



PUBLIC NOTICE

Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

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Internet: <http://www.fcc.gov>
<ftp.fcc.gov>

DA-11-1906

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: November 16, 2011

FEE DECISIONS OF THE MANAGING DIRECTOR AVAILABLE TO THE PUBLIC

The Managing Director is responsible for fee decisions in response to requests for waiver or deferral of fees as well as other pleadings associated with the fee collection process. A public notice of these fee decisions is published in the FCC record.

The decisions are placed in General Docket 86-285 and are available for public inspection. A copy of the decision is also placed in the appropriate docket, if one exists.

The following Managing Director fee decisions are released for public information:

3 Point Media-Coalville, LLC Station KCUA-FM
Request for waiver of FY 2010 regulatory fee.
Granted (March 23, 2011) [See Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5346 (1994), recon. granted, 10FCC Rcd 12759, (1995)]

Abacus Television Stations WIIC-LP, WWBP-LP, WWAT-CA, WQVC-CA, WBYD-CA, WBOA-LP, WWVW-LP, WTOO-CA, WSSS-LP and WJKF CA - Request for waiver of FY 2010 regulatory fee.
Denied (March 17, 2011) [See 47 U.S.C. §159(a) (1)]

AboveNet Communications, Inc. - Request for waiver of FY 2010 regulatory fee late payment penalty. **Denied** (July 18, 2011) [See 47 U.S.C. §159(a) (1)]

Black Crow Companies - Request for waiver of FY10 regulatory fee. **Granted** (March 18, 2011) [See Implementation of Section 9 of the Communications Act, 10 FCC Rcd 12759, 12762 (1995)]

Compliance Solutions, Inc. - Request for waiver of FY 2010 regulatory fee late payment penalty. **Denied** (May 4, 2011) [See 47 U.S.C. §159(a) (1)]

Cranston Acquisition, LLC. Station KMCC (TV) - Request for waiver of FY10 regulatory fee. **Granted** (March 18, 2011) [See Implementation of Section 9 of the Communications Act, 10 FCC Rcd 12759, 12762 (1995)]

Cbeyond Communications, LLC - Request for waiver of FY 2010 regulatory fee late payment penalty. **Granted** (March 16, 2011) [See 47 U.S.C. §159(a) (1)]

Data Net Systems, LLC - Request for waiver of FY 2010 regulatory fee late payment penalty. **Denied** (March 18, 2011) [See 47 U.S.C. §159(a) (1)]

Estuardo Valdemar Rodriguez and Leonor Rodriguez Station WSRP (AM) - Request for waiver of FY 2010 regulatory fee. **Granted** (March 22, 2011) [See Memorandum Opinion and Order in MD Docket No. 94-19 FCC 95-257, 10 FCC Rcd 12759 1262 (1995)]

Globalstar Licensee LLC - Request for refund of filing fees. **Partial Refund** (March 16, 2011) [See 47 C.F.R. §1.1107(9.e)]

Global Tel*Link Corporation - Request for waiver of FY 2010 regulatory fee late payment penalty. **Granted** (March 16, 2011) [See 47 U.S.C. §159(c)(1)]

Integrity Radio of Florida, LLC - Request for waiver of FY 2010 regulatory fee. **Granted** (May 10, 2011) [See Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5346 (1994), 10FCC Rcd 12759, (19)]

Infinite Conferencing - Request for waiver of FY 2010 regulatory fee late payment penalty. **Denied** (March 18, 2011) [See 47 U.S.C. §159(a)(1)]

IPC Network Services Inc - Request for waiver of FY 2010 regulatory fee late payment penalty. **Denied** (March 18, 2011) [See 47 U.S.C. §159(a)(1)]

KM Television of El Dorado, LLC. Station KEJB TV - Request for waiver of FY 2010 regulatory fee. **Granted** (March 22, 2011) [See Memorandum Opinion and Order in MD Docket No. 94-19 FCC 95-257, 10 FCC Rcd 12759 1262 (1995)]

Meridian Communications of Idaho, Inc. - Request for waiver and refund of FY 2010 regulatory fee. **Granted** (March 31, 2011) [See 47 C.F.R. §73.3598(b)(ii)]

N-1 Communications, LLC - Request for waiver of the application fee. **Granted** (March 22, 2011) [See 47 C.F.R. §1.1119]

Nancy L. Isserlis, ESQ. Station KAZZ - Request for waiver of FY10 regulatory fee. **Granted** (March 18, 2011) [See Implementation of Section 9 of the Communications Act, 10 FCC Rcd 12759,

New Radio Venture, Inc. - Request for waiver of FY10 regulatory fee. **Granted** (March 18, 2011) [See Implementation of Section 9 of the Communications Act, 10 FCC Rcd 12759, 12762 (1995)]

NPG of Idaho, Inc. - Request for waiver of FY 2010 regulatory fee late payment penalty.. **Granted** (March 18, 2011) [See 47 U.S.C. §159(a)(1)]

Opex Communications, Inc. - Request for waiver of FY 2010 regulatory fee late payment penalty. **Denied** (March 16, 2011) [See 47 U.S.C. §159(a)(1)]

Pappas Telecasting Companies Station KAZJ – LP - Request for waiver of FY 2010 regulatory-fee. **Granted** (March 22, 2011) [See Memorandum Opinion and Order in MD Docket No. 94-19 FCC 95-257, 10 FCC Rcd 12759 1262 (1995)]

Pappas Telecasting Companies Station KAZO -LP - Request for waiver of FY 2010 regulatory fee. **Granted** (March 22, 2011) [See Memorandum Opinion and Order in MD Docket No. 94-19 FCC 95-257, 10 FCC Rcd 12759 1262 (1995)]

Pappas Telecasting Companies Station KAZJ – LP - Request for waiver of FY 2010 regulatory fee. **Granted** (March 22, 2011) [See Memorandum Opinion and Order in MD Docket No. 94-19 FCC 95-257, 10 FCC Rcd 12759 1262 (1995)]

Pappas Telecasting Companies Station KAZS –**LP** - Request for wavier of FY 2010 regulatory fee.**Granted** (March 22, 2011) [See Memorandum Opinion and Order in MD Docket No. 94-19 FCC 95-257, 10 FCC Rcd 12759 1262 (1995)]**Pappas Telecasting Companies Station KBVK -****LP** - Request for wavier of FY 2010 regulatory fee.**Granted** (March 22, 2011) [See Memorandum Opinion and Order in MD Docket No. 94-19 FCC 95-257, 10 FCC Rcd 12759 1262 (1995)]**Pappas Telecasting Companies Station KBVQ -****LP** - Request for wavier of FY 2010 regulatory fee.**Granted** (March 22, 2011) [See Memorandum Opinion and Order in MD Docket No. 94-19 FCC 95-257, 10 FCC Rcd 12759 1262 (1995)]**Pappas Telecasting Companies Station KCAZ - LP**

Request for wavier of FY 2010 regulatory fee.

Granted (March 22, 2011) [See Memorandum Opinion and Order in MD Docket No. 94-19 FCC 95-257, 10 FCC Rcd 12759 1262 (1995)]**Pappas Telecasting Companies Station KCWL -****LP** - Request for wavier of FY 2010 regulatory fee.**Granted** (March 22, 2011) [See Memorandum Opinion and Order in MD Docket No. 94-19 FCC 95-257, 10 FCC Rcd 12759 1262 (1995)]**Pappas Telecasting Companies Station KFRE -****CA** - Request for wavier of FY 2010 regulatory fee.**Granted** (March 22, 2011) [See Memorandum Opinion and Order in MD Docket No. 94-19 FCC 95-257, 10 FCC Rcd 12759 1262 (1995)]**Pappas Telecasting Companies Station KHJP - LP**

Request for wavier of FY 2010 regulatory fee.

Granted (March 22, 2011) [See Memorandum Opinion and Order in MD Docket No. 94-19 FCC 95-257, 10 FCC Rcd 12759 1262 (1995)]**Pappas Telecasting Companies Station KVVV-LP**

Request for wavier of FY 2010 regulatory fee.

Granted (March 22, 2011) [See Memorandum Opinion and Order in MD Docket No. 94-19 FCC 95-257, 10 FCC Rcd 12759 1262 (1995)]**Pappas Telecasting Companies Station****KXLK - CA** - Request for wavier of FY 2010 regulatory fee. **Granted** (March 22, 2011) [See Memorandum Opinion and Order in MD Docket No. 94-19 FCC 95-257, 10 FCC Rcd 12759 1262 (1995)]**Pappas Telecasting Companies Station****WLGA - TV** - Request for wavier of FY 2010 regulatory fee. **Granted** (March 22, 2011) [See Memorandum Opinion and Order in MD Docket No. 94-19 FCC 95-257, 10 FCC Rcd 12759 1262 (1995)]**Pappas Telecasting Companies Station****WWAZ - TV** - Request for wavier of FY 2010 regulatory fee. **Granted** (March 22, 2011) [See Memorandum Opinion and Order in MD Docket No. 94-19 FCC 95-257, 10 FCC Rcd 12759 1262 (1995)]**Prism Broadcasting Network, Inc.** Request for waiver of FY 2010 regulatory fee late payment penalty. **Denied** (March 18, 2011) [See 47 U.S.C. §159(a) (1)]**Rama Radio Of North Carolina, Inc.****Station WWKO (AM)** - Request for wavier of FY 2010 regulatory fee. **Granted** (March 22, 2011) [See Memorandum Opinion and Order in MD Docket No. 94-19 FCC 95-257, 10 FCC Rcd 12759 1262 (1995)]**Revitalization Partners, LLC** - Request for waiver of FY10 regulatory fee. **Granted** (March 18, 2011) [See Implementation of Section 9 of the Communications Act, 10 FCC Rcd 12759, 12762 (1995)]

SATV10, LLC Debtor –in Possession Request for waiver of FY10 regulatory fee. **Granted** (March 18, 2011) [See Implementation of Section 9 of the Communications Act, 10 FCC Rcd 12759, 12762 (1995)]

SDN Communications- Request for waiver of FY 2010 regulatory fee late payment penalty. **Granted** (March 18, 2011) [See 47 U.S.C. §159(a) (1)]

Shaw Business Solutions US, Inc. - Request for waiver of FY 2010 regulatory fee late payment penalty. **Denied** (March 18, 2011) [See 47 U.S.C. §159(a) (1)]

SportsRadio 1410 Station WPCC- Request for waiver of FY 2010 regulatory fee late payment penalty.. **Granted** (March 16, 2011) [See 47 U.S.C. §159(c) (1)]

Southern Light - Request for waiver of FY 2010 regulatory fee late payment penalty. **Denied** (March 18, 2011) [See 47 U.S.C. §159(a) (1)]

Station K260BC (AM) - Request for wavier of FY 2010 regulatory fee. **Granted** (March 16, 2011) [See Memorandum Opinion and Order in MD Docket No. 94-19 FCC 95-257, 10 FCC Rcd 12759 1262 (1995

Station KHJP - LP - Request for wavier of FY 2010 regulatory fee. **Granted** (March 22, 2011) [See Memorandum Opinion and Order in MD Docket No. 94-19 FCC 95-257, 10 FCC Rcd 12759 1262 (1995

Station KVTE - LP - Request for wavier of FY 2010 regulatory fee. **Granted** (March 18, 2011) [See Memorandum Opinion and Order in MD Docket No. 94-19 FCC 95-257, 10 FCC Rcd 12759 1262 (1995

Station KYET – (AM) - Request for wavier of FY 2010 regulatory fee. **Granted** (March 22, 2011) [See Memorandum Opinion and Order in MD Docket No. 94-19 FCC 95-257, 10 FCC Rcd 12759 1262 (1995

Station W22BH - Request for wavier of FY 2010 regulatory fee. **Granted** (April 14, 2011) [See Memorandum Opinion and Order in MD Docket No. 94-19 FCC 95-257, 10 FCC Rcd 12759 1262 (1995

Station W249CC - Request for wavier of FY 2010 regulatory fee. **Granted** (April 14, 2011) [See Memorandum Opinion and Order in MD Docket No. 94-19 FCC 95-257, 10 FCC Rcd 12759 1262 (1995

Station WQMS - Request for wavier of FY 2010 regulatory fee. **Granted** (March 16, 2011) [See Memorandum Opinion and Order in MD Docket No. 94-19 FCC 95-257, 10 FCC Rcd 12759 1262 (1995

Station WWSJ (AM) - Request for wavier of FY 2010 regulatory fee. **Granted** (May 3, 2011) [See Memorandum Opinion and Order in MD Docket No. 94-19 FCC 95-257, 10 FCC Rcd 12759 1262 (1995

Susan L. Uecker Station KTRB - Request for waiver of FY 2010 regulatory fee. **Granted** (March 16, 2011) [See Implementation of Section 9 of the Communications Act, 10 FCC Rcd 12759, 12762]

Sure Shot Transmissions Inc. - Request for waiver of FY 2010 regulatory fee late payment penalty. **Denied** (March 18, 2011) [See 47 U.S.C. §159(a) (1)]

T.H. Greene, Jr. and M.E. Greene - Request for waiver of FY 2010 regulatory fee late payment penalty. **Denied** (July 18, 2011) [See 47 U.S.C. §159(a) (1)]

WLBE 790, Inc. Request for waiver of FY 2010 regulatory fee late payment penalty. **Granted** (March 16, 2011) [See 47 U.S.C. §159(c) (1)]

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

March 23, 2011

Aaron P. Shainis, Esq.
Shainis & Peltzman, Chartered
1850 M St., N.W., Suite 240
Washington, D.C. 20036

Re: 3 Point Media – Coalville, LLC
Station KCUA-FM
FY 2010 Regulatory Fee
Fee Control No. RROG-10-0013158

Dear Mr. Shainis:

This letter responds to your request filed August 31, 2010 (*Request*), on behalf of 3 Point Media – Coalville, LLC (3 Point), licensee of Station KCUA-FM, for waiver of the \$650.00 fiscal year (FY) 2010 regulatory fee. Our records reflect that 3 Point has not paid the regulatory fee. For the reasons stated herein, we grant your request.

You state that 3 Point suffered a net loss in 2009, is unable to pay the FY 2010 regulatory fee, and has had no employees.¹ You submit a declaration from a principal of 3 Point that “no net payments (including no payroll payments) have been made by 3 Point or the station to any 3 Point principal, or to any entity in which 3 Point has any interest, or to any other principal or owner of 3 Point or the station, in 2009[.]”² You submit a document entitled “3 Point – Coalville, LLC Statement of Income for the Year Ended December 31, 2009” (*Financial Statement*).

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

¹ *Request* at 1-2.

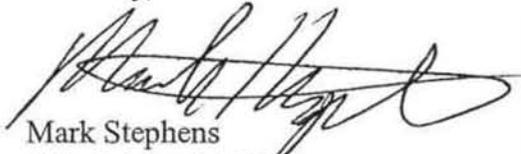
² *Id.*, Declaration of Christopher F. Devine; *see also* email from Aaron Shainis to Joanne Wall (Mar. 1, 2010) (stating that Mr. Devine is an unpaid principal of the licensee).

financial hardship."³ In reviewing a showing of financial hardship, the Commission relies upon a licensee's cash flow, as opposed to the entity's profits, and considers whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public. Thus, even if a station loses money, any funds paid to principals and deductions for depreciation and amortization are considered funds available to pay the fees.

Our review of the record, including 3 Point's *Financial Statement*, indicates that in calendar year 2009, 3 Point had no revenues, paid no compensation to any individual, and suffered a \$6,498.00 financial loss that was only partially offset by a deduction for depreciation and amortization. Given that 3 Point suffered a financial loss in calendar year 2009, we grant your request for a waiver of the \$650.00 regulatory fee for FY 2010.

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

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

Shainis & Peltzman, Chartered

Counselors at Law

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August 31, 2010

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Office of the Managing Director
Federal Communications Commission
445 12th Street SW, Room 1-A625
Washington, DC 20554
Attn: Regulatory Fee Waiver/Reduction Request

FILED/ACCEPTED

AUG 31 2010

Federal Communications Commission
Office of the Secretary

Re: 3 Point Media – Coalville, LLC

Dear FCC:

3 Point Media – Coalville, LLC (“3 Point”), licensee of KCUA(FM), Naples, Utah, Facility ID No. 13483, (the “Station”), by its counsel and pursuant to the Commission’s Regulatory Fee Fact Sheet, Waivers, Reductions and Deferments of Regulatory Fees (dated August 2010, the “Waiver Fact Sheet”), respectfully requests the waiver of the annual regulatory fees to be paid by 3 Point for the Station for fiscal year 2010 (“FY 2010”), as well as a deferment of the deadline for payment of the annual regulatory fees. The Waiver Fact Sheet states that the Commission will consider the waiver of annual regulatory fees in extraordinary and compelling circumstances, and upon a showing that such a waiver would serve the public interest. For the reasons stated herein, 3 Point also respectfully requests that the Commission defer payment of the regulatory fees for the Stations until the Commission acts upon this request for waiver of the fees.

The fees for the 3 Point station are listed on Schedule I.

ORIGINAL

Shainis & Heltzman, Chartered

Office of the Managing Director

August 31, 2010

Page 2 of 2

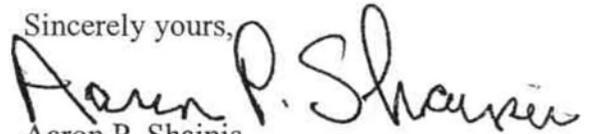
In support of 3 Point's showing of financial hardship, attached hereto as Schedule II is an unaudited Profit and Loss Statement for calendar year 2009. The P&L reflects that 3 Point suffered a net loss of \$6,498.

Also attached as Schedule III is a Balance Sheet for 3 Point. The Balance Sheet supports the inability of 3 Point to pay the regulatory fees.

3 Point has had no employees.

Accordingly, for the reasons stated herein, 3 Point respectfully requests that the Commission waive the \$650.00 in annual regulatory fees due from 3 Point for the Station for fiscal year 2010. 3 Point also requests that the Commission defer the deadline by which 3 Point must pay such annual regulatory fees based on the financial hardship demonstrated herein.

Sincerely yours,



Aaron P. Shainis

Counsel for

3 Point Media – Coalville, LLC

DECLARATION OF CHRISTOPHER F. DEVINE

I, Christopher F. Devine, under penalty of perjury and pursuant to Section 1.16 of the Federal Communications Commission's rules, 47 C.F.R. § 1.16, do hereby declare that:

1. I am the Manager of 3 Point Media – Coalville, LLC (“3 Point”), licensee of full power commercial broadcast station KCUA (the “Station”).
2. I have reviewed the request for waiver and deferral of the annual regulatory fees for fiscal year 2010 for 3 Point and the Station to which this declaration is attached, and the facts set forth therein are true and correct to the best of my knowledge and belief.
3. I certify that the unaudited Statement of Revenue & Expenses for calendar (and fiscal) year 2009 and the Statement of Assets, Liabilities & Equity as of December 31, 2009 for 3 Point are true and correct in all material respects, and were prepared in accordance with generally accepted accounting principles, to the best of my knowledge and belief.
4. I further certify that no net payments (including no payroll payments) have been made by 3 Point or the Station to any 3 Point principal, or to any entity in which 3 Point has any interest, or to any other principal or owner of 3 Point or the Station, in 2009 or since the Station was constructed and has been operating, to date.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and belief. Executed this 31st day of August, 2010.



Christopher F. Devine
Manager, 3 Point Media – Coalville, LLC

SCHEDULE I

KCUA(FM) \$650.00

SCHEDULE II

3 Point- Coalville, LLC
Statement of Income
For the Year ended December 31, 2009

Revenues	\$ -
Operating Expenses	
Engineering Expenses	-
Tower Rent	<u>6,000</u>
Total Operating Expenses	<u>6,000</u>
Loss Before Interest, Depreciation and Amortization	(6,000)
Interest	-
Depreciation & Amortization	<u>498</u>
Net Loss	\$ (6,498)

SCHEDULE III

3 Point Media - Coalville, LLO
Balance Sheet
At December 31, 2009

Assets

Current Assets	\$ 100
Net Property and Equipment	2,575
FCC Licenses	158,792
Other Assets	<u>-</u>
<i>Total Assets</i>	<u>\$ 161,467</u>

Liabilities & Equity

Current Liabilities	\$ -
Long term Debt	-
Other Liabilities	<u>254,786</u>
<i>Total Liabilities</i>	254,786
<i>Equity</i>	<u>(93,319)</u>
<i>Total Liabilities & Equity</i>	<u>\$ 161,467</u>

**CHECKLIST TO ACCOMPANY REQUESTS FOR FEE RELIEF FORWARDED FROM
OMD TO OGC FOR REVIEW**

3 Point Media-Coalville, LLC Station KCUA-FM

RROG-10-0013158

1. Request for Waiver of Regulatory Fees

Fiscal Year at Issue: **2010**

Total regulatory fee amount at issue: **\$650.00**

If there are multiple stations at issue, please also identify the stations and the individual associated fees: _____

Was the regulatory fee paid? No: ___ If so, when: _____

Total late penalty amount at issue: _____

If there are multiple stations at issue, please also identify the stations and the individual associated penalties: _____

Was the penalty paid? Yes: ___ No: ___ If so, when: _____



ACH File | Administer CD Number | Administer Data | Administer Role
Administer Schedule | Historical Loan | Regulatory Fees | Remittance Search



Financial Operations Administration

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Assessment Detail

Assessment ID: 40441327

Fiscal Year:	2010	Service Category:	AM & FM Radio Broadcasting
Unique ID:	13483	Bill Number:	
Licensee Frn:	0011233780	Licensee Name:	3 POINT MEDIA - COALVILLE, LLC
PTC:	1041	Quantity:	1
FCC Code 1:	13483	FCC Code 2:	UT NAPLES
Call Sign:	KEUA	Operating Status:	Feeable
Create Frn:	0	Update Frn:	
Create Date:	2010-08-05 20:30:00.0	Update Date:	
Create Source:	FCC	Update Source:	
Confirm FRN:		Confirm Date:	
Review FRN:		Review Date:	
Payment Count:	0	Review Status:	
Filing ID:		Parent Assessment ID:	
Assessment Amount:	\$650.00	Penalty Amount:	\$0.00
Assessment Paid:	\$0.00	Penalty Paid:	\$0.00
Cumulative Assessment Paid:	\$0.00	Cumulative Penalty Paid:	\$0.00
Assessment Status:	Non-payer	Error Message:	
Review Comment:			

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[UPDATE](#)

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

FILE

OFFICE OF
MANAGING DIRECTOR

May 17, 2011

Mr. Benjamin Perez
Abacus Television
514 Chautauqua Street
Pittsburgh, PA 15214

Re: WIIC-LP; WPTG-LP; WWBP-LP;
WWAT-CA; WQVC-CA; WBYD-CA; WBOA-LP;
WWVW-LP; WTOO-CA; WSSS-LP; WJKF-CA
FY 2010 Regulatory Fees
Fee Control No. RROG-10-00013234

Dear Mr. Perez:

On August 28, 2010, you requested a waiver of the Fiscal Year (FY) 2010 regulatory fees due for Stations WIIC-LP, WPTG-LP, WWBP-LP, WWAT-CA, WQVC-CA, WBYD-CA, WBOA-LP, WWVW-LP, WTOO-CA, WSSS-LP, and WJKF-CA on the grounds of financial hardship (*Request*).¹ Our records indicate you have not paid any of the FY 2010 regulatory fees of \$415.00 due for each Station, and you did not ask us to defer payment. Accordingly, under our rule,² we dismiss your *Request*, but even if you had petitioned for deferral of payment, for the separate reasons stated herein, we deny your *Request*, and require that you pay the regulatory fees and the accrued penalties.³

You state that "Abacus Television was formed . . . to deliver broadcasting programming to the Greater Pittsburgh, PA television market . . . [of] approximately 2,233,591 people, [of which] Abacus . . . serves . . . 223,360 people."⁴ Further, Abacus' only sources of revenue are a modest "affiliation fee" paid by Americans Collectable Network and the "sales commission" from Revenue Frontier, which leaves Abacus with a negative cash flow and unable to pay certain operational expenses without the "continued infusion of capital" by you as the sole proprietor.⁵ Moreover, if Abacus pays the regulatory fees, it will lack the funds to pay tower rent or electricity, so it will be forced to "suspend operation," which will "deprive (poorer) Pittsburgh

¹ In the Matter of Waiver of Regulatory Fee for FY 2009 of Abacus Television 1801 Columbia Road, N.W., Suite 101, Washington, DC 20009, Licensee of WIIC-LP, WPTG-LP, WWBP-LP, WWAT-CA, WQVC-CA, WBYD-CA, WBOA-LP, WWVW-LP, WTOO-CA, WSSS-LP, WJKF-CA (Aug. 28, 2010)(*Request*).

² 47 C.F.R. § 1.1166(c) (Petitions for waiver of a regulatory fee must be accompanied by the required fee and FCC Form 159. Submitted fees will be returned if a waiver is granted. Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.); 47 U.S.C. § 159(c)(2).

³ See 47 U.S.C. § 159(c)(1); 47 C.F.R. § 1.1164.

⁴ *Request* at 1-2.

⁵ *Id.* at 2, 3.

residents of one of a very limited number of off-air, free television services.”⁶ You provided a “Profit & Loss statements for calendar year 2009” to show Abacus’ operating deficit of \$7,232.16.⁷ For the additional reasons we set forth below, your *Request* does not present a compelling case of financial hardship to waive the FY 2010 regulatory fees due for each of the 11 stations. We take each matter in turn.

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”⁸ fully documented showing such that the regulatee “lacks sufficient funds to pay the regulatory fees and to maintain its service to the public.”⁹ Each regulatee is responsible for fully documenting its financial position with financial records, which may include “a balance sheet and profit and loss statement (audited if available), a cash flow projection for the next twelve months . . . a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information.”¹⁰

Because you are the sole proprietor of Abacus Television with 11 Stations,¹¹ you own all assets of the business, you are entitled to all profits, and you are responsible for all debts.¹² Thus, when a sole proprietor requests a waiver of regulatory fees, the required financial records of “the regulatee” include the sole proprietor’s gross income, assets, liabilities, and cash flows. Because you are the sole proprietor, you must include your financial records to “fully document” your *Request*.¹³ You did not. Accordingly, for this separate reason, we deny your *Request* to waive the FY 2010 regulatory fees to be paid by each of the 11 Stations.

Moreover, you refer to and discuss only some of the business and financial aspects of the six repeater Stations located in the general area of Pittsburgh, Pennsylvania, and you did not comment at all on five other named Stations.¹⁴ Indeed, you did not show the connection, if any, between the services provided in and around Pittsburgh and the service delivered by Stations operating in the other geographical areas,¹⁵ and you did not discuss at all whether you lack

⁶ *Id.*, at 3.

⁷ *Id.*

⁸ Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for Fiscal Year 1994, *Report and Order*, 9 FCC Rcd 5333, 5344 (1994), *recon. denied*, 10 FCC Rcd 12759 ¶12 (1995).

⁹ In the Matter of Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Memorandum Opinion and Order*, 10 FCC Rcd 12759, 12761-62, ¶ 13 (1995).

¹⁰ *Id.*

¹¹ *Request* at 1-3; FCC 323, Ownership Report for Commercial Broadcast Stations, File BOA-20100625AIQ (Jun. 25, 2010).

¹² *Hunter Innovations Co. v. Travelers Indemnity Co. of Connecticut*, 605 F.Supp.2d 170, 173 (D.D.C. 2009).

¹³ *Memorandum Opinion and Order*, 10 FCC Rcd at 12762.

¹⁴ *Request* at 1. You list WIIC-LP, WWBP-LP, WWAT-CA, WQVC-CA, WBYD-CA, and WBOA-LP as being the “repeater stations” that make up the “cellular television network,” that covers the entire Pittsburgh A.D.I.” You did not include Station WPTG-LP as part of that network of stations, and you did not discuss that Station’s operational abilities or financial situation. Moreover, you did not mention the business activities associated with WWVW-LP, WTOO-CA, WSSS-LP, or WJKF-CA.

¹⁵ The Stations are located in Wheeling, West Virginia; Altoona, Pennsylvania; Steubenville, Ohio; and Jacksonville, Florida. *Request* at 1.

sufficient funds to pay the regulatory fees for these Stations and to maintain service to the public. Specifically, you did not mention WPTG-LP at all, and your only brief comment about WWVW-LP, WTOO-CA, WSSS-LP, and WJKF-CA was that you operate those in addition to the six named repeater Stations. As a separate additional reason, because you did not provide any financial or other information as to your ability to pay the associated fees and to maintain service to the public at each Station, we deny your *Request* to waive the FY 2010 regulatory fees due for these five Stations.

In addition to the total regulatory fees of \$4,565.00, because you did not pay the regulatory fees or request deferment of payment, under 47 U.S.C. § 159(c), we are required to assess a penalty of twenty-five percent (25%) of the amount of the fee that was not paid in a timely manner.

Payment of the FY 2010 regulatory fees and the penalties are now due. The regulatory fee and penalty for each Station 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 matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Stephens", written over a horizontal line.

Mark Stephens
Chief Financial Officer

Enclosure

RR06-10-00013234

Before the
Federal Communications Commission
Washington, DC 20554

In the matter of:

Waiver of Regulatory Fee for FY 2009 of Abacus Television)
1801 Columbia Road, N.W., Suite 101, Washington, DC 20009)
Licensee of WIIC-LP, WPTG-LP, WWBP-LP, WWAT-CA, WTOO-CA)
WWVW-LP WQVC-CA, WBYD-CA, WSSS-LP, WBOA-LP, WJKF-CA)

To: Steven VanRoekel, Managing Director

Request for Waiver of Regulatory Fee

Pursuant to §1.1166 of the Rules and Regulations of the Federal Communications Commission, Abacus Television, hereby requests waiver of the regulatory fee for FY 2010.

Abacus Television was formed in the late 1980's to early 1990's Benjamin Perez, the sole owner of Abacus Television, using a network of Low Power Television stations to deliver broadcast programming to the Greater Pittsburgh, PA television market. Abacus Television arranged its stations into a "cellular television network," that covers the entire Pittsburgh A.D.I.

The repeater stations include: WIIC-LP Pittsburgh, PA

WWBP-LP Freedom, PA
WWAT-CA Uniontown, PA
WQVC-CA Greensburg, PA
WBYD-CA Johnstown, PA
WBOA-LP Kittanning, PA

Abacus Television also operates: WWVW-LP Wheeling, WV
WTOO-CA Altoona, PA
WSSS-LP Steubenville, OH
WJKF-CA Jacksonville, FL

Abacus Television is one of the most competitive broadcast television markets within the United States. The market size of Pittsburgh, PA is approximately 2,233,591 people, making it

21st largest television market. Between cable television and direct-to-home satellite subscriber-ship, 90% of these homes are “wired” and do not utilize roof top antennas. None of Abacus Television’s stations are carried on either cable or received by satellite homes. As a result, Abacus Television primarily serves the universe of approximately 223,360 people that do not subscribe to either cable or satellite services. Abacus Television is an affiliate of Americas Collectable Network and Revenue Frontier. Abacus Television does not sell local or national advertising, because without cable carriage such sales were found to be impossible. Abacus Television’s only source of revenue is the affiliation fee paid to it by Americas Collectable Network and the sales commission paid to it by Revenue Frontier.

Payment of its 2010 regulatory fees will significantly impact the ability of Abacus Television to provide over the air television broadcast service to the public. Absent cable carriage, the sales generated by the Abacus Television for Revenue Frontier, and the commission paid as a result, are extremely modest. The affiliation fee paid to Abacus Television by America’s Collectables is also commensurately reduced to reflect Abacus Television serving only the unwired televisions in its market. As a result, Abacus Television is cash flow negative. The gross revenue it receives is insufficient to cover its tower rent, electricity and equipment maintenance costs. Abacus is able to continue operating only because of continued infusion of capital by its owner. Benjamin Perez is the only principle in Abacus Television. He draws no salary, is not reimbursed for many of his expenses, and, because Abacus Television has operated at a loss since its inception, has not received any dividends or profit distribution from his company. He continues to operate Abacus Television in the hope that, with continued format development and the long-shot possibility that LPTV stations will eventually gain Must Carry status, Abacus Television will someday become profitable.

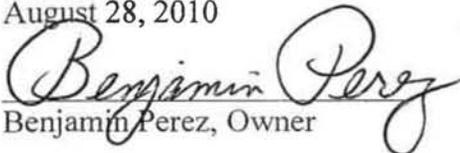
Abacus Television provides its entertainment and home shopping services to the poorest and least mobile television viewers in Pittsburgh – the 10% of Pittsburgh residents that do not pay for cable or satellite services. Payment of the scheduled FCC Regulatory Fees would leave Abacus Television with insufficient funds to pay its tower rent or electricity, forcing Abacus Television to suspend operation. That suspension would deprive (poorer) Pittsburgh residents of one of a very limited number of off-air, free television services. That suspension of service would also very quickly reverse the progress Abacus Television has made to date building its audience and revenue. All of the money invested by Benjamin Perez to cover each years operating deficit would be lost, causing a tremendous financial hardship to this small sole proprietor. Thus, a waiver of the 2010 FCC Regulatory Fees is in the public interest.

Abacus Television submits its Exhibit 1 detailed Profit & Loss statements for calendar year 2009. In 2009 Abacus Television had an operating deficit of \$7,232.16. Abacus Television is unable to pay its 2010 Regulatory Fees because it clearly can not afford to pay such fees until its short term operating costs have been reduced and its cash flow has grown to the point that it at least covers its day to day operating costs.

Therefore, for the reasons cited above, Abacus Television hereby requests waiver of the 2010 regulatory fee and, in light of the information attached hereto, no fee is provided herewith.

Respectfully submitted,

August 28, 2010


Benjamin Perez, Owner

Abacus Television
514 Chautauqua Street
Pittsburgh, PA 15214
abacuscommco@verizon.net
202 462-3680

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

July 18, 2011

Harold L. Goodman, CPA
Director of Corporate Tax
AboveNet, Inc.
360 Hamilton Avenue
White Plains, NY 10601

Re: AboveNet Communications, Inc.
FY 2010 Regulatory Fee Penalty Waiver Request
Filed 6-17-11
Fee Control No. RROG 10-00013495
Regulatory Fee Amount: \$ 403,111.00
Late Penalty Amount: \$ 100,777.75
Date Regulatory Fee Paid: 5-5-11
Date Late Penalty Paid: 5-5-11

Dear Mr. Goodman:

This letter responds to the above-referenced request for waiver of the penalty for late payment of FY 2010 regulatory fee. For the reasons stated herein, your waiver request is denied.

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.¹ 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."² 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."³

¹ 47 U.S.C. §159(a)(1).

² 47 U.S.C. §159(c)(1).

³ 47 C.F.R. §1.1164.

For FY 2010, the deadline for paying regulatory fees was August 31, 2010.⁴ You paid the regulatory fee at issue after this deadline, and therefore failed to meet this obligation. 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.”⁵ With respect to your assertion that “the FCC’s decision to stop sending pre-bills via surface mail without providing any notice of the significant change in practices via surface mail caught the Company off guard, and directly contributed to the inadvertent oversight[,]” the Commission provided ample prior notice that it would not be sending paper pre-bills to regulatees with respect to FY 2010 regulatory fees. On May 14, 2009, the Commission proposed to mandate electronic filing of regulatory fee information through the agency’s Fee Filer system.⁶ 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.”⁷ On July 31, 2009, the Commission released its order adopting these proposals.⁸ 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.”⁹ The Commission issued a 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.”¹⁰ On September 2, 2009, the Commission released a third public notice reiterating that **“HARDCOPY BILLS WILL NO LONGER BE MAILED BY THE FCC”**.¹¹

Although later, in its notice of proposed rulemaking for FY 2010 fees, the Commission stated that while “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.”¹² The Commission, however, was there exploring ways to “increase its efforts in notifying licensees that hardcopy regulatory fee bills will not be mailed out.”¹³ The Commission

⁴ *Public Notice, FY 2010 Regulatory Fees Due No Later Than August 31, 2010, Eastern Time (ET)*, DA 10-1451, 2010 WL 3133517 (Aug. 9, 2010) (*FY 2010 Filing Deadline Public Notice*).

⁵ *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); *see also NextGen Telephone (OMD, Apr. 22, 2010); Istel, Inc. (OMD, Apr. 22, 2010)*.

⁶ *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Notice of Proposed Rulemaking and Order*, 24 FCC Rcd 5966, 5972 ¶ 16 (2009).

⁷ *Id.* at 5973 ¶ 20.

⁸ *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*).

⁹ *Id.* at 10309 ¶ 26.

¹⁰ *Fee Filer Mandatory for FY 2009 Regulatory Fees, Public Notice*, 24 FCC Rcd 10893 (Aug. 21, 2009).

¹¹ *Payment Methods and Procedures for Fiscal Year 2009 Regulatory Fees, Public Notice*, 24 FCC Rcd 11513, 11514 (2009) (emphasis in original).

¹² *Assessment and Collection of Regulatory Fees for Fiscal Year 2010, Notice of Proposed Rulemaking*, 25 FCC Rcd 3918, 3923 ¶ 12 (2010).

¹³ *Id.*

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."¹⁴

Thus, it is the obligation of the licensee to make the fee payment by the deadline. History of timely payment of the regulatory fee does not provide sufficient grounds to support a waiver of the late payment penalties,¹⁵ and the penalty for late payment applies even to situations where the deadline is missed by a short period of time -- neither the statute nor the Commission's regulations contemplates a waiver of or reduction in the late payment penalty based on the amount of time after the deadline within which the regulatee satisfies its payment obligations.¹⁶ Further, although the Commission has waived late fees on a showing of good cause, neither the statute nor the Commission's regulations contemplates a waiver of or reduction in the late payment penalty based on the amount of time after the deadline within which the regulatee satisfies its payment obligations. Section 9(c)(1) does not limit the late payment penalty to regulatees whose failure to pay was knowing or willful.

With respect to your allegation that the FCC "exercised its authority under 47 USC §159(d) to waive late payment penalties to avoid 'inequitable' results" in *Implementation of Section 9 of the Communications Act, Memorandum Opinion and Order*, 10 FCC Rcd 12759, 12763 (1995), that decision involved a regulatory fee not a late charge penalty. The Commission has waived the Section 9(c)(1) penalty "only in the most extraordinary circumstances"¹⁷ and we find no such extraordinary circumstances here. We therefore deny your request for waiver and/or reduction of the penalties for late payment of the FY 2010 regulatory fees.

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

¹⁴ *Assessment and Collection of Regulatory Fees for Fiscal Year 2010, Report and Order*, 25 FCC Rcd 9278, 9291 ¶ 37 (2010).

¹⁵ See *TWC Digital Phone, LLC* (OMD, Sept. 28, 2009); *Big River Telephone Company* (OMD, July 21, 2009).

¹⁶ See *XO Communications, LLC* (OMD, Nov. 10, 2010).

¹⁷ *McLeodUSA Telecommunications Services, Inc., Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589 (2004) (denying the request for waiver of 25 percent penalty).



AboveNet

Received & Inspected

JUN 17 2011

FCC Mail Room

Tel 914 421 6700
Fax 914 421 6777

AboveNet, Inc.
360 Hamilton Avenue
White Plains, NY 10601
www.above.net

June 9, 2011

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

Re: **AboveNet Communications, Inc.**
ID# **820598**

To Whom It May Concern:

I am writing on behalf of AboveNet Communications, Inc. ("AboveNet" or the "Company") to request that the Federal Communications Commission ("FCC") waive or substantially reduce the penalty of \$100,777.75 for the Company's inadvertent and unintentionally late payment of its Interstate Telephone Service Provider ("ITSP") Regulatory Fee for 2010. In past cases, the FCC has exercised its authority under 47 U.S.C. § 159(d) to waive late payment penalties in order to avoid "inequitable" results. *See, e.g.,* Implementation of Section 9 of the Communications Act, 10 FCC Rcd 12759, 12763 (1995) ("*1995 Reconsideration Order*"). AboveNet respectfully submits that the \$100,777.75 penalty would lead to an inequitable result in this case unless waived or substantially reduced by the FCC.

AboveNet has an excellent compliance record and, since emerging from bankruptcy in 2003, has made impressive strides under very challenging economic conditions. AboveNet's success has led to the creation of 400 new jobs since 2003, with the Company employing approximately 700 individuals at this time. Importantly, AboveNet plans to continue hiring additional employees, which is of course important to the health of the Nation's economy.

No penalty is necessary to convince AboveNet of the importance of complying with the FCC's rules, including the importance of meeting the deadline for the payment of regulatory fees. The Company's failure to meet the deadline in this one instance was inadvertent. The Company has always promptly paid its regulatory fees upon receipt of paper pre-bills via surface mail, which has always been handled by a single individual in the accounting department. Like numerous companies, the FCC's decision to stop sending pre-bills via surface mail without providing any notice of the significant change in practices via surface mail caught the Company off guard, and directly contributed to the inadvertent oversight. It should not be surprising that electronic notices about the elimination of pre-bills sent via surface mail might go unnoticed by parties who have traditionally, and reasonably, relied upon receiving pre-bills sent via surface mail. As the FCC's itself has recognized:

Although the overall response to this procedural change was positive, it was apparent that a greater effort should have been made [by the FCC] to inform licensees that they would not be receiving a hardcopy regulatory fee bill in the mail.

Assessment and collection of Regulatory Fees for Fiscal Year 2010, MD Docket No. 10-87, Notice of Proposed Rulemaking (FCC 10-51), ¶ 12 (rel. Apr. 13, 2010). Although the Company could have noticed the change by actively monitoring the Federal Register, which first published notice of the significant change in procedures on August 11, 2009 (slightly more than one month before the fee deadline), the failure by the accounting department to notice the change certainly does not reflect a lack of respect for the rules that justifies a penalty of \$100,777.75.¹ AboveNet was able to make the payment for FY 2009 on a timely basis because outside counsel notified the Company of the due date. Because the Company received notice of the due date for FY 2009 from outside counsel, the Company employee responsible for paying regulatory fees did not realize that paper pre-bills were no longer being sent via standard mail. Unfortunately, due to a miscommunication between outside counsel and the Company, outside counsel did not notify the Company that the FY 2010 payment was due, and the Company missed the payment deadline. The Company first learned that it had missed the deadline when it discovered that it had been red-lighted, at which time AboveNet promptly paid the past due Regulatory Fee and changed its compliance programs to ensure that no similar oversights would incur in the future. Under these circumstances, a penalty is not necessary to encourage compliance by AboveNet or any other company with the payment of Regulatory Fees in the future.

Not only is the penalty unnecessary to encourage compliance by AboveNet, but the penalty would also harm the public interest by forcing AboveNet to eliminate, or significantly delay, at least one job that the Company otherwise would create. The elimination or significant delay of one or more jobs due to an inadvertent oversight by the Company of a significant change in procedures that the FCC itself admits should have been better publicized undeniably would be an "inequitable result."

To be clear, AboveNet is not claiming the type of economic hardship which requires the submission of financial statements. Importantly, however, the FCC has waived or substantially reduced penalties for reasons that have nothing to do with economic hardship. For example, the FCC has adjusted the fee schedule established by Congress to address "certain anomalies," *see, e.g.*, 10 FCC Rcd 12759, 12763 ¶ 18, or when "the regulatory fees can be particularly inequitable" *see id.*, ¶¶ 18, 22 (granting partial waivers and reducing the fees that Congress had explicitly mandated for satellite licensees in order to avoid an "inequitable" result). AboveNet asks the FCC to eliminate or substantially reduce the \$100,777.75 penalty in order to avoid an inequitable result here.

In sum, the oversight that led to the late payment was an inadvertent anomaly related to the significant, and unusual, change in FCC procedures. AboveNet has a strong compliance process, and the Company has since added additional controls to ensure that regulatory fees will always be paid on a timely basis in the future. Given these circumstances, a penalty of \$100,777.75 would be excessively harsh and would

¹ Indeed, the summary of the Federal Register notice does not mention the change at all, stating merely that "we amend our Schedule of Regulatory Fees to collect \$341,875,000 in regulatory fees for Fiscal Year (FY) 2009, pursuant to section 9 of the Communications Act of 1934, as amended (the Act)," which suggests that, as in other years, only the fee amount was changing rather than a substantial change in procedures. A casual reading of the notice summary would not lead the reader to believe that in-depth review would be necessary due to significant changes in procedures like the complete cessation of the sending of pre-bills via surface mail.

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harm the public interest by eliminating or significantly delaying the creation of one or more jobs. Accordingly, AboveNet respectfully requests a full or substantial waiver of the penalty.

We thank you for your attention to this matter.

Sincerely,
AboveNet Communications, Inc.

Harold Goodman

Harold L. Goodman, CPA, Director of Corporate Tax