

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

APR 22 2010

OFFICE OF
MANAGING DIRECTOR

Mark G. Lammert, CPA
Compliance Solutions, Inc.
740 Florida Central Parkway, Suite 2028
Longwood, FL 32750

Re: Total Call International, Inc.
Fiscal Year 2009 Regulatory Fee
Fee Control No. RROG-09-00012352

Dear Mr. Lammert:

This is in response to your request filed November 23, 2009 (*Request*), on behalf of Total Call International, Inc. (TCI) for waiver of the penalty for late payment of the fiscal year (FY) 2009 regulatory fee. Our records reflect that you paid the \$415,188.00 regulatory fee, but not the \$93,450.00 late payment penalty. For the reasons set forth below, we deny your request.

You assert that on September 21, 2009, you mailed an initial \$41,386.00 FY 2009 regulatory fee to the Commission that "was posted to [y]our financial institution on September 28, 2009."¹ You aver that you paid the balance of the FY 2009 regulatory fee in the amount of \$373,802.00 on November 6, 2009.² You claim that "[t]he second late filing fee was simply to [*sic*] a clerical mistake of assuming the total amount to pay was only a portion of the FCC 499A amount."³ You contend that the Commission's new policy not to send out preprinted invoices was the cause of TCI's failure to pay the regulatory fee on time.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 You made the initial \$41,386.00 FY 2009 regulatory fee

¹ *Request* at 1.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ 47 U.S.C. §159(c)(1).

⁶ See 47 C.F.R. §1.1164; and see *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Report and Order*, 24 FCC Rcd 10301, 10311 (2009); *Public Notice*,

Mark G. Lammert, CPA

payment on September 25, 2009, and the \$373,802.00 balance on November 6, 2009 (for a total of \$\$415,188.00), 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. For the FY 2009 regulatory fees, the Commission timely released several public notices and news releases informing licensees of the new filing requirement and the September 22, 2009, deadline for filing regulatory fees and posted these items on its web site.⁷

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.”⁸ 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 FY 2009 regulatory fees for TCI.

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

Payment Methods and Procedures for FY 2009, 24 FCC Rcd 11513, 11513 (Sept. 2, 2009) (*September 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).

⁷ See *supra*.

⁸ 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).

Compliance Solutions

Telecom Tax Services
Transaction Tax Services
Business Accounting Services

Received & Inspected

NOV 23 2009

FCC Mail Room

407-260-1011 • 407-260-1033/fax • mark@csilongwood.com • 740 Florida Central Pkwy., Ste. 2028, Longwood, FL 32750

November 18, 2009
Via Overnight Delivery (FedEx)

RR06-09-000/2352

Federal Communications Commission
Attn: Revenues and Receivables Operations Group
Cheryl Collins, Chief
445 12th Street S.W., Room 1-A843
Washington, DC 20554
202-418-1995

RE: Total Call International, Inc.
Filer 499 ID: 821882, FRN# 0006-8073-09
Payment of Annual FCC Regulatory Fees.

Dear Chief Collins,

I am submitting a copy of our electronic mail request to your Staff in an attempt to resolve the issue of why the FCC is showing that Total Call International, Inc has a late filing fee. There were two late filing fees. I have attached a copy of the cleared check for \$41,386 that was posted to our financial institution on 9/28/09. The payment was sent to the FCC on 9/21/09. The second late filing fee was simply a clerical mistake of assuming the total amount to pay was only a portion of the FCC 499A amount. Once that mistake was known the unpaid portion of \$373,802 was paid on 11/6/09 via credit card. As you know, this is the first year that the FCC has not sent out preprinted invoices on FCC Form 159. This change of policy has resulted in additional mistakes and was the primary reason why \$415,188 was not paid on 9/21/09. Please consider this as we respectfully request that you make this one time exception and waive the late payment penalties.

Please acknowledge receipt of this filing by date-stamping the extra copy of this cover letter and returning it to me in the self-addressed, stamped envelope provided for that purpose.

Please do not hesitate to contact me at 407-260-1011 or mark@csilongwood.com if you have any questions or concerns.

Thank you for your assistance in processing this filing.

Sincerely,



Mark G. Lammert, CPA
Tax Preparer for Total Call International, Inc.

cc: Total Call International, Inc.
file: Total Call International, Inc. - PUC - FCC

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

APR 22 2010

OFFICE OF
MANAGING DIRECTOR

Vae Kreger
Accounting Department
United Communications Association, Inc.
1107 McArtor Road
Dodge City, KS 67801

Re: United Communications Association, Inc.
Fiscal Year 2009 Regulatory Fee Waiver Request
Fee Control No. 0910219084401502

Dear Mr./Ms. Kreger:

This letter is in response to your request dated October 27, 2009, on behalf of United Communications Association, Inc. ("UCA") for waiver of the 25 percent penalty charged to it for late payment of its Fiscal Year ("FY") 2009 regulatory fees ("*Waiver Request*"). Our records show that UCA's fiscal year 2009 regulatory fees of \$613 were not paid when due (*i.e.*, September 22, 2009), and therefore, UCA was assessed a late payment penalty of \$153.25. For the reasons below, we deny your request for waiver.

In support of your request, you state that payment for FY 2009 regulatory fees was "mailed on 9/18/09, but to an incorrect address," and the payment was resubmitted after the initial submission was returned on or about October 3, 2009.¹

Section 9(c)(1) of the Communications Act, as amended, requires the Commission to assess a late payment penalty of 25 percent on any regulatory fee not paid in a timely manner.² The Commission's rules provide that a timely payment of a regulatory fee is one received at the Commission's lockbox bank by the due date.³

It is the obligation of 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, which for FY 2009 was September 22, 2009. The Commission, however, did not receive payment of UCA's FY 2009 regulatory fees until October 19, 2009.

¹ *Waiver Request*.

² See 47 U.S.C. § 159(c)(1) ("The Commission shall prescribe by regulation an additional charge which *shall* be assessed as a penalty for late payment of fees required by subsection (a) of this section [Regulatory Fees]. Such penalty shall be 25 percent of the amount of the fee which was not paid in a timely manner").

³ 47 C.F.R. § 1.1164.

Vae Kreger
Accounting Department
United Communications Association, Inc.
Page 2

We find therefore that UCA failed to meet its obligation to timely pay its FY 2009 regulatory fees and that its request for waiver presents no extraordinary circumstances that would warrant waiver of the penalty. Accordingly, we deny your request for waiver of the 25 percent penalty assessed against UCA for late payment of its FY 2009 regulatory fees.

Payment of the \$153.25 penalty is now due. The payment should be submitted, together with a Form 159 (copy enclosed), within 30 days of the date of this letter. 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

Enclosure

Stephen French

From: Vae Kreger [vae@unitedtelcom.net]
Sent: Tuesday, October 27, 2009 4:38 PM
To: ARINQUIRIES
Cc: Jennifer Pachner
Subject: Attn Steven French Red Light Issue
Importance: High
Attachments: Form 159 - UCA Cable & Toll Reg Fee '09.pdf

1224 /

Issues for United Communications Association, Inc.
 FRN 0002327153
 Bill Number 09RE011149

~~#~~ 0910219084401502

Scanned images:

- 1). Check 24908 for \$1,806.64 was for Regulatory fee Cable.
- 2). Check 24909 for \$613.00 was for Regulatory fee Toll.
These two checks were mailed on 9/18/09, but to an incorrect address.
- 3). Confirmation report printed 9/17/09.
- 4). Envelope dated 10/3/09 when the checks were returned.
This was scanned twice.
- 5). Remittance Voucher that was mailed with the checks to the correct address .
- 6). UPS next day air showing the date when the two checks were received.
- 7). Check 25023 for \$2,419.64 since form received 10/14/09 said we were to remit just one check.
- 8). Notice received stated that we needed to remit one check not two.
9. Envelope in which the notice and checks 24908 and 24909 was received from FCC.
- 10). Bill for collection that shows a penalty of \$153.25.
- 11). Envelope in which the collection notice was sent.

I believe the scanned information supports the fact that we sent our payment in a timely manner. That is why I respectfully request the removal of the penalty fee equal to \$153.25. United Communications Association now has a status of RED. After speaking to you this morning I believe that our check for \$2,419.64 was applied as such, \$1,806.64 to the cable regulatory fee, \$459.75 to the toll regulatory fee and \$153.25 for the penalty fee. This resulted in the toll regulatory fee being recorded as under paid. Please verify if you agree and if so will the penalty be waived with the application of the \$153.25 to our toll regulatory fee. If additional monies are due please inform us of the most efficient method to get this matter reconciled so that we do not incur any more charges and our status will be not be reflected as RED.

Thank you for your help.

Vae Kreger
 Accounting Department

CC: Jennifer Pachner
 Controller

**Vae Kreger | Accountant**

United Telephone Assn. Inc
 United Communications Assn. Inc
 United Wireless Communications Inc.
 1107 McArtor Rd.
 Dodge City, KS 67801
 (P)800-794-9999

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10/27/2009

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAY 13 2010

OFFICE OF
MANAGING DIRECTOR

Ms. Rose Cullen
Volcano Commuincations Group
20000 E. Highway 88
Post Office Box 1070
Pine Grove, CA 95665

Re: Volcano Commications Group
Fiscal Year 2009 Regulatory Fees
Fee Control Nos. 09102990880850078 and
0910299084428001

Dear Ms. Cullen:

This is in response to your request filed October 27, 2009 (*Request*), on behalf of Volcano Communications Group (Volcano) for waiver of the penalty for late payment of the fiscal year (FY) 2009 regulatory fee. Our records reflect that you paid the \$3,443.00, \$289.00, and \$21.00 regulatory fees, as well as the associated \$860.86, \$72.25, and \$5.25 late payment penalties. For the reasons set forth below, we grant your request.

You state that on September 18, 2009, Volcano mailed via the United States Postal Service (USPS) three checks in payment of the FY 2009 regulatory fees.¹ You allege that the three payments were mailed together in one envelope to the FCC, P.O. Box 979084, St. Louis, Missouri 63197-9000.² You submit a copy of a USPS certified mail receipt which includes a date-stamp indicating that an item was sent from Pine Grove, California, on September 18, 2009. Handwriting in the relevant boxes on the receipt indicates that the item was to be sent to "FCC, P.O. Box 979084, St. Louis, MO 63197-9000."³ You assert that communication with FCC staff revealed that the envelope with the three payments was mistakenly delivered to Pittsburgh, Pennsylvania, on September 21, 2009.⁴ You submit a copy of the USPS "Track and Confirm" record indicating that an item was sent from Pine Grove, California, on September 18, 2009, and delivered to Pittsburgh, Pennsylvania, on September 21, 2009.⁵ You claim that although "the reason that the original payments arrived in Pittsburgh rather than St. Louis remains unclear . . . the intent to pay was there[.]"⁶

¹ *Request* at 1.

² *Id.*

³ *Id.*, Attachment.

⁴ *Id.*

⁵ *Id.*, Attachment.

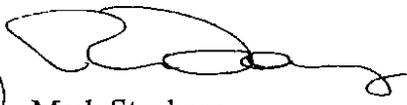
⁶ *Id.*

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.⁷ 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.⁸ Our records reflect that you paid the regulatory fees for Volcano on October 29, 2009, after the September 22, 2009, deadline for filing regulatory fees.

Late payment penalty waivers are seldom granted. In this case, however, you have submitted copies of a USPS certified mail receipt addressed to the correct address for mailing regulatory fees and date-stamped September 18, 2009, Pine Grove, California (Volcano's business location). Based on this evidence, we conclude that you made reasonable efforts to timely pay the fee in question. In light of these unique circumstances, we find it appropriate to waive the late fee payment penalty in this case. We emphasize that the relief granted today is confined to the facts of this particular case and is not intended to serve as precedent in dissimilar factual situations.

A check made payable to the maker of the original check, and drawn in the amount of \$938.36, will be sent to you at the earliest practicable time. 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

⁷ 47 U.S.C. §159(c)(1).

⁸ See 47 C.F.R. §1.1164; and see *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Report and Order*, 24 FCC Rcd 10301, 10311 (2009); *Public Notice, Payment Methods and Procedures for FY 2009*, 24 FCC Rcd 11513, 11513 (Sept. 2, 2009); *Public Notice, FY 2009 Regulatory Fees Due No Later Than September 22, 2009, Eastern Time (ET)*, 24 FCC Rcd 10890, 10890 (Aug. 21, 2009) (identifying the correct mailing address in St. Louis, Missouri for payment of FY 2009 regulatory fees); 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).



October 23, 2009

12273 Received & Inspected
OCT 28 2009

Office of the Managing Director
Federal Communications Commission
445 12th Street, S.W., Room 1-A625
Washington, D.C. 20554

FCC Mail Room

FD
OCT 27 2009
Financial Operations
Center

09/0299088085007
09/029908442800

Dear Managing Director:

On September 18, 2009, Volcano Communications remitted three (3) separate checks along with three (3) separate FCC Form 159-Es for the FCC FY 2009 Regulatory Fees that were due September 22, 2009. The details of the Remittance Vouchers and their respective checks are as follows:

FRN 0004307716 Voucher No. E001656539 Paid \$3,443.44 Check No. 8403 Check Date 9/17/09

FRN 0004307716 Voucher No. E001656544 Paid \$21.00 Check No. 1451 Check Date 9/17/09

FRN 0004307757 Voucher No. E001656549 Paid \$289.00 Check No. 997 Check Date 9/17/09

All three (3) payments were mailed together in one envelope to:

FCC
P O Box 979084
St. Louis, MO 63197-9000

A photocopy of the U.S. Postal Service Certified Mail Receipt is attached. Also enclosed are copies of each of the "Report for Submitted Fees" and the Form 159-E Remittance Vouchers.

On October 20, 2009, Volcano received two (2) Federal Communications Commission REMITTANCE ADVISE BILL FOR COLLECTION notices: one in the amount \$26.25 and the other in the amount of \$361.25. I immediately called the Revenue & Receivable Operations Group to inquire about the notices. I was informed that the payments listed above were not received nor posted to their respective accounts. After several phone conversations and numerous email correspondences with Mr. Stephen French of the Revenue & Receivable Operations Group, it was discovered that the envelope was mistakenly delivered to Pittsburgh, PA on September 21, 2009. Mr. French indicated that the Pittsburgh address is that of Mellon Bank, the bank that formerly handled payments on behalf of the FCC. Mr. French was not able to track down the checks, nor have they been returned to Volcano.

Volcano has executed "stop payments" on the checks. At the instruction of Mr. French, Volcano has re-issued and mailed three (3) new checks, all of which include a 25% late penalty fee. The details of this second set of checks are as follows:

FRN 0004307716 Voucher No. E001656539 \$3,443.44 + \$860.86 Penalty; Check No. 8550, Check Date 10/23/09

FRN 0004307716 Invoice No. 09RE012095 \$21.00 + \$5.25 Penalty; Check No. 1464, Check Date 10/23/09

FRN 0004307757 Invoice No. 09RE012096 \$289.00 + \$72.25 Penalty; Check No. 1022, Check Date 10/23/09

Volcano respectfully requests to have the three (3) 25% penalty fees waived and refunded. As you can see from the attached documents that I have provided as proof, Volcano *did* remit payment for the FY 2009 Regulatory Fees. The reason that the original payments arrived in Pittsburgh rather than St. Louis, remains unclear, however, the attached copy of the Mail Receipt shows that the envelope was postmarked on September 18, 2009 and the U.S.P.S.'s Track & Confirm website (screen shot attached) shows that it was received on September 21, 2009 (in advance of the due date). Clearly, the intent to pay the Regulatory Fees was there and had there not been an error in delivery, the payments would have been received by the FCC in advance of the deadline.

Thank you in advance for your consideration in this matter. For any inquiries about this request or any of the attached documents, please call me at 209-296-1435 or email me at rosec@volcanotel.com.

Regards,

A handwritten signature in black ink, appearing to read "Rose Cullen", with a long horizontal line extending to the right.

Rose Cullen
Volcano Communications

Enclosures

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

APR 26 2010

OFFICE OF
MANAGING DIRECTOR

Karis A. Hastings, Esq.
Hogan & Hartson
Columbia Square
555 Thirteenth Street, N.W.
Washington, D.C. 20004

Re: XM Radio Inc. ✓
FYs 2006, 2007, and 2008 Regulatory Fees
Fee Control Nos. 0609188365741001,
0709198835747004A, 0809249084702503

Dear Ms. Hastings:

This is in response to your request dated December 14, 2009 (*Request*), filed on behalf of XM Radio Inc. (XM) for a refund of the fiscal years (FYs) 2006, 2007, and 2008 regulatory fees on the grounds that XM was operating multiple technically identical spacecraft at its assigned orbital locations. You request a refund of \$459,225.00.¹ For the reasons stated herein, we grant your request.

You state that the Commission authorized XM to provide satellite digital audio radio service (SDARS) at the 85° W.L. and 115° W.L. orbital locations and that XM currently operates four satellites at those two locations: XM-1 (Call Sign S2118), XM-2 (Call Sign S2119), XM-3 (Call Sign S2117), and XM-4 (Call Sign S2616).² You assert that all four satellites have the same technical characteristics, including the same spacecraft bus, frequencies, and transponder design.³ You say that pursuant to Commission authorization, on October 1, 2005, and October 1, 2006, XM-1 and XM-2 were co-located at 115° W.L.⁴ You state that pursuant to Commission authorization, on October 1, 2007, XM-1 and XM-3 were co-located at the 85° W.L. orbital location, and XM-2 and XM-4 were co-located at 115° W.L.⁵ You contend that XM should have been billed only a single per satellite regulatory fee for the co-located technically identical spacecraft

¹ *Request* at 1 (stating that XM is a wholly-owned subsidiary of XM Satellite Radio Inc., which is a wholly-owned subsidiary of Sirius XM Radio Inc.).

² *Id.*

³ *Id.*

⁴ *Id.* at 2 (stating that XM co-located these two satellites at this location to ensure continuity of service in the event either satellite suffered an outage).

⁵ *Id.* (stating that XM continued to co-locate its spacecraft after the launch of XM-4 and the rearrangement of its satellite deployments to provide in-orbit back-up capacity if needed).

for FYs 2006, 2007, and 2008; instead, XM was billed for all of its satellites each year and submitted payment in accordance with those bills.⁶

The Commission has stated that:

geostationary orbit space station (GSO) licensees receive bills requesting regulatory fee payment for satellites that (1) were licensed by the Commission and operational on or before October 1 of the respective fiscal year; and (2) were not co-located with and technically identical to another operational satellite on that date (*i.e.*, were not functioning as a spare satellite).⁷

Section 1.1156(2) of the Commission's rules, 47 C.F.R. §1.1156(2), provides that the FYs 2006, 2007, and 2008 regulatory fee for each "Space Station[] (Geostationary Orbit)," such as the type of station at issue here, is \$111,425.00, \$109,200.00, and \$119,300.00 for FYs 2006, 2007, and 2008 respectively.⁸

We find that XM-1, XM-2, XM-3, and XM-4 are technically identical. We also find that XM-1 and XM-2 were co-located at the same orbital location in FYs 2006 and 2007, that XM-1 and XM-3 were co-located in FY 2008, and that XM-2 and XM-4 were co-located in FY 2008. Because XM paid a regulatory fee for each of the stations in FYs 2006, 2007, and 2008,⁹ we find that a refund in the amount of \$111,425.00, \$109,200.00, and \$238,600.00 for FYs 2006, 2007, and 2008, respectively, for a total of \$459,225.00, is warranted.¹⁰ Accordingly, your request is granted.

⁶ *Id.* at 1.

⁷ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, 24 FCC Rcd 5966, 5972-73, n.33 (2008), *Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, 22 FCC Rcd 15712, 15723 (2007), and *Assessment and Collection of Regulatory Fees for Fiscal Year 2006*, 21 FCC Rcd 8092, 8102 (2006).

⁸ See also *Regulatory Fees Fact Sheet, What You Owe – International and Satellite Services Licensees for FY 2006* at 2 (Aug. 2008) (*2008 Fact Sheet*) ("[m]ultiple technically identical geostationary satellites co-located at the same orbital location will be considered one station for the purpose of per-space station regulatory fee calculation."); *2007 Fact Sheet* at 2 (Aug. 2007) (same); *2006 Fact Sheet* at 2 (Aug. 2006) (same).

⁹ Specifically, XM paid a FY 2006 regulatory fee of \$111,425.00 for both XM-1 and XM-2, a FY 2007 regulatory fee of \$109,200.00 for both XM-1 and XM-2, and a FY 2008 regulatory fee of \$119,300.00 each for XM-1, XM-2, XM-3, and XM-4.

¹⁰ See 47 C.F.R. §1.1160(a)(1).

A check made payable to the maker of the original check, and drawn in the amount of \$459,225.00, will be sent to you at the earliest practicable time. 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

HOGAN &
HARTSON

0609188365741001
0709198835747004A
0809249084702503

Hogan & Hartson LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004
+1.202.637.5600 Tel
+1.202.637.5910 Fax

www.hhlaw.com

December 14, 2009

Karis A. Hastings
Counsel
202-637-5767
kahastings@hhlaw.com

BY HAND DELIVERY AND ELECTRONIC MAIL

Mr. Mark A. Stephens
Chief Financial Officer
Office of the Managing Director
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

12429

Re: Request of XM Radio Inc. for Refund of Regulatory Fee
Overpayment for Fiscal Years 2006, 2007, and 2008

Dear Mr. Stephens:

XM Radio Inc. ("XM"), by its attorneys and pursuant to Section 1.1160(a) of the Commission's Rules, 47 C.F.R. § 1.1160(a), hereby requests a refund in the amount of \$459,225 for overpayment of annual regulatory fees for Fiscal Years 2006, 2007, and 2008. In each of those years, XM was operating multiple technically identical spacecraft at one or more of its assigned orbital locations. Under Commission policy, XM should have paid a single fee at each of these orbital locations because co-located technically identical spacecraft are treated as one satellite for regulatory fee purposes. Instead XM was billed for, and paid the applicable fee for, each of the co-located satellites. XM is entitled to a refund of these overpayments.¹

Background

The Commission has authorized XM to provide satellite digital audio radio service ("SDARS") using the 85° W.L. and 115° W.L. orbital locations. XM currently operates four satellites at those two locations: XM-1 (Call Sign S2118), XM-2 (Call Sign S2119), XM-3 (Call Sign S2617), and XM-4 (Call Sign S2616). All four satellites have the same technical characteristics, including the same spacecraft bus, the same frequencies, and the same transponder design. XM-1, XM-2, and XM-3 were constructed during the same time period

¹ XM is a wholly-owned subsidiary of XM Satellite Radio Inc., which in turn is a wholly-owned subsidiary of Sirius XM Radio Inc. See *Applications of XM Satellite Radio Holdings Inc. and Sirius Satellite Radio Inc. for Consent to Transfer Control of Licenses*, 23 FCC Rcd 12348 (2008).

pursuant to a single contract with identical technical specifications. XM-4 was built slightly later, but again based on the same payload design and specifications.

XM-1 and XM-2 have experienced issues with solar array degradation, which is a problem common to the first generation Boeing 702 class satellites. Due to this problem, XM accelerated the launch of XM-3, which commenced service at 85° W.L. in 2005. XM subsequently requested and received authority to co-locate XM-1 and XM-2 at 115° W.L. in order to ensure continuity of service to XM's customers if either satellite suffered an outage. Accordingly, as of both October 1, 2005² and October 1, 2006, XM-1 and XM-2 were co-located at 115° W.L. XM again rearranged its satellite deployments pursuant to Commission authorization after the launch of XM-4 at 115° W.L., continuing to co-locate its spacecraft to allow XM-1 and XM-2 to provide in-orbit back-up capacity for XM's active spacecraft if needed. Specifically, as of October 1, 2007, XM-1 and XM-3 were co-located at the nominal 85° W.L. orbital location, and XM-2 and XM-4 were co-located at 115° W.L.

Commission Policy

The Commission has made clear that a licensee is required to pay only a single per space station fee for multiple co-located spacecraft that are technically identical. In its regulatory fees orders, the Commission has stated that:

geostationary orbit space station (GSO) licensees receive bills requesting regulatory fee payment for satellites that (1) were licensed by the Commission and operational on or before October 1 of the respective fiscal year; and (2) were not co-located with and technically identical to another operational satellite on that date (*i.e.*, were not functioning as a spare satellite).³

Similarly, the Commission's annual fact sheets for satellite service regulatory fees specify that "[m]ultiple technically identical geostationary satellites co-located at the same orbital location will be considered one station for the purpose of per-space station regulatory fee calculation."⁴

Given this clear policy, XM should have been billed only a single per satellite regulatory fee at each of its two assigned orbital locations for Fiscal Years 2006, 2007, and 2008. Instead, however, XM was billed for all of its satellites each year and submitted payment in accordance with those bills.

² Space station regulatory fees are collected each year based on a licensee's operational satellites as of October 1 of the previous year.

³ *Assessment and Collection of Regulatory Fees for Fiscal Year 2006*, Report and Order, 21 FCC Rcd 8092, 8102 (2006). See also *Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, Report and Order, 22 FCC Rcd 15712, 15723 (2007) (same); *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Report and Order, 24 FCC Rcd 5966, 6411 (2008) (same).

⁴ See, e.g., Regulatory Fees Fact Sheet, "What You Owe – International and Satellite Services Licensees for FY 2008," August 2008 at 2.

pursuant to a single contract with identical technical specifications. XM-4 was built slightly later, but again based on the same payload design and specifications.

XM-1 and XM-2 have experienced issues with solar array degradation, which is a problem common to the first generation Boeing 702 class satellites. Due to this problem, XM accelerated the launch of XM-3, which commenced service at 85° W.L. in 2005. XM subsequently requested and received authority to co-locate XM-1 and XM-2 at 115° W.L. in order to ensure continuity of service to XM's customers if either satellite suffered an outage. Accordingly, as of both October 1, 2005² and October 1, 2006, XM-1 and XM-2 were co-located at 115° W.L. XM again rearranged its satellite deployments pursuant to Commission authorization after the launch of XM-4 at 115° W.L., continuing to co-locate its spacecraft to allow XM-1 and XM-2 to provide in-orbit back-up capacity for XM's active spacecraft if needed. Specifically, as of October 1, 2007, XM-1 and XM-3 were co-located at the nominal 85° W.L. orbital location, and XM-2 and XM-4 were co-located at 115° W.L.

Commission Policy

The Commission has made clear that a licensee is required to pay only a single per space station fee for multiple co-located spacecraft that are technically identical. In its regulatory fees orders, the Commission has stated that:

geostationary orbit space station (GSO) licensees receive bills requesting regulatory fee payment for satellites that (1) were licensed by the Commission and operational on or before October 1 of the respective fiscal year; and (2) were not co-located with and technically identical to another operational satellite on that date (*i.e.*, were not functioning as a spare satellite).³

Similarly, the Commission's annual fact sheets for satellite service regulatory fees specify that "[m]ultiple technically identical geostationary satellites co-located at the same orbital location will be considered one station for the purpose of per-space station regulatory fee calculation."⁴

Given this clear policy, XM should have been billed only a single per satellite regulatory fee at each of its two assigned orbital locations for Fiscal Years 2006, 2007, and 2008. Instead, however, XM was billed for all of its satellites each year and submitted payment in accordance with those bills.

² Space station regulatory fees are collected each year based on a licensee's operational satellites as of October 1 of the previous year.

³ *Assessment and Collection of Regulatory Fees for Fiscal Year 2006*, Report and Order, 21 FCC Rcd 8092, 8102 (2006). See also *Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, Report and Order, 22 FCC Rcd 15712, 15723 (2007) (same); *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Report and Order, 24 FCC Rcd 5966, 6411 (2008) (same).

⁴ See, e.g., Regulatory Fees Fact Sheet, "What You Owe – International and Satellite Services Licensees for FY 2008," August 2008 at 2.

Under Section 1.1160(a), XM is entitled to receive a refund for the amount of its overpayment of regulatory fees in Fiscal Years 2006, 2007, and 2008. That rule provides that “[r]egulatory fees will be refunded, upon request, . . . [when] an excessive fee has been paid.” The rule’s language is not discretionary and mandates award of a refund when an overpayment has been demonstrated.

Consistent with this plain language, the Office of the Managing Director (“OMD”) has granted refund requests in a number of cases where the filing party has shown that it paid excessive fees. For example, Tyco was awarded a refund of \$190,512 based on errors it made in calculating its international bearer circuit regulatory fee liability, including paying for circuits that were exempt under the applicable fee policy.⁵ Similarly, station WULM received a refund for regulatory fee payments it made over the course of four years because the OMD agreed that the station qualified as a non-profit, so no fees were due.⁶ These decisions make clear that even when an overpayment is made solely due to the payor’s own error, a refund is warranted.⁷

Refund Calculation

Based on the co-location of XM satellites described above, XM’s total overpayment of regulatory fees is shown in the following table:

Fiscal Year	Per Satellite Fee Paid	Co-Located Satellites	Overpayment
2006	\$111,425	XM-1 and XM-2	\$111,425
2007	\$109,200	XM-1 and XM-2	\$109,200
2008	\$119,300	XM-1 and XM-3; XM-2 and XM-4	\$238,600

Total: \$459,225

Based on this showing and pursuant to Section 1.1160(a), XM respectfully requests that the Commission issue a refund check to XM in the amount of \$459,225. Please address any questions regarding this matter to the undersigned.

Respectfully submitted,



Karis A. Hastings
Counsel to XM Radio Inc.

⁵ See Letter from Mark A. Reger, Chief Financial Officer, OMD, FCC, to Kent D. Bressie, Counsel for Tyco Telecommunications (US) Inc., dated Nov. 9, 2005.

⁶ See Letter from Mark A. Stephens, Chief Financial Officer, OMD, FCC, to Brad Lovett, Program Director, WULM, dated Feb. 16, 2007.

⁷ See also Letter from Mark A. Reger, Chief Financial Officer, OMD, FCC, to A. Wray Fitch III, Counsel for Rolling Plains Broadcasting Corp., dated May 10, 2004 (refund granted when regulatory fee was erroneously paid twice).

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RAMIS ACCOUNT RECEIVABLES

Receipt Processing Voucher

Header Details :

Fee Control Number : 0609188365741001
 Customer FRN : 0007714579
 Customer Name : XM Radio Inc.
 CD Number : 779815 Date Received : 9/15/2006
 Type Collection : FEE CD Date : 9/15/2006
 Payment Type : WIRE Transaction Date : 9/19/2006
 Receipt Amount : \$334,275.00

Payer Details :

Payer FRN : 0007714579 Payer Name : XM RADIO INC
 Payer TIN : Address :
 Check No :
 Credit Card No : 0000000000000000
 Transit Routing :

Line Details :

Seq	Applicant FRN	Applicant Name	App. TIN	Call Sign	Fcc Code 1	Fcc Code 2	PTC	Qty	Applied Amt
1	0007714579			S2118	N/A	XM-1(Rock)	0674	1	\$111,425.00
2	0007714579			S2119	N/A	XM-2 (Roll)	0674	1	\$111,425.00
3	0007714579			S2617	N/A	XM-3	0674	1	\$111,425.00
Total :									\$334,275.00



RAMIS ACCOUNT RECEIVABLES

Receipt Processing Voucher

Header Details :

Fee Control Number : 0809249084702503
 Customer FRN : 0005050059
 Customer Name : XM Satellite Radio Inc.
 CD Number : 257081 Date Received : 9/24/2008
 Type Collection : FEE CD Date : 9/24/2008
 Payment Type : WIRE Transaction Date : 9/24/2008
 Receipt Amount : \$239,185.00

Payer Details :

Payer FRN : 0005050059 Payer Name : XM Satellite Radio Inc.
 Payer TIN : Address :
 Check No :
 Credit Card No : 0000000000000000
 Transit Routing :

Line Details :

Seq	Applicant FRN	Applicant Name	App. TIN	Call Sign	Fcc Code 1	Fcc Code 2	PTC	Qty	Applied Amt
1	0007714579			S2616	N/A	XM-4	0874	1	\$119,300.00
2	0007714579			S2617	N/A	XM-3	0874	1	\$119,300.00
3	0007714579			E000158	N/A	N/A	0873	1	\$195.00
4	0007714579			E000724	N/A	N/A	0873	1	\$195.00
5	0007714579			E040204	N/A	N/A	0873	1	\$195.00

Total : \$239,185.00