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FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OCT 10 2012

OFFICE OF
MANAGING DIRECTOR

Ms. Ivy Libramonte
TransPac Telecom, Inc.
2377 Crenshaw Blvd.
Suite 250
Torrance, CA 90501

Re: Waiver Request (Late Payment Penalty; 47
U.S.C. § 159(c)(1), 31 U.S.C. § 3717, 47 C.F.R. §§
1.1164, 1.1166)
Licensee/Applicant: TransPac Telecom, Inc.
Station: N/A
Fee: FY 2011 Regulatory Fee Late Fee
Date Request Filed: Mar. 16, 2012
Date Regulatory Fee Paid: Apr. 3, 2012
Date Regulatory Late Penalty and Charges Paid:
Apr. 3, 2012
Fee Control No.: RROG-11-00014232

Dear Ms. Libramonte:

This responds to Licensee's *Request*¹ for waiver and refund of the penalty and associated charges for late payment of the FY 2011 regulatory fees. For the reasons stated herein, we must deny the *Request*.

Under 47 U.S.C. § 159 and the Commission's implementing rules, we are required to "assess and collect regulatory fees" to recover the costs of the Commission's regulatory activities,² and when the required payment is received late or it is incomplete, and it is "not excused by bank error,"³ then to assess a penalty equal to "25 percent of the amount of the fee which was not paid in a timely manner."⁴ Thereafter, as required by the law,⁵ from the date of delinquency, we assess interest, penalties, and administrative charges for collection.

¹ Email from Ivy Libramonte (ivylibramonte@tpactel.com) to ARINQUIRIES (ARINQUIRIES@fcc.gov) (Mar. 16, 2012)(*Request*).

² 47 U.S.C. § 159(a)(1); 47 C.F.R. § 1.1151.

³ 47 C.F.R. § 1.1164.

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

⁵ 31 U.S.C. § 3717; 47 C.F.R. §§ 1.1164(f)(4), 1.1940; In The Matter Of 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, 5354 ¶ 65 (1994) ("Included in the recovery of any delinquent fee will be an assessment of interest on the debt due, a penalty for nonpayment, and the allowable cost incurred due to the federal government in the collection process."); In The Matter Of Assessment And Collection Of Regulatory Fees For Fiscal Year 2010, *Report and Order*, 25 FCC Rcd 9278, 9297-98 ¶ 54 (2010) ("A late payment penalty of 25 percent of the unpaid amount of the required regulatory fee will be assessed on the first day following the deadline date for filing of these fees. Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including those set forth in section 1.1910 of the Commission's Rules and in the Debt Collection Improvement Act of 1996 ("DCIA").

For FY 2011, the deadline for paying regulatory fees was September 16, 2011.⁶ Licensee's payment was not received and credited until April 3, 2012, thus Licensee failed to meet its obligations. Licensee assertions that it "was unaware that the FCC had changed the payment process[, and that it] believed that, consistent with its past practice, the Commission would mail TransPac a Form 159 that would serve as its regulatory fee invoice"⁷ are not legal grounds or clear mitigating circumstances to waive collection of the penalty. The Commission has repeatedly held that "[l]icensees are expected to know and comply with the Commission's rules and regulations and will not be excused for violations thereof, absent clear mitigating circumstances."⁸

On May 14, 2009, the Commission proposed to mandate electronic filing of regulatory fee information through the agency's Fee Filer system.⁹ 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."¹⁰ On July 31, 2009, the Commission released its order adopting these proposals.¹¹ 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."¹² 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."¹³ On September 2, 2009, the Commission released a third public notice reiterating that "**HARDCOPY BILLS WILL NO LONGER BE MAILED BY THE FCC.**"¹⁴

We also assess administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the related debt pursuant to the DCIA and section 1.1940(d) of the Commission's rules. These administrative processing charges will be assessed on any delinquent regulatory fee, in addition to the 25 percent late charge penalty. In case of partial payments (underpayments) of regulatory fees, the licensee will be given credit for the amount paid, but if it is later determined that the fee paid is incorrect or not timely paid, then the 25 percent late charge penalty (and other charges and/or sanctions, as appropriate) will be assessed on the portion that is not paid in a timely manner."

⁶ See FY 2011 Regulatory Fees Due No Later Than September 14, 2011, Eastern Time, *Public Notice*, DA 11-1420 (Aug. 17, 2011); FY 2011 Regulatory Fee Deadline Is Extended To 11:59 PM ET, September 16, 2011, *Public Notice*, DA 11-1559 (Sep. 15, 2011).

⁷ *Request*.

⁸ See *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), citing *Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970); see also *NextGen Telephone* (OMD, Apr. 22, 2010); *Istel, Inc.* (OMD, Apr. 22, 2010).

⁹ Assessment and Collection of Regulatory Fees for Fiscal Year 2009, *Notice of Proposed Rulemaking and Order*, 24 FCC Rcd 5966, 5972 ¶ 16 (2009).

¹⁰ *Id.* at 5973 ¶ 20.

¹¹ 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*).

¹² *Id.* at 10309 ¶ 26.

¹³ *Fee Filer Mandatory for FY 2009 Regulatory Fees*, *Public Notice*, 24 FCC Rcd 10893 (Aug. 21, 2009).

¹⁴ Payment Methods and Procedures for Fiscal Year 2009 Regulatory Fees, *Public Notice*, 24 FCC Rcd 11513, 11514 (2009) (emphasis in original).

Similarly, the Commission's final order on the FY 2010 regulatory 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."¹⁵ This notification was part of the Commission's increased effort to notify licensees that hardcopy bills will no longer be mailed.¹⁶

Every licensee is obliged to make the fee payment by the deadline. In such cases, 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; indeed, the penalty for late payment applies even to situations where the deadline is missed by a short period of time.¹⁷ 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. As we explained, the penalty required by 47 U.S.C. § 159(c)(1) is not limited to situations where the failure to pay was knowing or willful. If it is to be waived, it is "only in the most extraordinary circumstances,"¹⁸ which are not described by Licensee's situation. Thus, we must deny Licensee's *Request*, and we cannot refund the penalty and charges.

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

Sincerely,



Mark Stephens
Chief Financial Officer

¹⁵ Assessment and Collection of Regulatory Fees for Fiscal Year 2010, *Report and Order*, 25 FCC Rcd 9278, 9291 ¶ 37 (2010).

¹⁶ See Assessment and Collection of Regulatory Fees for Fiscal Year 2010, *Notice of Proposed Rulemaking*, 25 FCC Rcd 3918, 3923 ¶ 12 (2010).

¹⁷ See *XO Communications, LLC* (OMD, Nov. 10, 2010).

¹⁸ *McLeodUSA Telecommunications Services, Inc.*, *Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589 (2004) (denying the request for waiver of 25 percent penalty).

Stephen French

From: Ivy Libramonte [ivyl@tpactel.com]
Sent: Friday, March 16, 2012 7:39 PM
To: ARINQUIRIES
Cc: Roland Helvajian; 'Mark Nakatsukasa'
Subject: FCC Regulatory Fee Demand Letter - Bill# BRF R11P826851 1

Dear FCC Revenue & Receivable Operations Group:

TransPac received your demand letter dated March 1, 2012, 2days ago, March 14, 2012 and it was sent to our old address. Please update TransPac's address to 2377 Crenshaw Blvd., Suite 250, Torrance, CA 90501. Moreso, TransPac humbly requests your good office to give us more time to verify the bill and pay for it.

Also, TransPac respectfully requests that the Commission waive the interest and penalties associated with this delinquent account because TransPac was unaware that it had fallen behind on its obligation to remit regulatory fees. Specifically, TransPac was unaware that the FCC had changed the payment process to one in which TransPac was obligated to log onto the Fees portal and download and pay its invoice. Rather, TransPac believed that, consistent with its past practice, the Commission would mail TransPac a Form 159 that would serve as its regulatory fee invoice. Now that TransPac understand the new payment system it will pay its regulatory fees on time, as they come due.

TransPac hopes for your consideration on the above matters.

Respectfully yours,
Mark Nakatsukasa
President

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