



PUBLIC NOTICE

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

News media information 202 / 418-5000
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Internet: <http://www.fcc.gov>
<ftp.fcc.gov>

DA-12-98

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

PUBLIC NOTICE

Released: January 27, 2012

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:

Airen Broadcasting Company Station KBAE (formerly KZCC (FM)) - Request for waiver of FY 2009 and 2010 regulatory fees. **Granted** (May 19, 2011) [See Memorandum Opinion and Order in MD Docket No. 94-19 FCC 95-257, 10 FCC Rcd 12759 12762 (1995)]

Black Crow Companies, et al. - Request for waiver of FY 2011 regulatory fee. **Granted** (December 14, 2011) [See 47 U.S.C. §159(d); 47 C.F.R. §1.1166]

Cable & Wireless America Systems - Request for waiver of FY 2010 regulatory fee late payment penalty **Denied** (December 9, 2011) [See 47 U.S.C. §159(a)(1)]

Cable & Wireless Worldwide - Request for waiver of FY 2010 regulatory fee late payment penalty **Denied** (April 14, 2011) [See 47 U.S.C. §159(a)(1)]

College Creek Media, LLC Stations KPHD-FM, KRPX-FM, KEMR-FM AND KHUN-FM - Request for waiver of FY 2010 regulatory fee. **Denied** (June 24, 2011) [See 47 U.S.C. §159(d); 47 C.F.R. §1.1166]

Dollar Phone Corp. - Request for waiver of FY 2010 regulatory fee. **Denied** (April 18, 2011) [See Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5346 (1994), recon granted, 10FCC Rcd 12759, (1995) (Memorandum Opinion and Order)]

Encompass Communications, LLC. - Request for waiver of FY 2010 regulatory fee late payment penalty **Denied** (December 07, 2011) [See 47 U.S.C. §159(d); 47 C.F.R. §1.1164]

Fireweed Communications, LLC, Station KYES-TV, K120W, K06MF, KYEX-LP, K22HN-D and K09XO - Request for waiver of FY 10 regulatory fees. **Denied** (July 26, 2011) [See 47 U.S.C. §405]

Freedom Broadcasting of Tennessee Licensee, L.L.C., Freedom Broadcasting of New York Licensee, L.L.C, Freedom Broadcasting of Michigan Licensee, L.L.C, Freedom Broadcasting of Florida Licensee, L.L.C, Freedom Broadcasting of Texas Licensee, L.L.C, and Freedom Broadcasting of Oregon Licensee, L.L.C Request for waiver of FY 2010 regulatory fee. **Denied** (April 14, 2011) [See Implementation of Section 9 of the Communications Act, 10 FCC Rcd 12759, 12762(1995)]

KAZN-TV Licensee, LLC Station KHIZ - Request for waiver of FY 2010 regulatory fee. **Granted** (June 14, 2011) [See Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5346 (1994), recon granted, 10FCC Rcd 12759, (1995 (Memorandum Opinion and Order))]

KM Television of Flagstaff, LLC Station KCFG (TV) - Request for waiver of FY 2010 regulatory fee. **Granted** (May 26, 2011) [See Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5346 (1994), recon granted, 10FCC Rcd 12759, (1995 (Memorandum Opinion and Order))]

Louisville TV Licenses, LLC Stations WBKI-TV, WBKI-CA and WBKI-LD - Request for waiver of FY 2010 regulatory fee. **Denied** (April 5, 2011) [See Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5346 (1994), recon granted, 10FCC Rcd 12759, (1995 (Memorandum Opinion and Order))]

Gary L. Rainsdon, Trustee Stations KIPA-AM, KHBC-FM, KHWI-FM AND WMF420 - Request for waiver of FY 2010 regulatory fee. **Granted** (December 16, 2011) [See 47 U.S.C. §159(d); 47 C.F.R. §1.1166]

Gary L. Rainsdon, Trustee Stations KIPA-AM, KHBC-FM, KHWI-FM AND WMF42 - Request for waiver of FY 2011 regulatory fee. **Granted** (December 16, 2011) [See 47 U.S.C. §159(d); 47 C.F.R. §1.1166]

Genesis Communications, I, Inc. and Genesis Communications of Tampa Bay, Inc. Stations WHOO (54573), WAMT (15877), WIXC (54505), WMGG (67135), WHBO (41383), WWBA (51971), AND WHQ239 (54573) - Request for waiver of FY 2011 regulatory fee. **Denied** (November 30, 2011) [See 47 U.S.C. §159(d); 47 C.F.R. §1.1166]

Great Northern Broadcasting System, Inc and Roy E. Henderson Stations WBNZ-FM, WOUF-FM and WARD-FM - Request for waiver of 08, 09 and 2010 regulatory fees. **Denied** (August 18, 2011) [See 47 C.F.R. §1.1912]

Metropolitan Area network, Inc. - Request for waiver application fees. **Moot** (November 30, 2011) [See 47 U.S.C. §159(d) (2)]

Openpop.com, Inc - Request for waiver of FY 2010 regulatory fee late payment penalty **Denied** (April 14, 2011) [See 47 U.S.C. §159(c)(1)]

Peggy Sue Broadcasting Corporation Stations WMJD-FM, WNRG-AM AND W257AV -Request for waiver of FY 2010 regulatory fee. **Denied** (June 6, 2011) [See 47 U.S.C. §159(d); 47 C.F.R. §1.1166]

Pinnacle Media, LLC Stations KPBI 81593 (Eureka Springs, AR), **KFDF-CA 52418** (Fort Smith, AR), **KFFS-CA 52430** (Fayetteville, AR), **KHMF-CA 52420** (Bentonville, AR), **KKAF-CA 52432** (Siloam Springs, AR), **KRAH-CA 52423** (Paris, AR), **KSJF-CA 52425**, (Poteau, OK), **KWNL-CA 52426** (Winslow, AR), **K33HE 58284** (Fort Smith, AR), **K48FL 14387** (Fort Smith, AR), **KEGW-LP 48534** (Fayetteville, AR), **KLRA-LP 57548** (Little Rock, AR), **KUFS-LP 58281** (Fort Smith, AR), **KWFT-LP 58282** (Fort Smith, AR), and **KXUN-LP 14386** (Fort Smith, AR) - Request for wavier of FY 2010 regulatory fee. **Denied** (November 9, 2011) [See 47 U.S.C. §159(d); 47 C.F.R. §1.1166]

Radio Station WDEK-AM - Request for exemption from FY 2011 regulatory fee. **Dismissed** (October 21, 2011) [See 47 U.S.C. §159(c); 47 C.F.R. §1.1164]

Radio Station WHLQ-FM (formerly WHFD-FM) Request for exemption from FY 2011 regulatory fee. **Dismissed** (October 25, 2011) [See 47 U.S.C. §159(c); 47 C.F.R. §1.1164]

Radio Station WTKE-FM - Request for exemption from FY 2011 regulatory fee. **Dismissed** (October 25, 2011) [See 47 U.S.C. §159(c); 47 C.F.R. §1.1164]

Revitalization Partners, LLC, General Receiver - Request for wavier of FY 2010 regulatory fee. **Granted** (December 16, 2011) [See 47 U.S.C. §159(d); 47 C.F.R. §1.1166]

Roger E. Harders & David F. Harders Sations & Facility IDs: K21ES-15627, K31EN-15628, K33EM-15629, K63FQ-40546, K59FT-40562, K32FH-57403, K41FU-57399, K47FK-57396, K55HX-57395 and K63FW-57400 - Request for wavier of FY 02, 03, 04, 05, and 06 regulatory fees. **Denied** (December 22, 2011) [See 47 U.S.C. §159(d); 47 C.F.R. §1.1166]

Rusty R. Smart - Request for waiver application fee. **Dismissed** (October 3, 2011) [See 47 C.F.R. §§1.119©]

Sensormatic Holdings Corp - Request for waiver of application fees. **Denied** (April 12, 2011) [See 47 U.S.C. §158(d)(2)]

Silicon Business System, Inc. - Request for waiver of FY 2010 regulatory fee and associated late payment penalty. **Dismissed** (May 26, 2011) [See 47 U.S.C. §159(d); 47 C.F.R. §1.1166]

Smart Card Services, Inc. - Request for waiver of FY 2010 regulatory fee late payment penalty. **Denied** (December 16, 2011) [See 47 C.F.R. §1.1164]

Star Broadcasting, Inc. - **Request** for waiver of FY 06, 08, and 09 regulatory fee. **Granted** (April 14, 2011) [See Implementation of Section 9 of the Communications Act, 10 FCC Rcd 12759, 12762(1995)]

State Farm Insurance Satellite & Wireless Networks Stations E030145 and E050336 - Request for waiver of FY 2010 regulatory fee late payment penalty **Denied** (April 8, 2011) [See 47 U.S.C. §159(c)(1)]

Stone Communications, Inc. Stations WJML-AM and WJNJ-AM - Request for wavier of FY 2010 regulatory fee. **Denied** (June 10, 2011) [See 47 U.S.C. §159(c); 47 C.F.R. §1.1166]

Texas Grace Communications, Station KRZB (FM) – Request for waiver of application fees. **Denied** (December 22, 2011) [See 47 C.F.R. §1.1167(b)]

T.H. Greene, Jr. and M.E. Green - Request for waiver of FY 10 regulatory fees. **Denied** (July 18, 2011) [See 47 U.S.C. §159(d)]

Trillion Partners, Inc - Request to waive application fees. **Granted** (December 16, 2011) [See 47 U.S.C. §159(d); 47 C.F.R. §1.1166]

UGARF Media Holdings, LLC Station WNEG-TV, Toccoa, Georgia - Request for reduction of FY 2010 regulatory fee. **Dismissed** (June 7, 2011) [*See* 47 U.S.C. §159(c)]

Xanadoo, LLC Debtor-in-possession Request for waiver application fees. **Granted** (August 3, 2011) [*See* 47 U.S.C. §158(d)(2)]

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

AMD-FO x
(CHRON)

May 19, 2011

OFFICE OF
MANAGING DIRECTOR

Suzanne E. Rogers, Esq.
Airen Broadcasting Company
455 Capitol Mall, Suite 210
Sacramento, CA 95814

Re: Airen Broadcasting Company
Station KBAE (formerly KZCC)(FM)
FYs 2090 and 2010 Regulatory Fees Waiver
Request
Filed 4-20-11
Fee Control No. RROG-10-00013465
Regulatory Fees Amount: \$ 650.00 and
\$675.00
Date Regulatory Fees Paid: 9-11-09 and
8-30-10

Dear Ms. Rogers:

This letter responds to your request, referenced above, for waiver of regulatory fees ("Regulatory Fees"). Our records reflect that these fees have been paid. For the reasons stated herein, we grant your request.

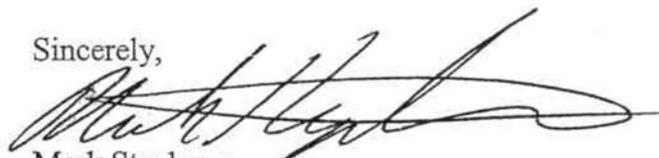
Our records reflect that you filed for Special Temporary Authority (STA) for the above-referenced ("Station") to remain silent prior to the due date of the Regulatory Fees in question, and that the station was still silent on the due date for filing the Regulatory Fees in question.

The Commission has 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.¹ Because our records reflect that you were not operating the Station on the date that the Regulatory Fees in question were due, we grant the request for waiver of the Regulatory Fee.

A check made payable to the maker of the original check, and drawn in the amount of \$1,325.00, will be sent 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

¹ *Memorandum Opinion and Order in MD Docket No. 94-19*, FCC 95-257, 10 FCC Rcd 12759, 12762 (1995). Broadcast stations that are dark must request permission to suspend operation pursuant to Section 73.1740(a)(4) of the Commission's rules. *Id.*

APR 20 2011

FCC Mail Room

AIREN
BROADCASTING CO.

455 Capitol Mall, Suite 210, Sacramento, California 95814 (916) 448-8800 Fax (916) 448-6455

RR09-10-00013465

April 18, 2011

VIA FEDERAL EXPRESS

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743

ATTN: Steven VanRoekel, Managing Director
Office of Managing Director

Re: **Regulatory Fee Waiver Request of Airen Broadcasting Company
Permittee of KBAE (FM), Trinidad, California; Facility ID 164090**

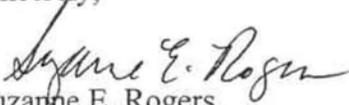
Dear Ms. Dortch:

Enclosed for filing with the Office of Managing Director is one original and four copies of Airen Broadcasting Company's ("Airen") Petition for Waiver of Regulatory Fees ("Petition") for fiscal years 2009 and 2010. Airen has submitted full payment of the assessed regulatory fees electronically and encloses herein at Exhibit A to the Petition a true and correct copy of its regulatory fee remittances, FCC Forms 159.

Also enclosed is a "stamp & receipt" copy of the Petition for return-receipt purposes. For your convenience a self-addressed stamped envelope is provided to return the stamp-receipted copy.

Thank you for your assistance with this matter. If you require any additional information in support of this request or have any questions regarding the enclosed documents, please feel free to contact me at the address and phone number listed above.

Sincerely,


Suzanne E. Rogers
President

Enclosures

APR 20 2011

FCC Mail Room

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)
)
Airen Broadcasting Company)
)
Permittee of FM Broadcast Station KBAE)
Channel 238C3)
Trinidad, California)
Facility ID 164090)

FCC File No. BMPH-20070523ADS

To Managing Director, Office of Managing Director

PETITION FOR WAIVER OF REGULATORY FEES

Airen Broadcasting Company (“Airen”), permittee of commercial FM broadcast station KBAE (formerly KZCC) (FM), Trinidad, California, Facility ID 164090 (“Station”), hereby petitions the Commission for a waiver and refund of the Station’s 2009 and 2010 regulatory fees due to the continuing tolled status of the Station’s construction permit, File Number BMPH-20070523ADS (“Permit”) which became effective November 19, 2007. In support of its Petition, Airen submits that the good cause and public interest standards of 47 U.S.C. § 159(d) and Section 1.1166 of the Commission’s Rules (47 C.F.R. §1166) have been met, and, specifically, that “extraordinary and compelling circumstances” exist which outweigh the public interest in reimbursing the Commission for its regulatory costs as to Airen’s Permit.¹ Airen declares the following in support of this submission.

1. The Station’s modified Permit, authorizing the Station to serve the community of Trinidad, California, was tolled as of November 19, 2007, by the December 9, 2008 *Letter from*

¹See *In Re* Implementation of Section 9 of the Communications Act, 59 F.R. 30984 (June 16, 1994), 9 FCC Rcd 5333 ¶ 29 (1994) (hereinafter “FY 1994 Report and Order”).

Peter H. Doyle, Chief, Audio Division, Media Bureau, FCC, to Ernest T. Sanchez, Esq., et al., DA 08-2676 ("2008 Letter Decision"), which, *inter alia*, placed a condition on the Permit which is beyond the control of Airen. The Permit was further tolled following Airen's December 17, 2008 Request for Further Tolling; and it will remain as such for three months and four days following the satisfaction of the fourth special operating condition placed on the Permit by the *2008 Letter Decision*.

2. In addition, because the Station cannot satisfy the fourth special operating condition of its Permit, it has been operating since the *2008 Letter Decision* pursuant to renewable 180-day Special Temporary Authority and must repeatedly submit its extension request therefor with a fee of \$170. To date, the Station has submitted four such requests and fees.

3. Accordingly, Airen has not been in possession of an operational construction permit since November 19, 2007 (including on October 1, 2009, and October 1, 2010, the dates for determining 2009 and 2010 regulatory fee obligations, respectively), and instead operates pursuant to Special Temporary Authority for which Airen pays separate fees. For these reasons, Airen believes that good cause exists for waiver of the \$650.00 2009 regulatory fee (PTC Code 0916) and the \$675.00 2010 regulatory fee (PTC Code 1016) for its tolled Permit with respect to the Station, and that indeed, "extraordinary and compelling circumstances" exist which "override the public interest in reimbursing the Commission for its regulatory costs."²

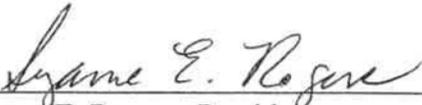
5. Airen has timely remitted the full \$650.00 2009 regulatory fee and \$675.00 2010 regulatory fee (*see* copies of electronic File Copies of FCC Online Payment Receipts, FCC Forms 159, attached hereto at Exhibit A).

²*See* FY 1994 Report and Order, *supra* note 1.

Pursuant to the facts set forth above and in accordance with 47 U.S.C. § 159(d), 47 C.F.R. § 1166, and the policy stated in the FY 1994 *Report and Order*, Airen requests a waiver and refund of its regulatory fees for fiscal years 2009 and 2010. Airen requests that this refund be tendered at the earliest possible date.

Respectfully submitted,

Airen Broadcasting Company

By: 
Suzanne E. Rogers, President

Dated: April 18, 2011

Adama

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

DEC 14 2011

OFFICE OF
MANAGING DIRECTOR

David G. O'Neil, Esq.
Rini Coran, PC
1140 19th Street, NW, Suite 600
Washington, DC 20036

Re: Black Crow Companies, et al.
FY 2011 Regulatory Fee Waiver Request
Filed: 9-7-11
Fee Control No. RROG-11-00013811
Regulatory Fee Amount: \$ 46,060.00

Dear Mr. O'Neil:

This letter responds to the above-referenced request for waiver of regulatory fees filed on the grounds of financial hardship ("Regulatory Fees"). Our records reflect that the Regulatory Fees at issue have not been paid. For the reasons stated herein, your waiver request is granted.

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. Such fees may be waived, reduced or deferred, but only upon a showing of good cause and a finding that the public interest will be served thereby.¹ The Commission has narrowly interpreted its waiver authority to require a showing of compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.² Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee's ability to serve the public.³ "Mere allegations or documentation of financial loss, standing alone," do not suffice and "it [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public."⁴

¹ 47 U.S.C. §159(d); 47 C.F.R. § 1.1166. See also Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for Fiscal Year 1994, Report and Order, 9 FCC Rcd 5333, 5344 (1994), recon. denied, 10 FCC Rcd 12759 (1995).

² 9 FCC Rcd at 5344 ¶ 29.

³ 10 FCC Rcd at 12761-62 ¶ 13.

⁴ Id.

Where relevant, the fact that the licensee is in bankruptcy or related receivership⁵ may be evidence of financial hardship; however, that fact will not relieve the petitioner of meeting its standard. Thus, we review each request, including those in which bankruptcy or receivership is asserted, on a case-by-case basis to determine whether the public interest warrants a waiver of the fee, and we may decline such a request.⁶ Under all the circumstances of this case, including our review of the materials you submitted and the facts, we find that waiver of the fee is appropriate.

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

⁵ We require evidence that the licensee is in bankruptcy or receivership based upon appropriate financial purposes, *e.g.*, to protect, preserve, and potentially enhance the value of the assets and maintain operations.

⁶ In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Report and Order*, 18 FCC Rcd 15985, 15989-90, ¶¶ 11, 13, 14 (2003).

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

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DEC 9 2011

OFFICE OF
MANAGING DIRECTOR

Andrew D. Lipman, Esq.
Ulises R. Pin, Esq.
Bingham McCutchen LLP
2020 K Street, NW
Washington, DC 20006

Re: Cable & Wireless America Systems,
Inc., Fiscal Year 2010 Regulatory Fee
Fee Control No. RROG-10-00013439

Dear Counsel:

This is in response to your request filed March 1, 2011 (*Reconsideration Request*), that the Office of Managing Director (OMD) reconsider its decision denying Cable and Wireless America Systems, Inc. (CWA) a waiver of the penalty for late payment of the Fiscal Year (FY) 2010 regulatory fee associated with the private Apollo submarine cable system (Apollo system).¹ Our records reflect that CWA has paid the \$233,950.00 regulatory fee and the \$58,487.50 penalty. For the reasons stated herein, we deny your request.

In support of your underlying request for waiver of the penalty for late payment of the FY 2010 regulation fees, you asserted that CWA had anticipated that the due date for filing FY 2010 regulatory fees would be on September 22, 2010, because the FY 2009 regulatory fees were due on September 22, 2009, and that CWA had a history of timely payment of regulatory fees.² In the *2011 Letter*, OMD found that CWA had not presented circumstances sufficient to mitigate its responsibility as a licensee to apprise itself of the obligation to pay the FY 2010 regulatory fees by the announced deadline of August 31, 2010.³ OMD determined that CWA had ample notice of the filing deadline to ensure compliance with its FY 2010 regulatory fee payment obligations, and that CWA's confusion regarding the filing deadline does not provide sufficient grounds for a waiver of the regulatory fee rules.⁴ OMD found that CWA's prior history of timely payment of the regulatory fee likewise does not support a waiver of the penalty and therefore denied CWA's waiver request.⁵

¹ See letter from Mark Stephens, Chief Financial Officer, OMD, FCC, to Richard Elliott, Managing Director, Apollo Submarine Cable System Ltd. (Jan. 20, 2011) (*2011 Letter*). Although you style the instant request for relief as an application for review, because you rely on questions of fact upon which OMD has not been afforded an opportunity to pass (*see infra* paragraph 3), we treat your filing as a petition for reconsideration. See 47 C.F.R. § 1.115(c).

² *Id.* at para. 2.

³ *Id.*

⁴ *Id.* at para. 5.

⁵ *Id.* at para. 6 (also stating that Section 9(c)(1) of the Communications Act, 47 U.S.C. § 159(c)(1), does not limit the late payment to regulatees whose failure to pay was knowing or willful).

As an initial matter, we note that your application for review relies upon facts not presented in your initial waiver request. We have determined that the public interest in the expeditious resolution of this matter would best be served by treating the instant pleading as a petition for reconsideration.⁶ In your petition for reconsideration, you assert for the first time that on August 9, 2010, CWA attempted to pay the FY 2010 regulatory fee before the August 31, 2010, filing deadline, but was unable to do so because the FCC's Fee Filer system "inaccurately" indicted that CWA had "a zero balance and would not generate the required [Form 159-E] remittance voucher."⁷ You maintain that after encountering the problem with the Fee Filer system, CWA (through its corporate parent Apollo Submarine Cable System Ltd. (Apollo Ltd.)) immediately sent an email requesting assistance to arinquiries@fcc.gov, "the email address specified in the FCC's Public Notice regarding FY 2010 regulatory fees for filers requiring assistance."⁸ You state that CWA did not receive a response to the August 9, 2010, email and that on September 8, 2010, CWA successfully logged into the Fee Filer system and paid the regulatory fee.⁹ You contend that CWA was unable to pay the fee on time due to an "undiagnosed" "technical difficulty related to the Fee Filer system" that was "completely beyond CWA's control[.]"¹⁰ You maintain that because CWA has been subject to the regulatory fees only since 2009, it did not understand that a penalty would be imposed for missing the filing deadline.¹¹ You claim that CWA anticipated that payment of the regulatory fee for FY 2010 would be in the same timeframe as for FY 2009, *i.e.*, early September.¹²

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.¹³ 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."¹⁴ 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."¹⁵ For FY 2010, the deadline for paying regulatory fees was August 31, 2010.¹⁶

⁶ See Note to 47 C.F.R. §§ 1.115(c) and 1.106(c).

⁷ *Petition for Reconsideration* at 1; see also *id.* at 5 (noting that "[r]egulatory fee filers are now required to log into the Fee Filer system and generate a Form 159-E voucher" and citing *Public Notice, Fee Filer Mandatory for FY 2009 Regulatory Fee*, 24 FCC Rcd 10893, 10893, 10893 (Aug. 21, 2009)).

⁸ *Id.* at 3; see also *id.*, Exhibit A, email from Steve Morgan, Finance Director of Apollo Ltd., to arinquiries@fcc.gov (Aug. 9, 2010) (stating that CWA "will need to pay our fee advised as to when this will change or if there is anything [CWA] ... needs[s] to do online to generate the fee for 2010").

⁹ *Petition for Reconsideration* at 3.

¹⁰ *Id.* at 4 and 5.

¹¹ *Id.* at 1.

¹² *Id.* at 2.

¹³ 47 U.S.C. § 159(a)(1).

¹⁴ 47 U.S.C. § 159(c)(1).

¹⁵ 47 C.F.R. § 1.1164.

¹⁶ *Public Notice, FY 2009 Regulatory Fees Due No Later Than August 31, 2010, Eastern Time (ET)*, 25 FCC Rcd 10676 (Aug. 9, 2010) (*FY 2010 Filing Deadline Public Notice*).

CWA paid the FY 2010 regulatory fee on September 7, 2010, after the August 31, 2010, deadline for filing regulatory fees, 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.”¹⁷ You have not presented circumstances sufficient to mitigate your responsibility as a licensee to apprise yourself of your obligation to pay the FY 2010 regulatory fees by the announced deadline of August 31, 2010.¹⁸

In *Assessment and Collection of Regulatory Fees for Fiscal Year 2010*, 25 FCC Rcd 9278, 9279 (2010) (2010 Report and Order), which was adopted on July 8, 2010, and released on July 9, 2010, the Commission stated that “[c]onsistent with our established practice, we intend to collect these [FY 2010] regulatory fees during an August 2010 filing window.” On August 9, 2010, the Commission announced the August 31, 2010, due date for filing the FY 2010 regulatory fees.¹⁹ Given that the Commission announced an August 2010 filing window on July 9, 2010, and adopted the August 31, 2010, due date on August 9, 2010, we find that CWA had ample notice of the filing deadline to ensure compliance with its FY 2010 regulatory fee payment obligations.²⁰

Your claim that “undiagnosed,” “technical” issue with the Fee Filer system beyond CWA’s control caused the Fee Filer system to indicate erroneously that CWA had a “zero balance” and to fail to generate the Form 159-E does not support a waiver of the regulatory fee. Because CWA failed to complete accurately the “Add Fee Details” portion of the Form 159-E, the FCC’s Fee Filer system indicated that CWA did not owe a FY 2010 regulatory fee.²¹ The “Add Fee Details” form includes two field screens under “PTC” (Payment Type Code) and “Quantity,” which users must complete in order for the “Add Fee Details” form to reflect a licensee’s regulatory fee for the fiscal year; otherwise, the field screen under the heading “Fee Amount” on the “Add Fee Details” form will reflect a fee amount of “\$0.00,” and the user will not be able to generate an accurate Form 159-E.²² To help users complete the field screens, the “Add Fee Details” form includes a link entitled “Payment Type Code (PTC)” directing users to a page entitled “PTCs for Service Categories” that identifies the various service categories as well as the

¹⁷ 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).

¹⁸ See, e.g., *Call Plan USA* (OMD, Mar. 1, 2010); *1Stel, Inc.* (OMD, Apr. 22, 2010).

¹⁹ See *FY 2010 Filing Deadline Public Notice*.

²⁰ See *NextGen Telephone* (OMD, Apr. 22, 2010); *WUPS-FM* (OMD, Apr. 22, 2010).

²¹ After entering the Fee Filer system with the appropriate FCC Registration Number (FRN), password, fiscal year, and service category (in the instant case, “International & Satellite”), licensees such as CWA enter the Fee Filer “Add Fee Details” online form. The “Add Fee Details” web page form automatically will reflect the licensee’s FRN and name, as well as the relevant fiscal year and service category.

²² Fee Filer automatically calculates the regulatory fee in the field screen under the “Fee Amount” heading on the “Add Fee Details” form based on the information in the field screens under the “PTC” and “Quantity” headings. If, for example, there is no information in the field screen under the “Quantity” heading, then the field screen under the “Fee Amount” heading will register “\$0.00.”

associated payment type codes and regulatory fee amounts for the relevant fiscal year.²³ To further assist users, the “Add Fee Details” web page directs users to the online Fact Sheet for the particular service at issue.²⁴

The “Add Fee Details” web page also includes links identified with a question mark symbol (“?”) next to the “PTC” and “Quantity” headings that, when clicked, provide an explanation of what those two terms mean in terms of FCC Form 159. The question mark associated with the “PTC” heading explains that “This field represents Payment Type Code (Form 159, Box 24)[.]” The question mark associated with the “Quantity” heading explains that “This field represents Payment Type Code (Form 159, Box 25).” FCC Form 159 can be found on the FCC’s website, along with instructions for using the form.²⁵

Given all the information in the Fee Filer system, on the Commission’s website, and in the various documents released by the Commission regarding the use of the Fee Filer system and the payment of the regulatory fees as set forth here, CWA has provided insufficient grounds for waiver of the FY 2010 regulatory fee. CWA clearly knew, or reasonable should have known, that the required fee was due on August 31, 2010. Its failure to take any further action to pay the fee a month after its unsuccessful effort on August 9, 2010, constituted laches and does not warrant waiver of the penalty.

We further find that CWA’s prior history of timely payment of the regulatory fee likewise does not support a waiver of the FY 2010 regulatory fee.²⁶ Finally, Section 9(c)(1) does not limit the late payment penalty to regulatees whose failure to pay was knowing or willful. We therefore deny your request for waiver of the \$58,487.50 penalty for late payment of the FY 2010 regulatory fee.

²³ The “PTCs for Service Categories” online page lists the payment type code for FY 2010 for licensees with submarine cable systems of 20 Gbps or greater, such as CWA, as “1090” and the regulatory fee as \$233,950.00. The Commission also posted on its webpage a public notice specifically listing CWA as the licensee of Apollo system and identifying the FY 2010 regulatory fee owed and the associated payment type code. *See Public Notice, FY 2010 Regulatory Fees, Submarine Cable Systems*, Attachment (Aug. 11, 2010). We note that the 2010 *Report and Order* also identifies the FY 2010 regulatory fee for licensees with submarine cable systems of 20 Gbps or greater, such as CWA. *See 2010 Report and Order*, Appendix C (FY 2010 Schedule of Regulatory Fees, International Bearer Circuits – Submarine Cable).

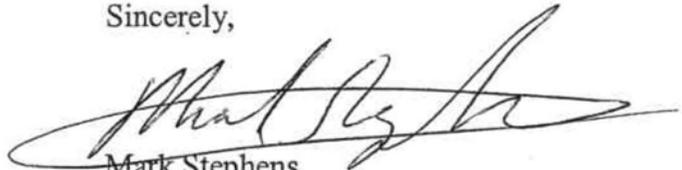
²⁴ The various Fact Sheets identify which licensees owe a regulatory fee and in what amount, when the regulatory fees are due, the payment type codes for the various services, and instructions on the mandatory use of the Fee Filer system to generate a Form 159-E voucher for the payment of regulatory fees. *See, e.g. Regulatory Fees Fact Sheet, What You Owe – International and Satellite Services Licensees for FY 2010* (August 2010).

²⁵ *See FCC Form 159, Remittance Advice*, Attachment, *Advice Reference Guide: How to Use FCC Form 159-Remittance Advice*, Item 24 (Payment Type Code) and Item 25 (Quantity – “Enter the total number of actions required with this submission. Refer to the FCC Fee Filing Guide or Public Notice for information concerning multiple requests.”).

²⁶ *See TWC Digital Phone, LLC* (OMD, Sept. 28, 2009); *Big River Telephone Company* (OMD, July 21, 2009).

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

Sincerely,

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

Mark Stephens

Chief Financial Officer

Ulises R. Pin
Direct Phone: (202) 373-6664
Direct Fax: (202) 373-6001
u.pin@bingham.com

RECEIVED

MAR 23 2011

**Financial Operations
Center**

FILED/ACCEPTED

MAR 1 - 2011

**Federal Communications Commission
Office of the Secretary**

February 10, 2011

VIA HAND DELIVERY

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

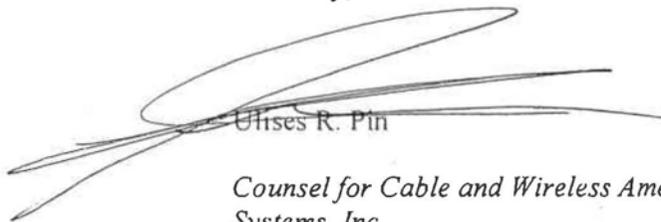
**Re: Application for Review of Cable and Wireless Americas Systems, Inc.; Fee
Control No. RROG-10-00013079**

Dear Ms. Dortch

On behalf of Cable and Wireless Americas Systems, Inc., enclosed for filing please find an original and fourteen (14) copies of the above-referenced Application for Review.

Please date-stamp the enclosed the extra copy of this filing and return it in the envelope provided. Please contact the undersigned with any questions.

Sincerely,



Ulises R. Pin

*Counsel for Cable and Wireless Americas
Systems, Inc.*

- Boston
- Hartford
- Hong Kong
- London
- Los Angeles
- New York
- Orange County
- San Francisco
- Santa Monica
- Silicon Valley
- Tokyo
- Washington

Bingham McCutchen LLP
2020 K Street NW
Washington, DC
20006-1806

T +1.202.373.6000
F +1.202.373.6001
bingham.com

previously noted to the OMD, CWA anticipated that payment of the regulatory fee would be in the same timeframe as in 2009 (*i.e.*, in early September). As such and even in the absence of a response by the FCC to CWA's requests for information, CWA remitted full payment of the applicable regulatory fee on September 8, 2010, merely eight days after the deadline set by the Commission.

Because (i) CWA made a good faith effort to timely pay 2010 regulatory fees for the Apollo system, (ii) of problems affecting the FCC's own internal systems and processes contributed to the late payment, and (iii) CWA paid the regulatory fee in the same time frame as it had done in the previous year, CWA requests a waiver of the 25% penalty for late payment imposed by Section 1.1164 of the Commission rules and prompt return of the \$58,487.50 penalty already paid to the Commission. Alternatively, CWA respectfully requests the Commission reduce the late penalty to a level that reflects CWA's good faith attempt to timely pay its regulatory fees and recognizes the Commission's current fee payment process introduces extrinsic factors beyond a filer's control that may prevent timely payment of fees.

I. Background

CWA holds FCC authority to land and operate the Apollo system, a ring configured trans-Atlantic submarine cable with landing stations in New Jersey and New York.¹ The Apollo system is a private submarine cable, and was not subject to annual FCC regulatory fees prior to 2009, when the Commission adopted a "new methodology for calculating regulatory fees from international submarine cable operators."² From 2009 forward, the Commission discontinued its longstanding policy of imposing regulatory fees exclusively on public submarine cables based on

¹ See FCC File No. SCL-LIC-20010122-00002.

² *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Second Report and Order, 24 FCC Rcd 4208, ¶ 1 (2009) ("*Submarine Cable Fee Order*").

the number of active 64 kbps common carrier circuits provisioned over the respective cable, and instead required all submarine cables landing in the U.S., public and private, to pay a flat fee per cable.³ During the inaugural year of the new regulatory fee methodology for submarine cables CWA timely paid the applicable fee for the Apollo system, which was due no later than September 22, 2009.⁴

In an effort to timely pay its fiscal year 2010 regulatory fees for the Apollo system and anticipating a filing deadline similar to that of fiscal year 2009, Steve Morgan, Finance Director of Apollo Submarine Cable System Ltd. (“Apollo Ltd”), logged in to the FCC Fee Filer system on August 9, 2010.⁵ However, after logging in to the Fee Filer system Mr. Morgan was unable to generate the required Form 159-E remittance voucher. Instead, the Fee Filer system indicated that CWA had a zero balance for fiscal year 2010 regulatory fees. After encountering this problem with the Fee Filer system Mr. Morgan forwarded email correspondence (attached as Exhibit A) requesting assistance to arinqueries@fcc.gov, the email address specified in the FCC’s Public Notice regarding fiscal year 2010 regulatory fees for filers requiring assistance.⁶ The Commission did not respond to Mr. Morgan’s inquiry, who was ultimately successful at logging into the Fee Filer system on September 8, 2010, at which time the applicable 2010 regulatory fee for the Apollo system was paid in full. To this date the Commission has failed to respond to Mr. Morgan’s request.

³ *Id.*

⁴ See *Payment Methods and Procedures for Fiscal Year 2009 Regulatory Fees*, Public Notice DA 09-1841 (rel. September 2, 2009) (“2009 Filing Deadline Public Notice”).

⁵ Apollo Submarine Cable System Ltd. is CWA’s parent and provides high level support regarding certain regulatory and financial matters.

⁶ See 2009 Filing Deadline Public Notice.

The facts above present a unique situation where a new FCC regulatory fee filer with only one prior opportunity to use the Fee Filer system attempted to file its fiscal year 2010 regulatory fees well in advance of the Commission's deadline, experienced technical difficulty related to the Fee Filer system, and then inadvertently missed the filing deadline waiting for FCC staff to help resolve the technical issue.

II. Justification for Waiver of Late Penalty

Pursuant to Section 1.3 of the Commission's Rules, the Commission may grant a waiver of the application of any of its rules "for good cause shown."⁷ The Commission may waive a rule where the specific facts make strict compliance with the rule inconsistent with the public interest.⁸ In addition, the Commission may take into account considerations of hardship.⁹ Thus, the Commission may waive its rules if special circumstances warrant such a waiver, and the waiver will serve the public interest.

Section 1.1164 of the Commission's rules states that "any 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."¹⁰ During prior evaluations of waiver requests from the penalty imposed under Section 1.1164 the Commission has required "extraordinary circumstances" as a prerequisite to grant a waiver because the "rules permit payment of regulatory fees in forms that would not be affected by extrinsic factors."¹¹

⁷ 47 C.F.R. § 1.3.

⁸ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

¹⁰ 47 C.F.R. § 1.1164.

¹¹ *In the Matter of Aerco Broadcasting Corporation*, Memorandum Opinion and Order, 16 FCC Rcd 15042, ¶ 6 (2001).

The current process for collecting regulatory fees, however, has introduced “extrinsic factors” that may prevent timely payment of fees regardless of the delivery mechanism for payment, and require a reevaluation of how the Commission treats waiver requests for late filed fees. Specifically, from 2009 forward the Commission has discontinued the acceptance of manually completed Form 159 remittance vouchers.¹² Regulatory fee filers are now required to log into the Fee Filer system and generate a Form 159-E voucher. As a result, to the extent that the Fee Filer system experiences internal errors, fails to update a filer’s records, or otherwise malfunctions, the filer is effectively prevented from paying fees until the Commission takes action and rectifies the problem within its internal electronic systems.

The instant situation involves a regulatory fee filer, CWA, that attempted to timely pay its fiscal year 2010 fees well in advance of the Commission’s due date, but was unable to complete payment as a result of an undiagnosed Fee Filer system issues that were extrinsic, unforeseen and completely beyond CWA’s control – the system indicated that CWA had a zero balance and would not generate a Form 159-E remittance voucher. When CWA encountered this problem it appropriately requested assistance from the Commission staff to rectify the issue, but never received guidance from Commission staff. As noted above, the Commission has yet to respond to Mr. Morgan’s August 9, 2010 request for assistance.

CWA, a sophomore regulatory fee filer, followed the Commission’s instructions to the letter. Had the Fee Filer system functioned properly, or, alternatively, had Commission staff responded to CWA’s request for assistance, the fiscal year 2010 regulatory fee for the Apollo system would have been paid in full and well in advance of the Commission’s August 31, 2010

¹² See *Fee Filer Mandatory for FY 2009 Regulatory Fees*, DA 09-1839, Public Notice (rel. Aug. 21, 2009).

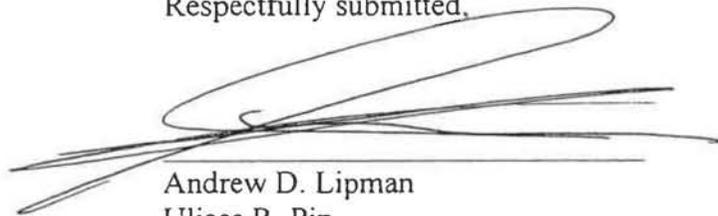
deadline. As previously noted by CWA, the deadline was moved forward by the Commission by more than three weeks. Under these circumstances, imposing a 25 percent penalty on CWA would result in an extreme hardship, would not be proportional with CWA's good faith efforts to timely pay its fees consistent with past practice and undermine the Commission's desire to encourage compliance with regulatory fee filing obligations and to make submarine cable regulatory fees equitable for all licensees.¹³

¹³ See *Submarine Cable Fee Order* at ¶¶ 1, 13-19.

III. Conclusion

For the above-stated reasons, Cable and Wireless Americas Systems, Inc., respectfully requests that the Commission reverse OMD's decision to impose a 25 percent penalty for late payment of regulatory fees associated with the Apollo submarine cable system for fiscal year 2010, and promptly refund the \$58,487.50 penalty paid by CWA. Alternatively, CWA respectfully requests the Commission reduce the late penalty to a level that reflects CWA's attempt to timely pay its regulatory fees and recognizes the Commission's current fee payment process introduces extrinsic factors beyond a filer's control that may prevent timely payment of fees.

Respectfully submitted,



Andrew D. Lipman
Ulises R. Pin
Bingham McCutchen LLP
2020 K Street, N.W.
Washington, D.C. 20006
(202) 373-6000

Counsel for Cable and Wireless
Americas Systems, Inc.

Dated: February 10, 2011

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

April 14, 2011

Richard Mullock
US Financial Controller
Cable & Wireless Worldwide
20110 Ashbrook Place, Suite 170
Ashburn, VA 20147

Re: Cable & Wireless Worldwide
FY 2010 Late Penalty Waiver Request
Filed 1-21-11
Fee Control No. RROG-10-00013381
Regulatory Fee Penalty Amount: \$ 56,365.00¹
Late Penalty Amount: \$ 14,091.25
Date Regulatory Fee Paid: 1-7-11
Date Late Penalty Paid: Not Paid

Dear Mr. Mullock:

This letter responds to the above-referenced request for waiver of the penalty for late payment of FY 2010 regulatory fees. 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.² 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."³ 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."⁴ For FY 2010, the deadline for paying regulatory fees was August 31, 2010.⁵ You paid the regulatory fee at issue after the due date and therefore failed to meet this obligation.

¹ The March 18, 2011, letter from Mark Stephens, Chief Financial Office, Office of Managing Director, FCC, Richard Mullock incorrectly stated the FY 2010 regulatory fee at issue was \$233,950.00.

² 47 U.S.C. §159(a)(1).

³ 47 U.S.C. §159(c)(1).

⁴ 47 C.F.R. §1.1164.

⁵ *Public Notice, FY 2010 Regulatory Fees Due No Later Than August 31, 2010, Eastern Time*

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.”⁶ In your request for waiver, you have not presented circumstances sufficient to mitigate the obligation to pay the regulatory fees at issue by the announced deadline. The Commission has routinely held these circumstances do not constitute clear mitigating circumstances:

- Allegations that the FCC’s records contain an incorrect mailing address. The FCC Registration Number (FRN) information (including the entity’s address) in the FCC database regarding a licensee is supplied by the licensee. The Commission requires entities to keep FRN information current either by updating the information on-line at the CORES link at www.fcc.gov or by filing FCC Form 161.⁷
- Assertions that a licensee had staff turnover or a death of a staff member, mailed its fee check to the wrong place, forgot or lost its password to the Fee Filer system, or had an employee who failed to follow directions/made an administrative error.

These situations do support waiver of the Section 9(c)(1) penalty, which is waived “only in the most extraordinary circumstances.”⁸ The circumstances asserted in your waiver request, as explained above, do not constitute clear mitigating circumstances. Accordingly, your request for waiver and/or reduction of the penalty for late payment of the FY 2010 regulatory fee is denied.

If you did not pay FY 2010 regulatory fees and the associated late penalty in full, payment of the regulatory fees and late penalties is now due. The payments 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

⁶ 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).

⁷ See 47 C.F.R. §1.8002(b)(2); see also *Amendment of Parts 1, 21, 61, 73, 74 and 76 of the Commission’s Rules, Adoption of a Mandatory FCC Registration Number, Report and Order*, 16 FCC Rcd 16138 (2001).

⁸ *McLeodUSA Telecommunications Services, Inc., Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589 (2004) (denying the request for waiver of 25 percent penalty).

RROG-10-00013381

20110 ASHBROOK PLACE, SUITE 170, ASHBURN, VA 20147
TEL +1 (571) 223 3224 FAX +1 (571) 223 3238 WWW.CW.COM

FEDERAL COMMUNICATIONS COMMISSION
445 12TH STREET SW
WASHINGTON, DC 20554

Cable&Wireless
Worldwide

January 21, 2011

To Whom it May Concern:

Please accept this letter as a request for abatement of penalty and interest on the late ITSP payment for Cable & Wireless Americas Operations, Inc. FRN 0009579954. It was not our intent to pay this fee late and as soon as we realized we mailed a check for the payment. We are a small company and historically we have paid all of our FCC fee's on time. We were erroneously awaiting an invoice that would state the amount of money that was due including the due date. We did not receive any notification that the amount was due or, once our account had become delinquent, receive notification of our red light status either (if there is a way to have this happen, please advise us how). We accept that it is our responsibility to insure that we pay what we owe and in the future will be extra diligent in monitoring our account with the FCC.

On January 3, 2011 we mailed check number #18566 for \$56,365.00 as payment for the fee portion of what we owe. A copy of the remittance advice is attached. We confirmed that this check did in fact clear the bank on January 10, 2011. We would like to confirm that this payment has been applied correctly to the balance on our account.

Thank you for your consideration and please note that we take our compliance with FCC rules and fees seriously and will most certainly take every step in the future to keep ourselves compliant with our responsibilities.

Sincerely,



Richard Mullock

US Financial Controller

Cable&Wireless Worldwide