

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

DEC 10 2010

OFFICE OF
MANAGING DIRECTOR

Peter Tannenwald, Esq.
Fletcher, Heald & Hildreth, P.L.C.
1300 North 17th Street, 11th Floor
Arlington, VA 22209

Re: Southern TV Corporation
FY 2010 Regulatory Fees
Fee Control No. RROG-10-00013124

Dear Mr. Tannenwald:

This is in response to your request filed August 27, 2010, (*Request*), on behalf of Southern TV Corporation (Southern TV), for a waiver of the Fiscal Year (FY) 2010 regulatory fees associated with Stations WGSA, WMU487, WGSA-CA, WGCW-LP, W25CQ, W32BJ, and W41CR (the Stations). Our records reflect that you have not paid the \$11,550.00, \$10.00, \$415.00, \$415.00, \$415.00, and \$415.00 FY 2009 regulatory fees for Stations WGSA, WMU487, WGSA-CA, WGCW-LP, W25CQ, W32BJ, and W41CR, respectively. For the reasons stated herein, we grant your request.

You say that with the exception of WGSA and WMU487, in 2010, all of the Stations filed requests with the Commission for Special Temporary Authority to remain silent and that they will not return to the air on or before August 31, 2010, the deadline for filing FY 2010 regulatory fees.¹ You submit "a cash flow statement for the licensee [*i.e.*, Southern TV] for the year 2009, which represents the latest figures available (*Financial Statement*)."² You state that when adjusted to eliminate non-cash items such as depreciation and payments to principals (including the salary of a 5.3 percent stockholder who works full-time for the licensee), the *Financial Statement* shows a net loss.³ You assert that "Southern TV has no employee who is currently, or was in 2009, paid more than any person who is an officer director, or shareholder of the corporation."⁴

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.⁵ In reviewing a showing of financial hardship, the Commission relies

¹ *Request* at 2, Declaration of Dan L. Johnson.

² *Id.* at 3, Declaration of Dan L. Johnson, Attachment (*Financial Statement*).

³ *Id.*

⁴ Declaration of Dan L. Johnson.

⁵ *See Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5346 (1994), *recon. granted*, 10 FCC Rcd 12759 (1995) (*Reconsideration Order*).

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.

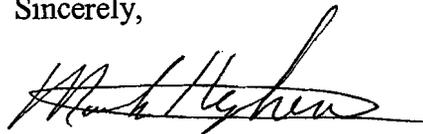
Our review of the record, including Southern TV's *Financial Statement* as adjusted to eliminate non-cash items and payments to principals (including the salary of a 5.3 percent stockholder), indicates that Southern TV suffered a financial loss in calendar year 2009 that was only partially offset by a depreciation deduction and funds payable to principals and the corporation's highest paid employee (who is also a stockholder). Given that Southern TV suffered a financial loss in calendar year 2009, we grant your request for a waiver of the FY 2010 regulatory fees.

Our records also reflect that in 2010, WGSA-CA, WGCW-LP, W25CQ, W32BJ, and W41CR filed requests with the Commission for Special Temporary Authority to remain silent and did not return to the air on or before August 31, 2010, the FY 2010 regulatory fee filing deadline. The fact that Stations WGSA-CA, W25CQ, W32BJ, and WGCW-LP were not operating on the date that the FY 2010 regulatory fees were due provides an additional grounds for granting those four stations a waiver of the FY 2010 regulatory fee.⁶

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

In summary, we grant your request for waiver of the FY 2010 regulatory fees for the Stations. 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

⁶ See *Reconsideration Order* 10 FCC Rcd at 12762 (the Commission determined that the imposition of a regulatory fee could be an impediment to the restoration of service by dark stations and that it therefore would waive the fee requirement for stations which have ceased operation; broadcast stations which are dark must request permission to suspend operation pursuant to Section 73.1740(a)(4) of the Rules.).

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

DEC 6 2010

OFFICE OF
MANAGING DIRECTOR

Cherie R. Kiser, Esq.
Cahill Gordon & Reindel, LLP
1990 K Street, N.W., Suite 950
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 March 31, 2010 (*Reconsideration Request*), on behalf of STi Prepaid, LLC (STi Prepaid) that the Office of Managing Director (OMD) reconsider its denial of STi Prepaid's request for waiver of the fiscal year (FY) 2009 regulatory fee.¹ Our records reflect that STi Prepaid has paid \$1,426,575.00 towards the \$1,711,888.00 FY 2009 regulatory fee, with a balance due of \$285,338.00.² Our records also reflect that you have not paid the \$427,972.00 penalty for late payment of the regulatory fee. For the reasons stated herein, we deny your request.

You assert that STi Prepaid experienced a significant decrease in net income, EBITDA (*i.e.*, Earnings Before Interest, Taxes, Depreciation, and Amortization), and operating income from 2008 to 2009.³ You aver that STi Prepaid's net income and EBITDA for the first two months of 2010 are negative and unlikely to improve, with the loss in net income for the first two months of 2010 equivalent to a large proportion of the loss for the whole of 2009.⁴ You state that in 2008 and 2009, and in the first two months of 2010, STi Prepaid "witnessed a [significant] loss in cash and cash equivalents[.]"⁵ You maintain that the regulatory obligations have become an intolerable burden to STi Prepaid, with the 2009 regulatory fee and TRS Fund obligations exceeding STi Prepaid's interstate service revenues by nearly 30 percent.⁶ You contend that the amount recorded for regulatory fees in 2009 increased by 114 percent from 2008 and represented 15

¹ See letter from Mark Stephens, Chief Financial Officer, OMD, FCC, to Cherie R. Kiser (Mar. 1, 2010) (*OMD Letter*).

² STi Prepaid paid five installments of \$285,315.00 on March 31, 2010, May 19, 2010, June 9, 2010, July 21, 2010, and August 11, 2010.

³ See *Reconsideration Request* at 6.

⁴ *Id.*

⁵ *Id.* at 7.

⁶ *Id.*

percent of STi Prepaid's total selling, general, and administrative expenses in 2009.⁷ You assert that STi Prepaid's predictions for the last four months of 2009 as set forth in the income statements in the underlying waiver request (*Request*) were optimistic.⁸ You allege that the decision in the *OMD Letter* was made "absent actual accounting data for the whole of [calendar] 2009" and that "it has no bearing on STi Prepaid's ability to pay the FY 2009 regulatory fee at present."⁹ You contend that as indicated on STi Prepaid's "Statement of Operations" and "Statement of Cash Flow" for the first two months of 2010, the amount that STi Prepaid has allocated to depreciation and amortization "fails to meet STi Prepaid's . . . obligation to the Commission[.]"¹⁰ You contend that STi Prepaid's revenue has shrunk due to new calling technologies and services, investments to maintain current revenue levels, and the dramatic drop in wholesale rates for some of STi Prepaid's historically profitable overseas calling destinations."¹¹ You claim that the *OMD Letter* failed to address STi Prepaid's request for a reduction of the regulatory fees for FY 2009.¹² You submit, among other documents, STi Prepaid's "Statement of Operations" for the calendar year ending December 2009 (*2009 Financial Statement*) and for the first two months of 2010 (*January and February 2010 Financial Statement*).¹³ You also request that OMD stay the effect of the *OMD Letter* while the *Reconsideration Request* is pending under section 1.102(b)(2) of the Commission's rules, 47 C.F.R. §1.102(b)(2), because STi Prepaid is likely to prevail on the merits, the company will suffer irreparable harm absent a stay, no other interested party will be harmed absent a stay, and the public interest is served by a "thoughtful examination of the materials STi Prepaid has provided."¹⁴

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.¹⁵ In reviewing a showing of financial hardship, the Commission relies

⁷ *Id.* at 7-8.

⁸ *Id.* at 8.

⁹ *Id.*

¹⁰ *Id.* at 8-9 (*citing* Exhibits A and B); *see also id.* at 9 ("Taken alongside STi Prepaid's substantial loss in income for 2009 and the first two months of 2010, it is clear that there are . . . no funds available to meet STi Prepaid's outstanding regulatory debt.").

¹¹ *Id.* at 10-13.

¹² *Id.* at 14.

¹³ *Id.*, Attachment A.

¹⁴ *Id.* at 16-17.

¹⁵ *See Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5346 (1994), *recon. granted*, 10 FCC Rcd 12759 (1995).

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.

In the *OMD Letter*, we found that our review of the record, including STi Prepaid's "Statement of Operations" for the calendar year ending September 2009 (*January – September 2009 Financial Statement*), indicated 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.¹⁶ We noted that the Commission considers depreciation deductions as funds available to pay the regulatory fee, because the loss resulted from the depreciation deduction.¹⁷ We therefore denied STi Prepaid's request for waiver of the FY 2009 regulatory fees on the grounds of financial hardship.¹⁸

Our review of the record, including STi Prepaid's *January – September 2009 Financial Statement* and *2009 Financial Statement*, indicates that STi Prepaid suffered a financial loss in the 2009 calendar year which was fully offset by a 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 submission of the *January and February 2010 Financial Statement* and your argument that STi Prepaid experienced a loss in the first two months of 2010, we consider the financial statements for 2009 (*i.e.*, the *January – September 2009 Financial Statement* and the *2009 Financial Statement*) as the most relevant financial statements for purposes of considering your request for waiver of the FY 2009 regulatory fee, and both statements provide evidence that STi Prepaid had sufficient funds to pay the FY 2009 regulatory fee. The Commission is obligated by Congress to collect regulatory fees on an annual basis and does so on a date published each year by OMD. The burden to obtain a waiver of the current fiscal year's fees is on the petitioner who must demonstrate an inability to pay the fees contemporaneous with the time the petitioner is obligated to pay them and the Commission has provided notice it will collect them. Evidence that a licensee will suffer financial hardship when the regulatory fee is due provides compelling evidence that the licensee lacks sufficient funds to make the regulatory fee payment at that time. In contrast, evidence that a licensee may suffer financial hardship at a later date (such as the *January and February 2010 Financial Statement*) does not necessarily establish that the licensee lacked the funds to pay the regulatory fee when the regulatory fee was due. Accordingly, we find that you have failed to provide compelling grounds for waiver of the FY 2009 regulatory fee. For the

¹⁶ *See Request* at 1.

¹⁷ *Id.*

¹⁸ *Id.* We also found that 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 should have been raised in the rulemaking proceeding in which we established those fees. *Id.*

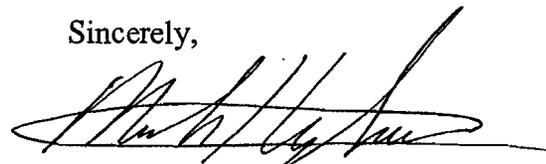
same reasons that we deny your request for waiver of the regulatory fee, we deny your request for reduction of the regulatory fee.¹⁹

With respect to your request for a stay of the *OMD Letter*, the Commission has determined that the filing of a petition for reconsideration of a decision denying a request for waiver of the regulatory fees on the grounds of financial hardship will not toll the requirement that the petitioner pay the regulatory fee within 30 days of the decision denying the underlying waiver request.²⁰ Because you have not provided us with sufficiently compelling reasons to grant your request, your request for a stay is denied. 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.²¹ STi Prepaid did not pay the FY 2009 regulatory fee within 30 days of the *OMD Letter*,²² March 1, 2010, and is therefore subject to a 25 percent penalty for late payment (*i.e.*, \$427,972.00).

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

Payment of the \$285,338.00 balance on the FY 2009 regulatory fee, as well as the \$427,972.00 penalty for late payment of the regulatory fee, for a total of \$713,310.00, is now due. The \$713,310.00 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

¹⁹ We note that the Commission imposes a cap of \$500,000.00 on waivers for regulatees asserting bankruptcy or otherwise claiming financial hardship. *See* 47 C.F.R. §1.1166(e); *see also Assessment and Collection of Regulatory Fees for Fiscal Year 2003, Report and Order* 18 FCC Rcd 15985, 15990 (2003)

²⁰ *See Implementation of Section 9 of the Communications Act*, 9 FCC Rcd at 5346.

²¹ 47 U.S.C. §159(c)(1).

²² *See supra* fn.2.

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

DEC 10 2010

OFFICE OF
MANAGING DIRECTOR

David Robinson
Regulatory Affairs Director
Syniverse Technologies, Inc.
8125 Highwoods Palm Way
Tampa, FL 33647-1776

Re: Syniverse Technologies, Inc.
Fiscal Year 2009 Regulatory Fee
Fee Control No. RROG-09-00012829

Dear Mr. Robinson:

This is in response to your request dated May 19, 2010 (*Reconsideration Request*), that the Office of Managing Director (OMD) reconsider its decision denying Syniverse Technologies (Syniverse) a waiver of the penalty for late payment of the fiscal year (FY) 2009 regulatory fee.¹ Our records reflect that you paid the \$16,628.00 regulatory fee, but not the \$4,157.00 late payment penalty. For the reasons set forth below, we deny your request.

You state that the only invoice that Syniverse received from the Commission for remittance of the FY 2009 regulatory fee is dated October 16, 2010, and that the due date for the invoice is September 22, 2010.² You assert that Syniverse did not have the opportunity to remit the regulatory fee in a timely manner.³

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.⁴ 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.⁵ You paid the regulatory fee for Syniverse on November 3,

¹ See letter from Mark Stephens, Chief Financial Officer, OMD, FCC, to David Robinson (May 14, 2010).

² *Reconsideration Request* at 1 (citing Federal Communications Commission, Remittance Advice, Bill for Collection, to Syniverse Technologies, Inc., Bill Number 09RE013789 (Oct. 16, 2009) (*Bill for Collection*)).

³ *Id.*

⁴ 47 U.S.C. §159(c)(1).

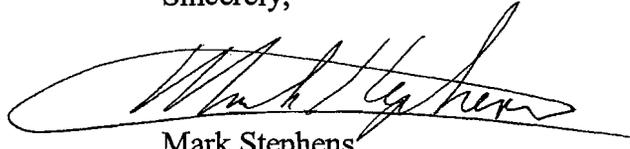
⁵ See 47 C.F.R. §1.1164; and see *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Report and Order*, 24 FCC Rcd 10301, 10311 (2009); *Public Notice, Payment Methods and Procedures for FY 2009*, 24 FCC Rcd 11513, 11513 (Sept. 2, 2009) (*September Public Notice*); *Public Notice, FY 2009 Regulatory Fees Due No Later*

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. For the FY 2009 regulatory fees, the Commission timely released several public notices (including the *September Public Notice*) 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.⁶ The *Bill for Collection* did not establish or otherwise extend the deadline for filing FY 2009 regulatory fees. Rather, the *Bill for Collection* advised Syniverse that it had failed to pay the FY 2009 regulatory fee by the due date and identified the regulatory fee and the 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.”⁷ 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 Syniverse.

Payment of the \$4,157.00 late payment 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 call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark Stephens
Chief Financial Officer

Enclosure

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).

⁶ *See supra*.

⁷ *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).



Syniverse Technologies, Inc.
8125 Highwoods Palm Way
Tampa, Florida 33647-1776
Telephone: (813) 637-5940
Facsimile: (813) 637-5731
Email: david.robinson@syniverse.com

RROC-09-000/28

May 19, 2010

Federal Communications Commission
Office of Managing Director
Washington, DC 20554

Re: Syniverse Technologies, Inc.
Fiscal Year (FY) 2009 Regulatory Fee
Fee Control Number 0911039088109001

To whom it may concern:

Syniverse respectfully requests reconsideration of our request for waiver of the penalty for late payment of the FY 2009 regulatory fees for Syniverse.

Attached, for your consideration, is the invoice received by Syniverse for remittance of the FY 2009 regulatory fee; this is the only invoice received by Syniverse related to our FY 2009 Regulatory Fees. Please note that the date of the invoice is 10/16/2009 and that the "due date" on the invoice is 9/22/2009. Syniverse would appreciate waiver of late fees based on the fact that Syniverse did not have the opportunity to remit our FY 2009 regulatory fee in a timely fashion.

Again, please review the attached documents. As stated above, Syniverse seeks reconsideration of your May 14 letter. Again, we would appreciate your consideration and waive all late fees assessed Syniverse Technologies in conjunction with our FY 2009 Regulatory Fee. Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "David Robinson", with a long, sweeping underline.

David Robinson

Attachments

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

DEC 10 2010

OFFICE OF
MANAGING DIRECTOR

Ms. Pam Richardson
Controller
Post Office Box 1844
Taos, New Mexico 87571

Re: Taos Communication Corporation
Fiscal Year 2009 Regulatory Fee
Fee Control No. 0911179084167002

Dear Ms. Richardson:

This is in response to your request filed on behalf of Taos Communication Corporation (TCC), licensee of Station KTAO(FM), for waiver of the penalty for late payment of the Fiscal Year (FY) 2009 regulatory fee (*Request*). Our records reflect that you have paid the \$1,450.00 regulatory fee, but not the \$18.50 penalty. For the reasons stated herein, we deny your request.

You state that after mailing to the Commission a check dated September 15, 2009, in the amount of \$1,375.00 in payment of the FY 2009 regulatory fee, Commission staff advised you that the check "was \$75.00 short" of the correct fee, *i.e.*, \$1,450.00, and that the Commission would hold the check until it received a replacement in the correct amount.¹ You say that on the same day as your conversation with Commission staff,² you mailed a check "in the amount of \$1,450.00 which cleared [y]our bank on November 17, 2009."³ You say that you "do realize this was our error" and that you have made changes in TCC's accounting department to avoid such errors in the future.⁴ You assert that "this has been a difficult year for our industry."⁵

Section 9(a)(1) of the Communications Act states that the Commission "shall assess and collect regulatory fees" to recover the costs of its regulatory activities.⁶ Section 9(c)(1) provides that "[t]he Commission shall prescribe by regulation an additional charge which shall be assessed as a penalty for late payment of fees required" by Section 9(a) and that "[s]uch penalty shall be 25 percent of the amount of the fee which was not paid in a timely manner."⁷ The Commission's regulations provide that "[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee . . . which was not paid in a

¹ *Request* at 1.

² This conversation apparently occurred at some time in late October or early November, prior to the receipt of the second check on November 9.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ 47 U.S.C. § 159(a)(1).

⁷ 47 U.S.C. § 159(c)(1).

timely manner.”⁸ For FY 2009, the deadline for paying regulatory fees was September 22, 2009.⁹

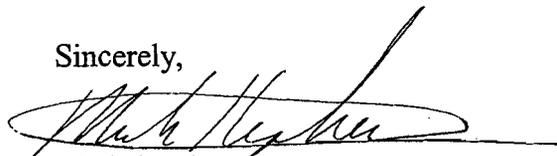
Our records reflect that TCC submitted a check in the amount of \$1,375.00 before the September 22, 2009, deadline for filing regulatory fees (which the Commission did not process), and another check in the amount of \$1,450.00 on November 9, 2010, which the Commission did process. Because TCC’s regulatory fee for FY 2009 was \$1,450.00, TCC failed to meet its obligation to pay the regulatory fee in a timely manner with respect to \$75.00.

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.”¹⁰ 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 fees with respect to the \$75.00 shortfall by the announced deadline of September 22, 2009.

With respect to your statement that “this has been a difficult year for our industry[,]” we note that even though the Commission will waive its regulatory fees in those instances where a petitioner presents a compelling case of financial hardship, you have provided no documentation that would support a waiver on the grounds of financial hardship.¹¹ Accordingly, we deny your request for waiver of the penalty for late payment of the fiscal year 2009 regulatory fee.

Payment of the \$18.75 late payment penalty on the shortfall (\$75.00 times 25 percent) is now due. The penalty 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 call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark Stephens
Chief Financial Officer

Enclosure

⁸ 47 C.F.R. § 1.1164.

⁹ *FY 2009 Regulatory Fees Due No Later Than September 22, 2009, Eastern Time (ET)*, Public Notice, 24 FCC Rcd 10890 (2009) (*FY 2009 Fee Due Date Notice*).

¹⁰ 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).

¹¹ See *Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5346 (1994), on recon, 10 FCC Rcd 12759 (1995).



12380

World Famous Solar Radio

0911179084167002

Mr. Steven French,

We mailed a check in the amount of \$1,375.00 ck # 14168 dated 09/15/2009, I received message from Tisha Littleton and returned the call on 10/29/09 and left a message for her to return the call. When she called back she explained that the amount was based on previous year's fees and was not correct it was \$75.00 short. She held the check for \$1,375.00 until she received the check in the correct amount. The same day as our conversation, I mailed check #14326 in the amount of \$1,450.00 which cleared our bank on 11/17/2009.

I do realize this was our error, we have had a change in our accounting department and this should not be a problem in the future.

I would like to ask that you wave the penalty; this has been a difficult year for our industry with the economy being down.

Thank you in advance for your help in this matter.

Sincerely,

Pam Richardson,
Controller
Taos Communication Corporation

102000068

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FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

NOV 10 2010

OFFICE OF
MANAGING DIRECTOR

Peter M. Connolly
Holland + Knight
2099 Pennsylvania Ave., N.W.
Suite 100
Washington, D.C. 20006-6801

Re: USCOC of Greater North Carolina, LLC
Request for Refund of Application Filing Fees
Fee Control No. 1004289097893289

Dear Mr. Connolly:

This letter responds to your request filed May 4, 2010 (*Request*), on behalf of USCOC of Greater North Carolina, LLC (USCOC) for a refund of the \$560.00 fee associated with an application filed on April 28, 2010, for a new point-to-point microwave license for a station to be located in Youngsville, North Carolina (*April 28 Application*).¹ Our records reflect that you paid the \$560.00 application fee. For the reasons set forth below, we grant your request.

You state, and our records confirm, that on April 5, 2010, you filed an application for a new point-to-point microwave license for a station to be located in Youngsville, North Carolina (*April 5 Application*), along with a \$560.00 application fee.² On April 28, 2010, you filed the *April 28 Application* (also requesting a new point-to-point microwave license for a station to be located in Youngsville, North Carolina), along with a \$560.00 application fee, and withdrew the application on April 29, 2010.³ You say that you erroneously filed the *April 28 Application* as a "new" application and that you had intended to file an amendment to the *April 5 Application*.⁴ On April 29, 2010, you filed an application to amend the pending *April 5 Application* to add a second transmit path.⁵

¹ See ULS Application File No. 0004227159.

² See email from Darryl Richard to Joanne Wall at 1 (Sept. 3, 2010) (*September email*) (citing ULS Application File No. 0004199384).

³ *Request* at 1 and *September email* at 1.

⁴ See *September email* at 1.

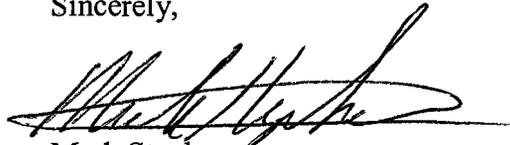
⁵ *Id.* at 1.

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.⁶ 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."⁷

In view of the circumstances recited above, including the fact that you withdrew the *April 28 Application* one day after filing the application, we find that the \$560.00 fees paid with the *April 28 Application* was effectively an "overpayment" under section 1.1113 of the Commission's rules, 47 C.F.R. §1.1113. We therefore conclude that a refund of the application filing fees associated with the *April 28 Application* is appropriate.⁸ We therefore grant your request for a refund of the \$560.00 filing fees associated with the *April 28 Application*.

A check, made payable to the maker of the original check, and drawn in the amount of \$560.00, will be sent to you at the earliest practicable time. 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

⁶ 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).

⁷ 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).

⁸ See 47 C.F.R. §§1.1108 and 1.1113(a).

FILED/ACCEPTED

May 4, 2010

MAY - 4 2010

Peter M. Connolly

202 862-5989

Peter.Connolly@hklaw.com

VIA HAND DELIVERYFederal Communications Commission
Office of the SecretaryFederal Communications Commission
Revenues and Receivables Operations Group
445 12th Street, S.W.
Room 1-A821
Washington, D.C. 20554Re: USCOC of Greater North Carolina, LLC
Request for Refund of Application Filing Fee
Payor FRN: 0004148995 – Holland & Knight LLP
Payment Agency Tracking ID: 1770644
Pay.Gov Tracking ID: 250OG0IV
ULS Application File No. 0004227159

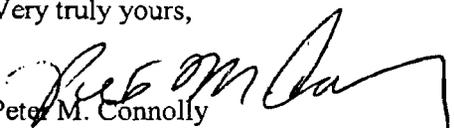
Dear Sir/Madam:

On behalf of USCOC of Greater North Carolina, LLC, we hereby request a refund in the amount of \$560.00 paid to the Commission for an application filed electronically in ULS on April 28, 2010 for a new Point-to-Point Microwave license for a station to be located in Youngsville, NC (Site Name: Franklinton), file number 0004227159. The payment was remitted electronically by use of the Holland & Knight LLP credit card, FRN number 0004148995. The application was filed in error and was withdrawn on April 29, 2010. Subsequently, an amendment application for the proposed station was filed on April 29, 2010, file number 0004199384.

Upon completing your review of this information, please issue a refund check for application file number 0004227159 in the amount of \$560.00 payable to Holland & Knight LLP at the above address, and forward to the attention of Peter Connolly.

Should you have any further questions, please contact the undersigned or Darryl Richard at this office at (202)457-5932.

Very truly yours,


 Peter M. Connolly

Counsel for USCOC Nebraska/Kansas, LLC

FILED/ACCEPTED

May 4, 2010

MAY - 4 2010

Peter M. Connolly
202 862-5989
Peter.Connolly@hklaw.com

VIA HAND DELIVERY

Federal Communications Commission
Office of the Secretary

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445 12th Street, S.W.
Room 1-A821
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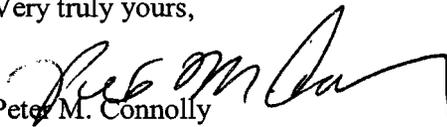
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Very truly yours,


Peter M. Connolly
Counsel for USCOC Nebraska/Kansas, LLC

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

NOV 10 2010

OFFICE OF
MANAGING DIRECTOR

Melissa S. Conway
Brad E. Mutschelknaus
Kelley Drye & Warren, LLP
Washington Harbour, Suite 400
3050 K Street, N.W.
Washington, DC 20007-5108

Re: XO Communications, LLC
Fiscal Year 2009 Regulatory Fee Waiver Request
Fee Control No. RROG-09-12777

Dear Counsel:

This is in response to your request filed on March 29, 2010 (*Reconsideration Request*), and supplemented on May 12, 2010,¹ that the Office of Managing Director (OMD) reconsider its decision denying XO Communications, LLC (XO) a waiver of the penalty for late payment of XO's fiscal year (FY) 2009 regulatory fees.² In the *2010 Letter Decision*, OMD noted that XO was assessed a late payment penalty of \$161,768.93 because XO's regulatory fees were not paid when due. For the reasons set forth below, we deny your request for reconsideration of that decision.

Section 9(a)(1) of the Communications Act states that the Commission "shall assess and collect regulatory fees" to recover the costs of its regulatory activities.³ Section 9(c)(1) provides that "[t]he Commission shall prescribe by regulation an additional charge which shall be assessed as a penalty for late payment of fees required" by Section 9(a) and that "[s]uch penalty shall be 25 percent of the amount of the fee which was not paid in a timely manner."⁴ The Commission's regulations provide that "[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee . . . which was not paid in a timely manner."⁵ For FY 2009, the deadline for paying regulatory fees was September 22, 2009.⁶

¹ See Letter from Melissa S. Conway to Mark A. Stephens (May 12, 2010) (*May 12 Letter*).

² See Letter from Mark Stephens, Chief Financial Officer, OMD, FCC, to Martin Pfister (Mar. 1, 2010) (*2010 Letter Decision*).

³ 47 U.S.C. § 159(a)(1).

⁴ 47 U.S.C. § 159(c)(1).

⁵ 47 C.F.R. § 1.1164.

⁶ *FY 2009 Regulatory Fees Due No Later Than September 22, 2009, Eastern Time (ET)*, Public Notice, 24 FCC Rcd 10890 (2009) (*FY 2009 Fee Due Date Notice*).

In your *Reconsideration Request*, you claim that the late payment penalty may be waived where “particular facts make strict compliance inconsistent with the public interest,” where “special circumstances warrant a deviation from the general rule,” where “violations were not knowing or willful,” and where there are “violations of rules that are newly implemented.”⁷ You assert that “XO was unaware that the Commission had implemented the elimination several weeks earlier of its historic practice of mailing pre-bills to carriers” and that XO “relied on receipt in the mail of a pre-bill as a trigger for processing of regulatory fee payments.”⁸ You state that “XO never received a pre-bill or actual notice of the change in policy, so its processing system was not properly triggered.”⁹ You assert that “leniency is appropriate solely for the FY 2009 regulatory fee deadline as the first time that actual notice was not given to carriers.”¹⁰ You claim that “it was reasonable for XO to expect actual notice of the Commission’s modifications to its notification procedures for the payment of regulatory fees,” and that “a waiver is appropriate and in the public interest because immediately upon notification of the amount due, XO submitted payment.”¹¹

The *Reconsideration Request* does not set forth a sufficient basis for reconsidering the 2010 *Letter Decision*. XO concededly made no attempt to submit a timely payment of its regulatory fee by the September 22, 2009, due date; rather, XO’s failure to pay resulted from its lack of awareness of the payment deadline.

The Commission has stated clearly and consistently that it is the responsibility of the regulatee to ensure timely payment of its regulatory fees.¹² Section 9(c)(1) directs the Commission to assess a 25 percent late payment penalty on a regulatee who fails to fulfill that responsibility. Although the Commission has waived late fees on a showing of good cause, neither the statute nor the Commission’s regulations contemplates a reduction in the late payment penalty based on the amount of time after the deadline within which the regulatee satisfies its payment obligations.

⁷ *Reconsideration Request* at 2 (internal quotation marks omitted).

⁸ *Id.*

⁹ *Id.* at 3.

¹⁰ *Id.*

¹¹ *Id.*

¹² See *Fee Filer Mandatory for FY 2009 Regulatory Fees*, Public Notice, 24 FCC Rcd 10893, 10893 (2009) (*Fee Filer Notice*) (“It is the responsibility of the licensee to determine the full extent of [its] regulatory fee obligation.”); cf. *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, Report and Order, 2 FCC Rcd 947, 949 ¶ 15 (1987) (stating, with respect to application fees, that “[i]t has always been the applicant’s sole responsibility to know and comply with our rules in regard to application filing.”).

You claim that imposition of a late payment penalty on XO would be inequitable because XO's internal procedures relied on the Commission's mailing of a pre-bill to trigger the company's payment processes.¹³ The Commission, however, provided ample prior notice that it would not be sending paper pre-bills to regulatees with respect to FY 2009 regulatory fees. On May 14, 2009, the Commission proposed to mandate electronic filing of regulatory fee information through the agency's Fee Filer system.¹⁴ The Commission explained that, "[c]onsistent with [its] proposal to require mandatory use of Fee Filer . . . , pre-bill information would be loaded into Fee Filer for viewing, but would not be mailed directly to the licensee via surface mail."¹⁵ On July 31, 2009, the Commission released its order adopting these proposals.¹⁶ In that order, the Commission advised regulatees that "because all pre-bills will be loaded into Fee Filer, once Fee Filer becomes operational, this will be the signal by which licensees can view their pre-bill information online."¹⁷ On August 21, 2009, the Commission issued a public notice entitled "FY 2009 Regulatory Fees Due No Later Than September 22, 2009, Eastern Time (ET),"¹⁸ and a second public notice informing regulatees that use of Fee Filer was mandatory in FY 2009 and that "regulatory fee bills will no longer be mailed to the regulatee, but can be viewed by logging on the Fee Filer."¹⁹ On September 2, 2009, the Commission released a third public notice reiterating that "**HARDCOPY BILLS WILL NO LONGER BE MAILED BY THE FCC**".²⁰

You assert that "[i]t is reasonable for customers [of telecommunications carriers] and carriers alike to expect material changes in the logistics of payments or in their telecommunications services to be communicated to them by the same method that they traditionally have received information."²¹ Regulated entities, however, are not in the same position as ordinary consumers; the former have an obligation to keep abreast of legal developments that may affect their regulated activities and to ensure compliance with their regulatory obligations, including the annual payment of regulatory fees. As noted above, the Commission proposed and adopted mandatory use of Fee Filer and the discontinuance of paper pre-bills through an open and transparent rulemaking proceeding

¹³ *Reconsideration Request* at 2.

¹⁴ *Assessment and Collection of Regulatory Fees for Fiscal Year 2009*, Notice of Proposed Rulemaking and Order, 24 FCC Rcd 5966, 5972 ¶ 16 (2009).

¹⁵ *Id.* at 5973 ¶ 20.

¹⁶ *Assessment and Collection of Regulatory Fees for Fiscal Year 2009*, Report and Order, 24 FCC Rcd 10301, 10307-09 ¶¶ 18-27 (2009) (*FY 2009 Regulatory Fees NPRM*).

¹⁷ *Id.* at 10309 ¶ 26.

¹⁸ *FY 2009 Fee Due Date Notice*, 24 FCC Rcd 10890.

¹⁹ *Fee Filer Notice*, 24 FCC Rcd at 10893.

²⁰ *Payment Methods and Procedures for Fiscal Year 2009 Regulatory Fees*, Public Notice, 24 FCC Rcd 11513, 11514 (2009) (emphasis in original).

²¹ *Reconsideration Request* at 3.

and issued several public notices informing regulatees of the payment deadline and the absence of pre-bill mailings. Regulatees thus had ample opportunity to adjust their internal procedures to ensure compliance with their regulatory fee payment obligations in FY 2009.

In your *May 12 Letter*, you claim that a waiver is warranted because the Commission supposedly admitted that “carriers were not adequately informed” of the discontinuance of pre-bill mailings.²² That is incorrect. To be sure, in the notice of proposed rulemaking for FY 2010 fees, the Commission stated that “[a]lthough the overall response to this procedural change [to paperless billing] was positive, it was apparent that a greater effort should have been made to inform licensees that they would not be receiving a hardcopy regulatory fee bill in the mail.”²³ The Commission, however, was there exploring ways to “increase its efforts in notifying licensees that hardcopy regulatory fee bills will not be mailed out.”²⁴ The Commission did not conclude that its notices in FY 2009 were inadequate; to the contrary, the Commission’s final order on FY 2010 fees reaffirmed that regulatees should “check[] the Commission’s website periodically beginning in July” in order to “ascertain the fee due date, and receive instructions on how to access Fee Filer, view their bill, and make a fee payment.”²⁵

You claim that the Commission may waive or reduce the amount of the late payment penalty where “particular facts” or “special circumstances” demonstrate that a waiver is in the public interest.²⁶ Even assuming that this standard applies to the statutorily mandated late payment penalty for regulatory fees, there is no basis for concluding that the discontinuance of pre-bill mailings, which affects an entire class of regulated entities, would constitute a “particular” or “special” fact or circumstance to justify a waiver. Nor does Section 9(c)(1) limit the late payment penalty to regulatees whose failure to pay was knowing or willful.²⁷ Finally, although you claim that “the Commission has also determined that it is appropriate to reduce penalties for violations of rules that are newly

²² *May 12 Letter* at 1.

²³ *FY 2010 Regulatory Fee NPRM*, 25 FCC Rcd at 3923 ¶ 12.

²⁴ *Id.*

²⁵ *Assessment and Collection of Regulatory Fees for Fiscal Year 2010*, Report and Order, 25 FCC Rcd 9278, 9291 ¶ 37 (2010).

²⁶ *Reconsideration Request* at 2 (citing *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990)).

²⁷ *See id.* Section 503(b)(1)(A) and (B) of the Communications Act, 47 U.S.C. § 503(b)(1)(A), (B), authorizes the Commission to impose a forfeiture for “willful[]” or “repeat[ed]” violations of the Act or the Commission’s rules. The late payment penalty in this case, however, was imposed pursuant to Section 9(c)(1), not Section 503(b)(1).

implemented," the obligation of regulatees to pay annual regulatory fees is not a newly implemented rule, but has been in place since 1994.²⁸

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 'S. VanRoekel', written in a cursive style.

Steven VanRoekel
Managing Director

²⁸ *Reconsideration Request* at 2 (internal quotation marks omitted).

KELLEY DRYE & WARREN LLP

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May 12, 2010

BY HAND DELIVERY

Mark A. Stephens
Office of the Managing Director
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Petition for Reconsideration of XO Communications, LLC –
WTS Cntl. No. 12777

Dear Mr. Stephens:

On March 29, 2010, XO Communications, LLC (“XO”), through its undersigned counsel, filed the above-referenced petition for reconsideration of a ruling denying XO’s request for waiver of the deadline for payment of FY 2009 regulatory fees (“Petition”). XO acknowledges that it missed the payment deadline by approximately a week, but urges the Commission to reexamine the unique and mitigating circumstances surrounding the payment of regulatory fees in September 2009 at which time the Commission had just recently eliminated its long-standing practice of sending hard copy pre-bills to carriers. XO’s processing system was not triggered by receipt of a pre-bill as it had been in the past; thus, it missed the deadline. Immediately upon becoming aware of the amount due, XO paid its fee obligation in full. Due to these mitigating circumstances, XO requests a waiver of the disproportionate late-filed penalty. At this time, the Petition remains pending.

The purpose of this supplemental letter is to bring to the Commission’s attention its own recent admission that carriers were not adequately informed of the procedural change in the regulatory fee notification and collection process for FY 2009. As noted in the Petition, the Commission has determined that it is appropriate to reduce penalties for violations of rules that are newly implemented.¹ Last month, the Commission released an NPRM in the Assessment and

¹ Petition at p. 2, fn. 6.

Mark A. Stephens
May 12, 2010
Page Two

Collection of Regulatory Fees for Fiscal Year 2010 docket. In the NPRM, the Commission seeks comment on ways to promote greater use of technology in collecting regulatory fees. In reviewing the FY 2009 regulatory fee notification process, the Commission acknowledges the following: “[i]t was apparent that a greater effort should have been made to inform licensees that they would not be receiving a hardcopy regulatory fee bill in the mail.”² It is reasonable to infer from this statement that XO was not the only carrier that missed the deadline because of lack of awareness of newly implemented rules. Moreover, the clear implication of this statement is that the Commission agrees that its methods of notification were not sufficient. The Commission goes on to request comment on “how to most efficiently and effectively notify licensees that hardcopy regulatory fee bills will not be mailed out, but that, instead, the amount and attributes of the bills will be available in Fee Filer for review.”³ By the Commission’s own admission, then, adequate notice was not provided to carriers required to pay FY 2009 regulatory fees in September 2009. It follows that the Commission should find mitigating circumstances sufficient to waive the application of its rules on a limited, one-time basis for good cause shown.

XO, a carrier with an impeccable record for timely payment of regulatory fees prior to 2009, firmly believes that strict adherence to the late-filed payment penalty provision is, in these limited and unique circumstances, unreasonably harsh and respectfully requests a waiver of the penalty as in the public interest. Should you have any questions or concerns regarding this matter, please do not hesitate to contact the undersigned counsel for XO at (202) 342-8552.

Respectfully submitted,


Melissa S. Conway

cc: Regina Dorsey, FCC
Lisa Youngers, XO

² *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2010*, Notice of Proposed Rulemaking, MD Docket No. 10-87 at ¶12 (rel. April 13, 2010).

³ *Id.*