 6 and 17, coordinates with the National Telecommunications and Information Administration of the Department of Commerce and the Defense Information Systems Agency of the Department of Defense. See *Streamlined Procedures for Executive Branch Review of Submarine Cable Landing License Requests*, State Department Media Note (Revised) (rel. Dec. 20, 2001) available at <http://www.state.gov/r/pa/prs/ps/2001/6951.htm>.

²⁵ See *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Budget Reconciliation Act of 1989*, 5 FCC Rcd 3558, para. 36 (1990); see also *Establishment of a Fee Collection Program to Implement the Provisions of the Omnibus Budget Reconciliation Act of 1985*, 2 FCC Rcd 947, paras. 4 and 8 (1987).

²⁶ *Reporting Requirements for U.S. Providers of International Telecommunications Services, Amendment of Part 43 of the Commission’s Rules*, IB Docket No. 04-112, Notice of Proposed Rulemaking, 19 FCC Rcd 6460, 6471, para. 24 (2004) (*Reporting NPRM*). As the Commission explains in the *Reporting NPRM*, it uses the information “to track market developments, to determine the competitiveness of each service and

required by section 43.82 provides “the Commission information on how U.S. international carriers use their circuits.”²⁷ The fact that the manuals for reporting information under sections 43.61 and 43.82 define Puerto Rico as a “U.S. domestic point” reflect the specific purpose of these rules, which is to provide the Commission with information to monitor market conditions for the provision of U.S. international services and facilities.²⁸ These rules are not relevant to the statutory framework for the Commission’s authorization of, or application fees for, overseas submarine cables.

We note that requiring Triton to file the section 214 application for overseas cable construction and pay the appropriate fee as well as the common carrier cable landing license fee associated with the *Application* is consistent with the Commission’s practice of requiring applicants for non-common carrier cable landing licenses to pay the fees associated with their applications to land or operate in the United States a submarine cable that connects the United States with any other portion thereof, where the cables do not lie wholly within the continental United States within the meaning of Section 1 of the Cable Landing License Act.²⁹ The application fees for such non-common carrier cable

geographical market (*e.g.*, an international route), to formulate rules and policies consistent with the public interest, to monitor compliance with those rules and policies, and to gauge the competitive effect of Commission decisions on the international market. The country-by-country information we collect under section 43.61 allows us to tailor our policies to respond to market developments on a particular route.” *Id.* The Commission also uses the information as a means to determine “whether a U.S. carrier’s foreign-carrier correspondents are engaging in anti-competitive conduct” and “to measure the progress of our accounting-rate benchmark policy and the [International Settlements Policy].” *Id.* at 6471, paras. 25-26.

²⁷ *Id.*, 19 FCC Rcd at 6482, para. 58. The Commission uses the information from the circuit-status report “to ensure that carriers with market power do not use their access to circuit capacity to engage in any anti-competitive behavior” and “to determine whether a proposed merger might result in an anti-competitive concentration of market power in the international transport market.” The Commission also uses the report “to implement the requirement in section 9 of the Communications Act that carriers pay annual regulatory fees for each of the [international] bearer circuits they own.” *Id.*

²⁸ The Commission has proposed in the *Reporting NPRM* to modify the sections 43.61 and 43.82 reporting requirements to treat all U.S. off-shore points as U.S. domestic points. *Id.*, 19 FCC Rcd at 6472-73, paras. 29-31.

²⁹ *See, e.g.*, SCL-LIC-20020522-00047 (Alaska United Fiber System Partnership (Alaska United West Cable), connects Alaska to Oregon); SCL-LIC-20060413-00004 (Kodiak-Kenai Cable Company, LLC (Kodiak Kenai Fiber Link), connects 6 points all within Alaska); SCL-LIC-20061115-00010 (BP Exploration and Production Company (Gulf of Mexico Fiber Optic Network), connects oil platforms in the Gulf of Mexico and cable landing stations in Texas and Mississippi); SCL-LIC-20070223-00003 (Paniolo Cable Company, LLC (Paniolo Fiber-Optic Cable), connects 5 of the Hawaiian islands); SCL-LIC-20071025-00018 (ACS Cable Systems, Inc. (ACS Cable System), connects Alaska

landing licenses are identical to the combined fees associated with an application for a common carrier license and an overseas cable construction license, such as the application at issue here.³⁰

For all these reasons, we therefore find that Triton has not shown sufficiently extraordinary or compelling circumstances as to warrant a waiver of the \$14,415.00 overseas cable construction fee, and that Triton also owes the \$1,620.00 common carrier cable landing license fee associated with the *Application*. Accordingly, we deny your request.

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

Sincerely,



Mark Stephens
Chief Financial Officer

to Oregon); and SCL-LIC-20071023-00019 (GCI Communication Corp. (Southeast Alaska Fiber-Optic System), connects 7 communities in Alaska to the Alaska United Cable, which connects Alaska to Washington).

³⁰ See 47 C.F.R. §1.1107(2.a) and §1.1107(2.b).