

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAR 24 2010

OFFICE OF  
MANAGING DIRECTOR

Paul Ciaramitaro  
Associate Tax Director  
Mitel, Inc.  
1016 W. Geneva  
Tempe, Arizona 85282

Re: Mitel NetSolutions, Inc.  
Fiscal Year 2009 Regulatory Fee  
Fee Control No. 0910279088072009

Dear Mr. Ciaramitaro:

This is in response to your request dated November 20, 2009 (*Request*), filed on behalf of Mitel NetSolutions, Inc. (Mitel) for waiver of the penalty for late payment of the fiscal year (FY) 2009 regulatory fee. Our records reflect that you paid the \$63,341.00 FY 2009 regulatory fee, but not \$15,838.25 late payment penalty. For the reasons set forth below, we deny your request.

You claim that Mitel received a bill for collection from the Commission "for tax and penalty amounting to \$79,176.25 for failure to pay their universal service fund liability."<sup>1</sup> You assert that Mitel "keeps receiving withholding notices . . . from USAC that have exceeded the stated balance due."<sup>2</sup> You request that the Commission "place a hold on the account until the penalty abatement is resolved and to please refund all the amounts that have been withheld."<sup>3</sup>

The \$79,176.25 bill that you received from the Commission does not relate to Mitel's required contribution to the Universal Service Fund (which is managed by the Universal Service Administrative Company (USAC)). Rather, the bill reflects Mitel's \$63,341.00 FY 2009 regulatory fee and the \$15,838.25 penalty for Mitel's failure to pay the regulatory fee by the September 22, 2009, due date.

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.<sup>4</sup> It is the obligation of the licensees responsible for regulatory fee payments to ensure that the

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

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

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

<sup>4</sup> 47 U.S.C. §159(c)(1).

Commission receives the fee payment no later than the final date on which regulatory fees are due for the year.<sup>5</sup> Mitel paid the regulatory fee on October 27, 2009, after the September 22, 2009, deadline for filing regulatory fees, and therefore failed to meet this obligation.

The Commission informs its licensees of the due dates, amounts of the fees, and payment methods in public notices and fact sheets, which information it also posts on its web site, [www.fcc.gov](http://www.fcc.gov).<sup>6</sup> For the FY 2009 regulatory fees, the Commission released several public notices informing licensees of the September 22, 2009, deadline for filing regulatory fees and posted these items on its web site.<sup>6</sup>

To the extent that you may have relied upon receiving a pre-bill from the Commission regarding the regulatory fee, the Commission determined in *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Report and Order*, 24 FCC Rcd 10301, 10308-10309 (2009), that it would no longer mail pre-bills via surface mail to licensees such as Mitel. That decision, which was adopted on July 28, 2009, and released on July 31, 2009, adopted without change a proposal announced by the Commission in *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Notice of Proposed Rulemaking*, 24 FCC Rcd 5966, 5972-73 (2009), which was released on May 14, 2009. The Commission adopted the modifications to the notifications procedures at issue here almost two months before the due date for filing the FY 2009 regulatory fees, and proposed those modifications over four months before the due date.

The Commission has repeatedly held that “[l]icensees are expected to know and comply with the Commission’s rules and regulations and will not be excused for violations thereof, absent clear mitigating circumstances.”<sup>7</sup> You have not presented circumstances sufficient to mitigate your responsibility as a licensee to apprise yourself of your obligation to pay the FY 2009 regulatory fee by the announced deadline of September 22, 2009. We therefore deny your request for waiver of the penalty for late payment of the fiscal year 2009 regulatory fee for Mitel.

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<sup>5</sup> See 47 C.F.R. §1.1164, and see *Public Notice, Payment Methods and Procedures for FY 2009*, 24 FCC Rcd 11513, 11513 (Sept. 2, 2009) (*September 2009 Public Notice*), *Public Notice, FY 2009 Regulatory Fees Due No Later Than September 22, 2009, Eastern Time (ET)*, 24 FCC Rcd 10890, 10890 (Aug. 21, 2009), and *Public Notice, Fee Filer Mandatory for FY 2009 Regulatory Fees*, 24 FCC Rcd 10893, 10893 (Aug. 21, 2009) (stating that FY 2009 regulatory fees must be received by the Commission no later than September 22, 2009, and that payments received after that date will be charged a 25 percent late payment penalty).

<sup>6</sup> *Id.*

<sup>7</sup> 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).

Mr. Paul Ciaramitaro

3.

If you have any questions concerning this matter, 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 stylized flourish extending to the right.

Mark Stephens  
Chief Financial Officer



1016 West Geneva Drive  
Tempe, AZ 85282  
Telephone (480) 449-8900  
Fax (480) 784-4395  
www.mitel.com

Federal Communications Commission  
Office of the Managing Director  
445 12<sup>th</sup> Street, S.W. Room 1-A625  
Washington, D.C. 20554  
Attn: Regulatory Fee Waiver/Reduction Request

October 27, 2009

Re: Mitel NetSolutions, Inc.  
# 0003736378

Dear Sir/Madam:

Per the attached instructions from Protiviti Government Services e-mail, I am forwarding the attached waiver request dated October 21, 2009 to your department.

We are respectfully requesting that your department abate the assessed penalty and consider the taxpayers reporting obligations to have been fulfilled. In addition, could your department please place a hold on our account so that no other withholding action is commenced upon this taxpayer until this matter is resolved? If you have, any questions please contact me at 480-449-8847.

Regards,

A handwritten signature in black ink, appearing to read 'Paul Ciaramitaro', written over a light blue horizontal line.

Paul Ciaramitaro  
Mitel, Inc.  
Associate Tax Director

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAR 24 2010

OFFICE OF  
MANAGING DIRECTOR

John J. Heitmann, Esq.  
Devin L. Crock, Esq.  
Denise N. Smith, Esq.  
Kelley Drye & Warren LLP  
Washington Harbour, Suite 400  
3050 K Street, NW  
Washington, D.C. 20007-5108

Re: NuVox, Inc.  
Fiscal Year 2009 Regulatory Fee  
Fee Control No. RROG-09-00012256

Dear Counsel:

This is in response to your request filed October 2, 2009 (*Request*), on behalf of NuVox, Inc. (NuVox) for waiver of the penalty for late payment of fiscal year (FY) 2009 regulatory fee. Our records reflect that you paid the \$274,183.00 FY 2009 regulatory fee, but not the \$68,545.75 late payment penalty. For the reasons set forth below, we deny your request.

You state that during the time period for filing the regulatory fee, NuVox's employee responsible for paying the regulatory fee was on medical leave.<sup>1</sup> You assert that NuVox was unaware that the Commission had eliminated its practice of mailing pre-bills to carriers.<sup>2</sup> You say that NuVox did not receive actual notice of this change, was not a party to the docket in which the Commission issued the order adopting the change, and has always relied upon receiving the pre-bill.<sup>3</sup> You maintain that "it is reasonable to expect that notice of a change in means of delivering bills would be noticed by the means being discontinued[.]"<sup>4</sup>

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.<sup>5</sup> It is the obligation of the licensees responsible for regulatory fee payments to ensure that the

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<sup>1</sup> *Request* at 2. You also state that NuVox has "in house . . . counsel responsible for state and federal regulatory compliance." *Id.*

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

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

<sup>4</sup> *Id.* at 3.

<sup>5</sup> 47 U.S.C. §159(c)(1).

Commission receives the fee payment no later than the final date on which regulatory fees are due for the year.<sup>6</sup> NuVox paid the regulatory fee on September 29, 2009, after the September 22, 2009, deadline for filing regulatory fees, and therefore failed to meet this obligation.

The Commission takes care to inform its licensees of the due dates, amounts of the fees, and payment methods in public notices and fact sheets, which information it also posts on its web site, [www.fcc.gov](http://www.fcc.gov). For the FY 2009 regulatory fees, the Commission released several public notices informing licensees of the September 22, 2009, deadline for filing regulatory fees and posted these items on its web site.<sup>7</sup>

Further, the Commission determined in *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Report and Order*, 24 FCC Rcd 10301, 10308-10309 (2009), that it would no longer mail pre-bills via surface mail to licensees such as the Companies. That decision, which was adopted on July 28, 2009, and released on July 31, 2009, adopted without change a proposal announced by the Commission in *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Notice of Proposed Rulemaking*, 24 FCC Rcd 5966, 5972-73 (2009), which was released on May 14, 2009. The Commission adopted the modifications to the notifications procedures at issue here almost two months before the due date for filing the FY 2009 regulatory fees, and proposed those modifications over four months before the due date. NuVox is bound by these new rules whether or not it chose to participate in the rulemaking proceedings in which they were adopted.

The Commission has repeatedly held that “[l]icensees are expected to know and comply with the Commission’s rules and regulations and will not be excused for violations thereof, absent clear mitigating circumstances.”<sup>8</sup> You have not presented circumstances sufficient to mitigate your responsibility as a licensee to apprise yourself of your obligation to pay the FY 2009 regulatory fee by the announced deadline of September 22, 2009. We therefore deny your request for waiver of the penalty for late payment of the fiscal year 2009 regulatory fee for NuVox.

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<sup>6</sup> See 47 C.F.R. §1.1164, and see *Public Notice, Payment Methods and Procedures for FY 2009*, 24 FCC Rcd 11513, 11513 (Sept. 2, 2009) (*September 2009 Public Notice*), *Public Notice, FY 2009 Regulatory Fees Due No Later Than September 22, 2009, Eastern Time (ET)*, 24 FCC Rcd 10890, 10890 (Aug. 21, 2009), and *Public Notice, Fee Filer Mandatory for FY 2009 Regulatory Fees*, 24 FCC Rcd 10893, 10893 (Aug. 21, 2009) (stating that FY 2009 regulatory fees must be received by the Commission no later than September 22, 2009, and that payments received after that date will be charged a 25 percent late payment penalty).

<sup>7</sup> *Id.*

<sup>8</sup> 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).

John J. Heitmann, Esq., Devin L. Crock, Esq., & Denise N. Smith, Esq.

3.

If you have any questions concerning this matter, 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 stylized flourish at the end.

Mark Stephens  
Chief Financial Officer

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

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DIRECT LINE: (202) 342-8614

EMAIL: dsmith@kelleydrye.com

RR09-09-000-12256

October 2, 2009

DATE STAMP & RETURN

BY HAND DELIVERY

FILED/ACCEPTED

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

OCT - 2 2009

Federal Communications Commission  
Office of the Secretary

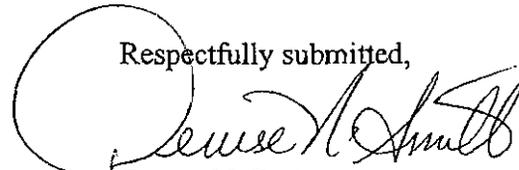
Re: NuVox, Inc. Petition for Waiver of Penalty for Late Filing of Regulatory Fees

Dear Ms. Dortch:

On behalf of NuVox, Inc. ("NuVox"), and pursuant to Section 1.3 of the Federal Communications Commission ("FCC") rules, 47 C.F.R. § 1.3, enclosed please find an original and four (4) copies of a Petition for Waiver of Penalty for Late Filing of Regulatory Fees.

Please contact the undersigned at (202) 342-8614, if you have any questions regarding this filing. Also enclosed is a duplicate of this filing. Kindly date-stamp the duplicate and return it to the courier.

Respectfully submitted,



Denise N. Smith

Counsel to NuVox, Inc.

Enclosure

cc: Steven VanRoekel, FCC  
Regina Dorsey, FCC

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC

Petition of NuVox, Inc. for Waiver of )  
Penalty for Late Filing of Regulatory Fees )  
)

**Petition of NuVox, Inc. for Waiver of Penalty for Late Filing of Regulatory Fees**

NuVox, Inc. (“NuVox”), through its undersigned attorneys and pursuant to Section 1.3 of the Federal Communications Commission’s rules<sup>1</sup> hereby requests that the Commission waive the 25 percent late-filing penalty rule<sup>2</sup> for NuVox’s payment of its Fiscal Year 2009 regulatory fees. As explained below, NuVox has substantially complied with the requirement and has paid its regulatory fee obligation in full. NuVox takes care to comply with all of its regulatory obligations, and would have timely filed its payment but for extenuating circumstances. In light of the unique confluence of events and circumstances described below, strict adherence to the late-filed payment penalty provision is, in this instance, unduly harsh and does not serve the public interest.

The Commission may waive the application of its rules for good cause shown.<sup>3</sup> A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.<sup>4</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>5</sup> Generally speaking,

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<sup>1</sup> 47 C.F.R. § 1.3.

<sup>2</sup> 47 C.F.R. § 1.1164.

<sup>3</sup> 47 C.F.R. § 1.3.

<sup>4</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“*Northeast Cellular*”).

<sup>5</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1157, (D.C. Cir. 1969), *affirmed by WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972).

waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.<sup>6</sup>

Due to circumstances beyond NuVox's reasonable control, NuVox filed its annual regulatory fee payment on September 29, 2009, one week after the September 22, 2009 deadline. This year, during the September time period when NuVox typically files its annual regulatory fee, NuVox's employee responsible for paying the FCC's annual regulatory fee was on a leave of absence under the Family Medical Leave Act.<sup>7</sup> Additionally, NuVox was unaware that the Commission had eliminated its longstanding practice of mailing pre-bills to carriers.<sup>8</sup> Until this week, in-house NuVox counsel responsible for state and federal regulatory compliance and other responsible personnel were unaware of the Commission's July 2009 Order changing this practice of mailing pre-bills. NuVox did not receive actual notice of this change. As NuVox was not a party to the docket in which the Commission issued this Order and did not receive any other notice or advisory about it, the Commission's July 2009 Order provided constructive notice only, which in this instance did not result in actual notice on a timely basis. Historically, like many carriers, NuVox relied on receipt of the pre-bill as a trigger for processing of the regulatory fee payment, as it does with various regulatory fees paid to states. With the employee in charge of payment out on leave, the absence of a pre-bill triggering mechanism, and no actual notice of the Commission's discontinuance of issuing pre-bills, NuVox did not discover the deadline until six days after it had passed. NuVox made full payment of its regulatory fee within hours of discovering the missed deadline. These circumstances were unavoidable and do not reflect NuVox's commitment to compliance with the Commission's rules and procedures.

<sup>6</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>7</sup> 29 U.S.C. § 2601, *et seq.*

<sup>8</sup> *See Assessment and Collection of Regulatory Fees for Fiscal Year 2009*, Report and Order, MD Docket No. 09-65 (rel. Jul. 31, 2009).

NuVox has reasonable policies and procedures in place to ensure compliance with the Commission's rules, and the regulatory fee payment requirement in particular. Unfortunately, the constructive notice in the Commission's regulatory fee order and subsequent public notices was not sufficient to provide NuVox with actual notice of the Commission's decision to end its established practice of mailing pre-bills. It is reasonable to expect that notice of a change in means of delivering bills would be noticed by the means being discontinued, as that is the established means of communicating billing information. For example, when a carrier changes billing practices, it will typically inform customers through a bill-insert, thus providing actual notice through the same delivery channel established to convey billing information. If a carrier relied on constructive notice (*e.g.*, notice posted on its website) to impose elimination of mailed bills, it reasonably could expect many customers to miss payments. Thus, it should not be considered unreasonable for NuVox to have relied on use of a mailed pre-bill as its payment triggering mechanism in the absence of actual notice of a change in billing practices delivered through the same channel established to convey billing information.

In light of the unique confluence of events and circumstances described above, strict adherence to the late-filed payment penalty provision is, in this instance, unduly harsh and does not serve the public interest. The Commission can deviate from strict adherence of the late-filed payment where doing so will promote the public interest.<sup>9</sup> Here, waiver of the late-filed penalty is in the public interest. NuVox has substantially complied with the requirement, immediately paying in full upon being informed of its error. Especially in today's less than optimal economic times, the 25% late-filed penalty is unduly harsh and does not further the goal of ensuring compliance and timely payment by punishing those who knowingly fail to remit payment in a

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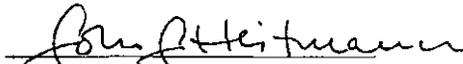
<sup>9</sup> *Northeast Cellular*, 897 F.2d at 1166.

timely manner. NuVox is a financially stable company with an internal group working to ensure compliance with regulatory requirements and timely payment of state and federal regulatory assessments. Given a timely mailed pre-bill or actual notice of discontinuance of same, NuVox would, without question, have remitted its payment in a timely manner. This penalty is not needed to deter NuVox from repeating the infraction, because, having been made aware of the change in Commission processes, NuVox has implemented changes to its policies and procedures so that it no longer relies on receipt of a mailed pre-bill as a trigger for filing its annual regulatory fee payment.

### **Conclusion**

For the reasons stated above, NuVox respectfully requests that the Commission for good cause shown waive the 25 percent late-filed penalty provision of Section 1.1164 of the Commission's rules.

Respectfully submitted,

  
John J. Heitmann  
Devin L. Crock  
**KELLEY DRYE & WARREN LLP**  
3050 K Street N.W.  
Suite 400  
Washington, DC 20007  
Phone: (202) 342-8544  
jheitmann@kelleydrye.com

*Attorneys for NuVox, Inc.*

October 2, 2009

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

My name is Susan J. Berlin and I am over eighteen years old. I am the Vice President, Senior Regulatory Counsel for NuVox, Inc. ("NuVox" or the "Company"), a privately held corporation organized and existing under the laws of Delaware, with its principal office located at 2 North Main Street, Greenville, South Carolina, 29601.

I provide this Declaration in compliance with the requirements of Section 1.16 of the Federal Communications Commission's (the "Commission") rules, 47 C.F.R. § 1.16.

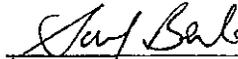
Under penalty of perjury, I hereby declare that the following is true and correct to the best of my knowledge and belief:

1. I have reviewed the attached Petition for Waiver of the late-filed penalty provisions of Section 1.1164 of the Commission's rules.
2. The factual statements contained in NuVox's Petition for Waiver are true and correct.

**IN WITNESS WHEREOF**, the above-mentioned corporation has caused this instrument to be executed on its behalf on October 2, 2009.

NuVox, Inc.

By:



Susan J. Berlin

Vice President, Senior Regulatory Counsel

## FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAR 1 2010

OFFICE OF  
MANAGING DIRECTOR

Matthew H. McCormick  
Davina S. Sashkin  
Fletcher, Heald & Hildreth, P.L.C.  
1300 North 17<sup>th</sup> Street, 11<sup>th</sup> Floor  
Arlington, VA 22209

Re: Progressive Broadcasting System, Inc.  
Station W292DO, Middlebury, IN  
Station W291BQ, Plymouth, IN  
Fiscal Year 2009 Regulatory Fee Waiver Request  
Fee Control No. RROG-09-00012245

Dear Counsel:

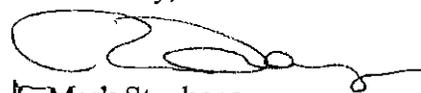
This letter is in response to your request filed on October 8, on behalf of Progressive Broadcasting System, Inc. ("Progressive"), licensee of Station W292DO, Middlebury, Indiana and Station W291BQ, Plymouth, Indiana, for waiver and refund of the combined \$800.00 fiscal year 2009 regulatory fee for these two stations ("*Waiver Request*"). Our records show that Progressive has paid the \$400.00 regulatory fee for each station. For the reasons below, we grant your request.

In support of your request, you state that Station W292DO and Station W291BQ "were silent as of the FY2009 regulatory fee deadline" and neither station has "returned to the air" since notice was given to the FCC on February 18, 2009 that Station W291BQ "had gone of the air," and on August 12, 2009 that Station W292DO "had gone off the air."<sup>1</sup>

The Commission has determined that the imposition of a regulatory fee could be an impediment to the restoration of broadcast service and therefore will grant "petitions for waivers of the regulatory fees on the grounds of financial hardship from licensees of broadcast stations which are dark (not operating)." *Implementation of Section 9 of the Communications Act*, 10 FCC Rcd 12759, 12762 (1995). Because Station W292DO and Station W291BQ were not operating on the date that the fiscal year 2009 regulatory fees were due (*i.e.*, September 22, 2009), we grant your request for waiver and for refund of the fee for each station.

A check in the amount of \$800.00, made payable to the maker of the original check, will be sent to you on the earliest practicable date. If you have any questions concerning this matter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark Stephens  
Chief Financial Officer

<sup>1</sup> *Waiver Request* at 1, 2 (dated October 8, 2009).

090913 1009100000

12245

HARRY F. COLE  
ANNE GODDWIN CRUMP  
VINCENT J. CURTIS, JR.  
JOSEPH M. DI SCIPIO  
PAUL J. FELDMAN  
JEFFREY J. GEE  
KEVIN M. GOLDBERG  
FRANK R. JAZZO  
M. SCOTT JOHNSON  
MITCHELL LAZARUS  
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SUSAN A. MARSHALL  
HARRY C. MARTIN  
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KATHLEEN VICTORY  
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OF COUNSEL  
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THOMAS J. DOUGHERTY, JR.  
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ROBERT M. GURSS\*  
RICHARD F. SWIFT

WRITER'S DIRECT

703-812-0458  
SASHKIN@FHHLAW.COM

October 8, 2009

PLEASE STAMP  
AND RETURN  
THIS COPY TO  
FLETCHER, HEALD & HILDRETH

FILED/ACCEPTED  
OCT - 8 2009  
Federal Communications Commission  
Office of the Secretary

\* NOT ADMITTED IN VIRGINIA

**Via Hand Delivery**  
Ms. Marlene Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

**Attn: Office of the Managing Director**

**Re: Request for Refund of FY 2009 Regulatory Fees**  
**Progressive Broadcasting System, Inc. (FRN: 0004341897)**

Dear Ms. Dortch:

By its counsel, licensee Progressive Broadcasting System, Inc. ("Progressive") hereby respectfully requests a refund of \$800.00 in regulatory fees paid for two silent FM Translator Stations (\$400 paid for each). As indicated in the enclosed documentation, payment in full for all regulatory fees assessed for stations licensed to Progressive was submitted to the Commission on September 14, 2009 via Fee Filer (E-Voucher No. E001655617), and the ACH payment was processed on September 15, 2009.

In *Implementation of Section 9 of the Communications Act*, 10 FCC Rcd 12759, 12762 (1995), the Commission determined that regulatory fees may be waived for stations which are not on the air. Two of Progressive's licensed FM Translator Stations were silent as of the FY2009 regulatory fee payment deadline: **W292DO**, Middlebury, Indiana (Facility Id. 145316); and **W291BQ**, Plymouth, Indiana (Facility Id. 147705).

Marlene Dortch, Secretary

October 8, 2009

Page 2

- On February 18, 2009, Progressive filed a notification with the Commission that W291BQ, Plymouth, IN, had gone off the air, and requested continued authority to remain silent (See File No. BLSTA-20090218ABO). That request remains pending. The station has not returned to the air.
- On August 12, 2009, Progressive filed a notification with the Commission that W292DO, Middlebury, IN, had gone off the air, and requested continued authority to remain silent (See File No. BLSTA-20090812AAU). That request remains pending. The station has not returned to the air.

In light of the foregoing, the licensee respectfully requests a refund, in the amount of **\$800.00**, of the FY2009 regulatory fees paid for the above-referenced stations. Should you have any questions, please do not hesitate to contact the undersigned.

Very truly yours,



Matthew H. McCormick

Davina S. Sashkin

*Counsel for Progressive Broadcasting System, Inc.*

Enclosure

cc: Mr. Mark Stephens (via email)  
Ms. Regina Dorsey (via email)

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

MAR 29 2010

OFFICE OF  
MANAGING DIRECTOR

Robert J. Rini, Esq.  
Jonathan E. Allen, Esq.  
Rini Coran, PC  
1140 19<sup>th</sup> Street, N.W.  
Suite 600  
Washington, D.C. 20036

Re: SATV10, LLC, Debtor-in-Possession  
Station KTRG(TV), Del Rio, Texas  
FY 2009 Regulatory Fees  
Fee Control No. RROG-09-00012043

Dear Counsel:

This letter responds to your request dated September 18, 2009 (*Request*), on behalf of SATV10, LLC, Debtor-in-Possession (SATV10-DIP), licensee of Station KTRG(TV), Del Rio, Texas, for waiver of the fiscal year (FY) 2009 regulatory fees. Our records reflect that SATV10-DIP has not paid the \$37,575.00 FY 2009 regulatory fees. For the reasons stated herein, we grant your request.

You state that on January 30, 2009, SATV10, LLC filed a voluntary petition for reorganization under Chapter 11 with the United States Bankruptcy Court, Southern District of New York (Bankruptcy Court),<sup>1</sup> and was in bankruptcy on the date that the FY 2009 regulatory fees were due, *i.e.*, September 22, 2009.<sup>2</sup> You submit copies of the voluntary petition for Chapter 11 bankruptcy protection filed by SATV10, LLC with the Bankruptcy Court (*Bankruptcy Petition*) and the *Notice of Bankruptcy Case Filing* issued by the Bankruptcy Court (*Bankruptcy Court Notice*).<sup>3</sup> You state that on March 6, 2006, SATV10, LLC filed an application to assign the license for Station KTRG(TV) from SATV10, LLC to SATV10-DIP, and that the application was granted on March 12, 2009.<sup>4</sup>

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

<sup>2</sup> See email from Robert Rini to Joanne Wall (Nov. 16, 2009).

<sup>3</sup> See *Request*, Exhibit 1.

<sup>4</sup> *Id.* 2, Exhibit 2.

The Commission has determined that it will waive regulatory fees for licensees who are bankrupt or are in receivership at the time the fees are due.<sup>5</sup> Based on the evidence that you provide that SATV10-DIP was in bankruptcy on the September 22, 2009, due date for filing FY 2009 regulatory fees,<sup>6</sup> including the *Bankruptcy Petition* and the *Bankruptcy Court Notice*, we grant SATV10-DIP a waiver of the FY 2009 regulatory fees.

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

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<sup>5</sup> See *Implementation of Section 9 of the Communications Act*, 10 FCC Rcd 12759, 12762 (1995).

<sup>6</sup> See *Public Notice, FY 2009 Regulatory Fees Due No Later Than September 22, 2009, Eastern Time (ET)*, DA 09-1837, 2009 WL 2595896 (Aug. 21, 2009).

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAR 1 2010

OFFICE OF  
MANAGING DIRECTOR

Mr. Roberto Perez  
219 River Bluff Lane  
Royal Palm Beach, FL 33411

Re: Solutions Unlimited LLC  
Fiscal Year 2009 Regulatory Fee  
Fee Control No. 0911049088116004

Dear Mr. Perez:

This is in response to your request dated October 30, 2009 (*Request*), filed on behalf of Solutions Unlimited LLC (Solutions) for waiver of the penalty for late payment of the fiscal year (FY) 2009 regulatory fee. Our records reflect that you paid the \$1,844.00 FY 2009 regulatory fee, but not the \$461.00 late payment penalty. For the reasons set forth below, we deny your request.

You state that you were “completely unaware that this filing [sic] was to be completed online . . . [or that you] even owed the FCC.”<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> Solutions paid the regulatory fee on November 4, 2009, after the September 22, 2009, deadline for filing regulatory fees, and therefore failed to meet this obligation.

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

<sup>2</sup> 47 U.S.C. §159(c)(1).

<sup>3</sup> See 47 C.F.R. §1.1164, and see *Public Notice, Payment Methods and Procedures for FY 2009*, 24 FCC Rcd 11513, 11513 (Sept. 2, 2009) (*September 2009 Public Notice*), *Public Notice, FY 2009 Regulatory Fees Due No Later Than September 22, 2009, Eastern Time (ET)*, 24 FCC Rcd 10890, 10890 (Aug. 21, 2009), and *Public Notice, Fee Filer Mandatory for FY 2009 Regulatory Fees*, 24 FCC Rcd 10893, 10893 (Aug. 21, 2009) (stating that FY 2009 regulatory fees must be received by the Commission no later than September 22, 2009, and that payments received after that date will be charged a 25 percent late payment penalty).

The Commission takes care to inform its licensees of the due dates, amounts of the fees, and payment methods in public notices and fact sheets, which information it also posts on its web site, [www.fcc.gov](http://www.fcc.gov). For the FY 2009 regulatory fees, the Commission released several public notices informing licensees of the September 22, 2009, deadline for filing regulatory fees and posted these items on its web site.<sup>4</sup>

Further, the Commission determined in *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Report and Order*, 24 FCC Rcd 10301, 10308-10309 (2009), that it would no longer mail pre-bills via surface mail to licensees such as Solutions. That decision, which was adopted on July 28, 2009, and released on July 31, 2009, adopted without change a proposal announced by the Commission in *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Notice of Proposed Rulemaking*, 24 FCC Rcd 5966, 5972-73 (2009), which was released on May 14, 2009. The Commission adopted the modifications to the notifications procedures at issue here almost two months before the due date for filing the FY 2009 regulatory fees, and proposed those modifications over four months before the due date.

The Commission has repeatedly held that “[l]icensees are expected to know and comply with the Commission’s rules and regulations and will not be excused for violations thereof, absent clear mitigating circumstances.”<sup>5</sup> You have not presented any circumstances sufficient to mitigate your responsibility as a licensee to apprise yourself of your obligation to pay the FY 2009 regulatory fee by the announced deadline of September 22, 2009. We therefore deny your request for waiver of the penalty for late payment of the fiscal year 2009 regulatory fees for Solutions.

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

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<sup>4</sup> *Id.*

<sup>5</sup> 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).

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAR 1 2010

OFFICE OF  
MANAGING DIRECTOR

Rhonda Cruickshanks  
General Manager  
SportsRadio 1410 WPCC  
Post Office Box 1455  
Clinton, S.C. 29325

Re: Station WPCC-AM  
FY 2009 Regulatory Fees  
Fee Control No. 0910269084883381

Dear Ms. Cruickshanks:

This is in response to your request dated October 23, 2009 (*Request*), on behalf of Station WPCC-AM, for waiver of the penalty for late payment of the Fiscal Year (FY) 2009 regulatory fee. Our records reflect that you have paid the \$885.00 regulatory fees at issue here, but not the \$221.25 penalty. For the reasons stated herein, we grant your request.

You state that although the regulatory fee payment at issue here was sent through the United States Postal Service for a guaranteed delivery by noon on September 22, 2009, it arrived on September 23, 2009.<sup>1</sup> You say that with the current "tough times," the \$221.25 penalty is a lot of money for Station WPCC-AM.<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup> You paid the regulatory fee for Station WPCC-AM on September 23, 2009, after the September 22, 2009, deadline for filing regulatory fees, and therefore failed to meet this obligation.

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

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

<sup>3</sup> 47 U.S.C. §159(c)(1).

<sup>4</sup> See 47 C.F.R. §1.1164, and see *Public Notice, Payment Methods and Procedures for FY 2009*, 24 FCC Rcd 11513, 11513 (Sept. 2, 2009) (*September 2009 Public Notice*), *Public Notice, FY 2009 Regulatory Fees Due No Later Than September 22, 2009, Eastern Time (ET)*, 24 FCC Rcd 10890, 10890 (Aug. 21, 2009), and *Public Notice, Fee Filer Mandatory for FY 2009 Regulatory Fees*, 24 FCC Rcd 10893, 10893 (Aug. 21, 2009) (stating that FY 2009 regulatory fees must be received by the Commission no later than September 22, 2009, and that payments received after that date will be charged a 25 percent late payment penalty).

The Commission has repeatedly held that “[l]icensees are expected to know and comply with the Commission’s rules and regulations and will not be excused for violations thereof, absent clear mitigating circumstances.”<sup>5</sup> In this case, we find that your reliance upon the United States Postal Service’s guarantee to deliver the FY 2009 regulatory fee payment by the September 22, 2009, due date, and the failure of the U.S. Postal Service to meet that guarantee through no fault of the licensee, presents mitigating circumstances sufficient to warrant waiver of the late payment penalty. We note that the waiver granted herein is based solely on the unique circumstances of this particular case and is not intended to serve as precedent for any other request to waive late payment penalties.

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

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<sup>5</sup> 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).

*Clinton High Red Devils*

**ATLANTA BRAVES BASEBALL**

**SOUTH CAROLINA GAMECOCKS**

# *SportsRadio 1410 WPCC*

**CLEMSON TIGERS**

**ESPN RADIO ... "The Worldwide Leader In Sports"**

**NASCAR RACING**

## ***"THE SPORTS VOICE OF LAURENS COUNTY"***

THIS IS "IMPORTANT SPORTS STUFF" & INFORMATION

TO: Financial Apperstion  
 COMPANY: Fcc  
 FAX #: 1-202-418-7869  
 FROM: Rhonda Cruickshanks  
 FAX #: 864.833.2467  
 RE: dispute

PAGES: 7 (INCLUDING COVER SHEET)

If you do not receive a clear copy, or have further questions, please contact *SportsRadio 1410* at 864.833.1410 or drop us an e-mail; [wpcc@bellsouth.net](mailto:wpcc@bellsouth.net). Plus, please visit our website at [www.SportsRadio1410WPCC.com](http://www.SportsRadio1410WPCC.com). Thank You!!!



## SportsRadio 1410 WPCC

"The **Sports** Voice of Laurens County

Post Office Box 1455 • Clinton, S.C. 29325  
Office (864) 833-1410 • Fax (864) 833-2467

10-19-09

### To Whom It May Concern:

This is concerning the regulatory fees for 2009 paid to the FCC by radio station WPCC-AM in Clinton, S.C. This payment, sent through the U. S. Postal Service for a guaranteed overnight delivery, was to arrive at noon on September 22, 2009. It was delivered on September 23, 2009, which made the payment late. With the tough times that we are now going through, \$221.25 is a lot of money for WPCC-AM. I am asking that the FCC please waver this fee. Any assistance you can give me with this matter is most appreciated.

Rhonda Cruickshanks  
General Manager  
SportsRadio 1410 WPCC  
Clinton, S.C. 29325

864-833-1410

FRN # 0001885508

Affiliate of  
**ESPN**  
RADIO

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAR 1 2010

OFFICE OF  
MANAGING DIRECTOR

Cherie R. Kiser, Esq.  
Cahill Gordon & Reindel, LLP  
Suite 950  
1990 K Street, N.W.  
Washington, D.C. 20006-1181

Re: STi Prepaid, LLC  
FY 2009 Regulatory Fee  
Fee Control No. RROG-09-00012042

Dear Ms. Kiser:

This letter responds to your request filed on September 22, 2009 (*Request*), on behalf of STi Prepaid, LLC (STi Prepaid) for waiver of the fiscal year (FY) 2009 regulatory fee. Our records reflect that STi Prepaid has not paid the \$1,711,888.00 FY 2009 regulatory fee. For the reasons stated herein, we deny your request.

You assert that STi Prepaid is required to pay regulatory fees that are “grossly excessive” and out of proportion to that required of other carriers and to its stature as a very small carrier in the United States market.<sup>1</sup> You claim that the other carriers should be equitably sharing the burden of the regulatory fees.<sup>2</sup> You state that as an interstate telecommunications service provider, STi Prepaid calculates its regulatory fees based on its interstate and international revenues.<sup>3</sup> You maintain that as a result of this calculation and because STi Prepaid earns substantial revenues internationally, the company’s FY 2009 regulatory fee totals nearly 30 percent of its interstate gross revenues.<sup>4</sup> You aver that STi Prepaid’s activities impose “little, if any,” demands on the Commission’s resources.<sup>5</sup>

You contend that payment of the regulatory fee would cause STi Prepaid significant financial hardship.<sup>6</sup> You assert that STi Prepaid’s FY 2009 regulatory fee and TRS Fund obligations exceed the company’s interstate service revenues by nearly 23 percent and

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

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

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

<sup>4</sup> *Id.* at 1-2.

<sup>5</sup> *Id.* at 2.

<sup>6</sup> *Id.* at 2-3.

exceed the normal costs of operating a business.<sup>7</sup> You claim that the regulatory fee hinders STi Prepaid's ability to remain competitive.<sup>8</sup> You submit, among other documents, STi Prepaid's "Statement of Operations" for the calendar year ending September 2009 (*Financial Statement*).<sup>9</sup>

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.<sup>10</sup> In reviewing a showing of financial hardship, the Commission relies upon cash flow, as opposed to profits, and considers whether adequate funds exist to pay the regulatory fee and maintain service to the public. Thus, even if an entity 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 STi Prepaid's 2009 *Financial Statement*, indicates that STi Prepaid suffered a financial loss in the first nine months of the 2009 calendar year which was fully offset by a depreciation deduction. The Commission considers depreciation deductions as funds available to pay the regulatory fee, because the loss resulted from the depreciation deduction. We therefore deny your request for waiver of the FY 2009 regulatory fees on the grounds of financial hardship.

With respect to your argument that the way the Commission calculates regulatory fees imposes a disparate burden on STi Prepaid as a provider of interstate and international telecommunications services, this issue should have been raised in the rulemaking proceeding in which we established those fees.<sup>11</sup> We therefore deny your request for waiver of the FY 2009 regulatory fees on this basis.

You have also requested confidential treatment of the financial data 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

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 3-4.

<sup>9</sup> See email from Angela Collins to Joanne Wall, Attachment (*Financial Statement*) (Dec. 18, 2009).

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

<sup>11</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Report and Order*, 24 FCC Rcd 10301 (2009); *Assessment and Collection of Regulatory Fees for Fiscal Year 2008, Report and Order and Further Notice of Proposed Rulemaking*, 24 FCC Rcd 6389 (2008).

conjunction with your regulatory fees is received, you will be notified and afforded the opportunity to respond at that time.<sup>12</sup>

Payment of the \$1,711,888.00 FY 2009 regulatory fee is now due. The regulatory fee 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,

A handwritten signature in black ink, appearing to read "Mark Stephens", with a stylized flourish at the end.

Mark Stephens  
Chief Financial Officer

Enclosure

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<sup>12</sup> By this letter, we also grant your request for a deferral of payment while the waiver request is pending.