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FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

NOV 14 2012

OFFICE OF
MANAGING DIRECTOR

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

Re: Waiver Request (Financial Hardship; 47 C.F.R.
§§ 1.1166, 1.1910)
Licensee/Applicant: STi Prepaid, LLC
Station: N/A
FY 2011 Regulatory Fee
Fee Control No. RROG-11-00013869

Dear Ms. Kiser:

This letter responds to Licensee's *Request*¹ for waiver and deferral of the required Fiscal Year (FY) 2011 regulatory fees due for STi Prepaid, LLC (STi or Licensee). Our records reflect that the FY 2011 fees have not been paid, and that Licensee is delinquent in its contributions to the Telecommunications Relay Service (TRS) fund. For the reasons stated herein, we deny the *Request*.

Licensee contends that payment of the regulatory fee would cause "STi Prepaid a significant financial hardship."² Specifically, Licensee asserts that it "cannot pay [its] regulatory fee if it is to continue as an ongoing competitive provider"³ and that Licensee's financials demonstrate financial hardship exacerbated by a shortage of cash and enumerated problems with vendors and distributors of its services,⁴ including "business practices in the prepaid calling card industry and certain unforeseen bad debts."⁵ Licensee states that its federal regulatory obligations represent a significant portion of its interstate telecommunications revenues,⁶ and that Licensee "cannot readily pass [the] costs onto its customers in the same way as other types of telecommunications carriers."⁷

¹ Letter from Cherie R. Kiser, Esq., and Angela F. Collins, Esq., Cahill Gordon & Reindel, LLP, Suite 950, 1990 K Street, N.W., Washington, DC 20006-1181 to Marlene H. Dortch, Office of the Secretary, FCC, 455 12th Street, S.W., Washington, DC 20554 (Sep. 14, 2011)(*Request*).

² *Id.* at 2.

³ *Id.*

⁴ *Id.* at 3.

⁵ *Id.* at 5.

⁶ *Id.* at 4.

⁷ *Id.*

Further, Licensee asserts it is required to “pay regulatory fees that are both grossly excessive and out of proportion to that required of other carriers.”⁸ In that regard, Licensee maintains it is a very small carrier compared to thousands of other larger carriers, which should be proportionally sharing the burden of the regulatory fees.⁹ Furthermore, Licensee avers that its regulatory fees fund a large proportion of the total regulatory fee fund; however, its “activities impose little, if any, demands on the Commission’s resources” resulting in “excessive fees [that] places [Licensee] at a severe competitive disadvantage as a provider of prepaid calling card services.”¹⁰

Additionally, Licensee claims that the amount it allocated to depreciation and amortization through July 2011 “has no bearing on [Licensee’s] ability to pay the FY 2011 regulatory fees at present.”¹¹ Moreover, “the depreciation deduction is “an arbitrary measure” ignores other critical factors,”¹² such as Licensee’s need to “upgrade and buy new equipment to be a viable competitor in today’s prepaid market.”¹³ Licensee claims, for example, that as a small telecommunications businesses, it is vital to the nation’s economic health and the welfare of the nation’s workers,’ and businesses with such status “warrant special consideration by the Commission because of [the business’s] centrality to the competitive nationwide telecommunications marketplace.”¹⁴

First, we note that because Licensee is delinquent in its required contributions¹⁵ to the TRS fund, we withhold action on your request.¹⁶ However, even if Licensee was current in paying its obligations, we would, in the alternative, deny the Request.

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, and it may be waived, reduced, or deferred upon a showing of good cause and a finding that the public interest will be served thereby.¹⁷ The Commission has narrowly interpreted its waiver authority to require a showing of extraordinary and compelling circumstances that outweigh the public interest in recouping the Commission’s regulatory costs.¹⁸ Fee relief may be granted based

⁸ *Id.* at 6.

⁹ *Id.*

¹⁰ *Id.* at 7.

¹¹ *Id.* at 6.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 7-8.

¹⁵ Our records show that the TRS fund administrator transferred to the FCC approximately \$1,017,478.46 of Licensee’s delinquent debts, and that Licensee owes approximately \$1,478,522.26 to the TRS fund administrator.

¹⁶ Under 47 C.F.R. § 1.1910(b)(2), “Action will be withheld on applications, including on a petition for reconsideration or any application for review of a fee determination, or requests for authorization by any entity found to be delinquent in its debt to the Commission”

¹⁷ 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 the 1994 Fiscal Year, *Report and Order*, 9 FCC Rcd 5333, 5344 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995).

¹⁸ 9 FCC Rcd at 5344 ¶ 29; In *The Matter of Phoenix Broadcasting, Inc. Stations KSWD and KPFN Seward, Alaska*, *Memorandum Opinion and Order*, 18 FCC Rcd 26464, 26446, ¶¶ 5-6 (2003) (“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. . . . [I]n the absence of a documented showing of insufficient funds to pay the

on a “sufficient showing of financial hardship.”¹⁹ In such matters, however, “[m]ere 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.”²⁰ Thus, in order to establish a basis for waiver predicated on financial need, the regulatee must provide financial documents including, *e.g.*, a licensee’s balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), 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. On this information, the Commission considers on a case-by-case basis whether the licensee met the standard to show the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.²¹ Thus, for example, even if a station loses money, any funds paid to principals and deductions for depreciation or amortization are considered funds available to pay the fees.

Although Licensee presented certain financial information and presented a discussion of that information, the information fails to establish grounds to waive the fee.

Licensee’s financial loss in the first seven months of the 2011 calendar year is offset fully by a depreciation deduction. In that situation, the Commission considers depreciation deductions to be funds available to pay the regulatory fee. Licensee’s expenditures in excess of depreciation deductions during the same time periods do not alter the fact that the depreciation deduction on the *2011 Income Statement* represents a non-cash expenditure. Under generally accepted accounting principles, depreciation is not taken into account when counting a company’s cash flow from operations because it is considered a non-cash expenditure. Moreover, Licensee’s expenditures “to upgrade and buy new equipment to be a viable competitor”²² executed strategic business decisions and, as such, were voluntary acts entirely within Licensee’s discretion and under its control.

Additionally, Licensee’s financial information is incomplete and contradicted. For example, Licensee asserts broadly that it experienced a decline in revenue, it cannot pass through certain costs to its customers, and it had difficulty with its distributor. Licensee does not, however, resolve its position with contradictory public information and settled facts bearing on both the business activities and financial matters.

First, we note other public information, which Licensee did not rebut or explain, that contradicts Licensee’s asserted financial difficulties. For example, on September 27, 2010, Licensee requested expedited Special Temporary Authority (STA) to allow it to operate under control of Vivaro Corporation.²³ The STA related to a request to transfer control, in which

regulatory fees, [applicant] has not made a compelling showing that overrides the public interest in the Commission’s recouping the costs of its regulatory activities.”).

¹⁹ 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) (*FY 1994 MO&O*).

²⁰ *Id.*

²¹ *Id.*

²² *Request* at 6.

²³ Letter from David L. Nace, Lukas, Nace, Gutierrez & Sachs, LLP, 8300 Greensboro Dr., Suite 1200, McLean, VA 22102 to Marlene H. Dortch, Secretary, FCC, Washington, DC 20554 (Sep. 27, 2010).

Licensee would remain the surviving entity in a merger with Vivaro Acquisition, LLC (Vivaro Acquisition), a subsidiary of Vivaro Corporation (Vivaro). Licensee asserted in the STA that Vivaro “has the financial resources to assure that financial commitments of [Licensee] will be met” and that “Vivaro will be able to introduce efficiencies in operations that will allow for continuity of service at competitive prices” in a process likened as the ‘second passenger in the same car’ to the related companion transaction seeking authority to transfer of control of “Progress International, LLC, the parent company of Vivaro, to acquire control of Epana Networks, Inc. ... through an acquisition of Vivaro.”²⁴ Licensee also noted in its request for STA that the transaction “will provide financial stability and efficiencies”²⁵ It seems that Grupo Marcatel shared this favorable financial projection when Grupo Marcatel acquired Vivaro and Licensee,²⁶ which were described as “two of the top companies dedicated to the sale and distribution of pre-paid calling cards in the United States.”²⁷

A timely press release announced, “while other companies suffered losses, both Vivaro and STi experienced a fast 25% growth in their prepaid calling card sales ... the combined sales of both companies reach over 260 million cards per year with a price range of \$2, \$5 and \$10, which are distributed in more than 25 thousand stores, throughout one of the largest distribution networks in the United States, and will generate for Grupo Marcatel nearly \$1 billion dollars in annual sales.”²⁸ Later, on July 11, 2011, Grupo Marcatel announced that “the integration of these companies represented a 700% growth in revenue and a 60% growth in the prepaid calling card market share for the Grupo Marcatel, resulting in the creation of Vivaro Corporation, which has become the world's largest prepaid card company with revenue of more than \$700 million dollars.”²⁹ On February 3, 2012, Vivaro claimed it was “the leading provider of Prepaid Long Distance Calling Cards in the United States” with “aggressive expansion plans in the first quarter of the year through its affiliates, STI Prepaid and Kare Distribution. The new expansion will solidify Vivaro’s position as the number one provider of Prepaid Long Distance Calling Cards and Telecommunications Services in the country”³⁰ Vivaro shared this view by promoting itself as “profitable and cash flow positive ... offer[ing] industry leading products and services that are expanding rapidly to meet the needs of its consumer base”³¹ with a “strong international presence and regional offices throughout the United States.”³²

²⁴ *Id.* at 2.

²⁵ *Id.*

²⁶ *Id.*

²⁷ See <http://www.prnewswire.com/news-releases/grupo-marcatel-becomes-the-largest-pre-paid-calling-card-company-in-the-world-105916008.html>.

²⁸ *Id.*

²⁹ See <http://www.prnewswire.com/news-releases/grupo-marcatel-consolidates-its-presence-in-the-prepaid-card-industry-125623938.html>.

³⁰ http://www.bizjournals.com/prnewswire/press_releases/2012/02/03/NY47700.

³¹ See http://www.vivarocorp.com/About_Us/Who_We_Are/.

³² *Id.*

Moreover, Licensee asserted financial difficulties with “one of [its] major distributors,”³³ but, Licensee did not disclose that Kare Distribution,³⁴ its affiliate³⁵ and a subsidiary of Vivaro Corporation “built the largest Hispanic distribution network in the United States,”³⁶ and it “distributes the largest numbers of prepaid telecommunications products to Mexico, as well as other Latin American destinations.” Without Licensee’s explanation of this public information, we are left to infer that Kare Distributions is the unnamed “major distributor” that allegedly contributed to Licensee’s financial problems, but, as noted above, solidified Vivaro’s premier position. Finally, Licensee asserted that “[a]s a prepaid calling card service provider, [Licensee] cannot readily pass these costs onto its customers in the same way as other types of telecommunications carriers.”³⁷ Despite the several possible meanings from that assertion, *e.g.*, the comparative ease that some providers have in passing on costs to end users or the relative ease or similarity in collection efforts with other providers, Licensee does not state in its *Request* or note in the financial documents whether it collects such costs and, if so, in what annual amount. We do not accept this unsubstantiated and speculative assertion as establishing financial hardship or extraordinary circumstances, and thus, deny the *Request* on that ground.

With respect to Licensee’s assertion that the Commission’s methodology for calculating regulatory fees imposes a disparate burden,³⁸ we note that Licensee raised substantially similar arguments in response to the Commission’s request for comment on the subject of regulatory fees applicable to Interstate Telecommunications Service Providers (ITSPs), including the methodology for assessing regulatory fees for ITSPs, in *Assessment and Collection of Regulatory Fees for Fiscal Year 2008, Report and Order and Further Notice of Proposed Rulemaking*, 24 FCC Rcd 6389, 6405 (2008) (*FY 2008 Further Notice of Proposed Rulemaking*, which the Commission addressed in the *2010 Report and Order*.³⁹ Specifically, the Commission noted

Because the comments to our question did not provide sufficient detail, we are unable to ascertain exactly how the collection of fees from end users has affected the operation of the ITSP service providers or to what extent a shift in the amount of the payment would be warranted to address the alleged competitive disadvantage or provide warranted relief to ITSP service providers.

Moreover, ... reducing the fees paid by ITSP providers will increase the fees paid by licensees in other service categories ... [thus, u]nless we revisit the fee schedule in light of all the shifts that have occurred in the market for telecommunications services, and consider carefully what further changes may occur in the foreseeable future, we may succeed in addressing one anomaly while

³³ *Request* at 5.

³⁴ See <http://www.karedistribution.com/Home/>.

³⁵ http://www.karedistribution.com/About_Us/affiliates/; http://www.vivarocorp.com/About_Us/our_companies/.

³⁶ http://www.karedistribution.com/About_Us/who_we_are/.

³⁷ *Request* at 4.

³⁸ *Request* at 6.

³⁹ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2010, Report and Order*, 25 FCC Rcd 9278, 9288 (2010) (*2010 Report and Order*) (summarizing Licensee’s arguments in response to the issues raised in the *FY 2008 Further Notice of Proposed Rulemaking* relative to ITSPs).

unintentionally creating others.⁴⁰

The Commission determined it would not to change the methodology for assessing regulatory fees for ITSPs but, instead, review the issue in the future “in the context of fundamental reform.”⁴¹ Since its earlier comment, Licensee has not added more precise information, instead it relies on a broad assertion that Licensee’s share is a significant percentage of the total collected for regulatory fees, and that Licensee is a “very small carrier in the United States.” Missing from that position are an analysis of the points asserted and factual information establishing the existence of the alleged burden. Even so, the Commission decided to address the matter as part of a more comprehensive rulemaking proceeding in the future. Licensee did not establish that the Commission’s current rules require Licensee to bear a disproportionate share of the regulatory fee.

Furthermore, Licensee’s contention that it should receive relief because its activities impose few demands on the Commission’s resources has been considered and rejected. The Commission consistently has “reject[ed] arguments that regulatory fees must be precisely calibrated, on a service-by-service basis, to the actual costs of the Commission’s regulatory activities for that service.”⁴² Indeed, Licensee has actual knowledge of some of the Commission’s regulatory activities that involve considerable time and effort.⁴³ Furthermore, Licensee’s contention that its status as a small business warrants “special consideration” because such entities are vital to the nation’s economic health and its workers’ welfare lacks any articulated rationale why it, in particular, warrants special treatment. The assertion applies broadly to all small businesses and, in effect, requests modification of the rule for an entire class. Such changes may only be instituted through a rulemaking proceeding.⁴⁴ We therefore find that Licensee did not demonstrate extraordinary and compelling circumstances warranting a waiver. Accordingly, Licensee’s *Request* is denied.

Licensee requested confidential treatment of the submitted financial data. Pursuant to section 0.459(d)(1) of the Commission’s rules, 47 C.F.R. §0.459(d)(1), we do not routinely rule on requests for confidential treatment until we receive a request for access to the records. The records are treated confidentially in the meantime.

Payment of \$1,057,952.00, Licensee’s FY 2011 regulatory fees is now due,⁴⁵ and that amount must be received, together with a Form 159 (copy enclosed), within 30 days of the date of this letter. If Licensee’s full payment of that amount is not received by that date, any unpaid

⁴⁰ *Id.* at 9289, ¶¶ 29-30.

⁴¹ *Id.* at 9288-90. The Commission stated that “[i]n a separate and forthcoming action,” it would “further examine the nature and extent of all changes that need to be made to our regulatory fee schedule and calculations.” *Id.* at 9290.

⁴² Assessment and Collection of Regulatory Fees for Fiscal Year 2004, 19 FCC Rcd 11662, 11665 (2004); see also Assessment and Collection of Regulatory Fees for Fiscal Year 1997, 12 FCC Rcd 17161, 17171-2 (1997); Assessment and Collection of Regulatory Fees for Fiscal Year 1995, 10 FCC Rcd. 13512, 13524 (1995); Assessment and Collection of Regulatory Fees for Fiscal Year 1998, Report and Order, MD Docket No. 98-36, FCC 98-115, 1998 WL 320272, para. 15 (1998).

⁴³ See *In the Matter of STI Prepaid, LLC, Notice of Apparent Liability for Forfeiture*, 25 FCC Rcd 17836 (2010).

⁴⁴ Section 1.1166 of the rules specifically states that “[r]equests for waivers, reductions or deferrals of regulatory fees for entire categories of payors will not be considered.” 47 C.F.R. §1.1166.

⁴⁵ By this letter, we also grant Licensee’s petition for a deferral, the period of which has now ended.

portion of the debt will be delinquent, and such amount, we will assess the statutory penalty of 25% of the unpaid fee,⁴⁶ and assess interest and applicable additional penalties and charges required by 31 U.S.C. § 3717(e) that will accrue from the date of this letter. Furthermore, under the law,⁴⁷ the Commission will initiate collection proceedings. If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark Stephens
Chief Financial Officer

Enclosure

⁴⁶ 47 U.S.C. § 159(c)(1). *See* 9 FCC Rcd at 5346, ¶ 35 (“the petitioner will have 30 days to [pay the fee] in order to avoid the assessment of penalty charges and the invocation of any other available remedy. The filing of a petition for reconsideration will not toll this 30-day period.”).

⁴⁷ *See* 47 C.F.R. § 1.1901, *et seq.*