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**LNGS** | LUKAS,  
NACE,  
GUTIERREZ  
& SACHS, LLP

December 4, 2013

ConServe  
P.O. Box 1528  
Fairport, NY  
14450

Re: *Debt Validity Dispute and Waiver Request*  
U.S. Department of Treasury, FMS  
Debt ID: 201-329-0367  
ConServe Account #: 632104

To Whom It Concerns:

We represent InComm Solutions, Inc. (“InComm”) in connection with the debt collection notice identified above and dated November 5, 2013. The debt pertains to 2011 Federal Communications Commission (“FCC”) Regulatory Fees for which payment was finally demanded in writing in March 2012,<sup>1</sup> *after* InComm sold its entire business operations effective November 16, 2011.<sup>2</sup> With no staff to receive the notice, and with no business operations and revenue from which to pay this obligation, InComm respectfully requests – pursuant to 47 U.S.C. section 159(d) and 47 C.F.R. section 1.1166 – that for reasons of financial hardship, this obligation be reversed, along with associated, fees, penalties, and interest. In the alternative, InComm requests that fees, penalties, and interest in excess of the original principal amount plus the initial statutory late payment penalty (*i.e.*, amounts in excess of \$10,477.50) be reversed.

As part of the filing of this request, InComm intends on December 4, 2013 to wire a payment to ConServe in the amount of \$10,477.50, representing payment of the original principal amount due of \$8,382.00 plus the 25% statutory penalty amount of \$2095.50. This payment is offered in good faith and is not part of an offer of settlement. However, for the reasons described herein, InComm respectfully requests relief that would result in a refund of these amounts.

### Background

InComm was a family-owned business engaged in providing conference call services encompassing audio, video, and web-based platforms to clients in multiple industries and organizations. By emphasizing total quality and the highest level of client service, InComm developed a loyal client base of small to medium sized businesses for their event conferencing

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<sup>1</sup> See FCC Demand Letter, dated March 1, 2012. Attachment #1.

<sup>2</sup> See InComm Bill of Sale. Attachment #2.

and investor relations conferencing services. However, during and after the 2008 financial crisis, InComm's heavy reliance on clientele in the financial industry caused the company to suffer severely.

Meanwhile, effective October 1, 2008, the FCC ordered providers of audio bridging services such as InComm to begin reporting their revenues and to begin making contributions to the federal universal service fund based upon those revenues.<sup>3</sup> Although the FCC in the *InterCall Order* did not address the imposition of Regulatory Fees on entities such as *InComm*, this was a further obligation which flowed from the new revenue reporting obligations.

As InComm's management team struggled to keep the company going in the continuing aftermath of the financial crisis, it also struggled to comply with FCC revenue reporting obligations and related regulatory requirements.<sup>4</sup> Ultimately this struggle proved futile and – as a direct result of dramatically reduced revenue and debts stemming from the 2008 downturn<sup>5</sup> – InComm was forced to sell its assets and operations to a new company. This sale of the company's assets caused InComm to cease to exist as a going concern effective November 16, 2011.

After the sale, InComm had no paid staff in place to regularly monitor notices to the company. As a result, InComm did not receive and was not aware of the FCC Demand Letter (“Demand Notice”) dated March 1, 2012. InComm did not become aware of the debt until July 30, 2013, when it received a collection notice from the Department of Treasury which was dated July 23, 2013. InComm promptly requested proof of the indebtedness and was provided a copy of the Demand Notice. InComm now seeks to resolve this matter.

### Discussion and Request

The statute requiring the FCC to collect Regulatory Fees also provided the FCC with discretion to “waive [or] reduce . . . payment of a fee in any specific instance for good cause shown, where such action would promote the public interest.”<sup>6</sup> The FCC has recognized proof of financial hardship as establishing good and sufficient cause for granting a waivers of Regulatory Fees and

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<sup>3</sup> See *Request for Review by InterCall, Inc. of Decision of Universal Service Administrator*, CC Docket No. 96-45, Order, 23 FCC Rcd 10731, 10739 (2008) (“*InterCall Order*”), *recon. pet. denied*, WC Docket No. 06-122, CC Docket No. 96-45, Order on Reconsideration, FCC 12-10 (2012), *aff'd*, *The Conference Group LLC v. FCC*, case number 12-1124 (DC Cir. 2013).

<sup>4</sup> InComm has pending at the FCC a request for relief from double-collection of certain universal service fund obligations. See *Request for Review of Decision by InComm Solutions, Inc. of the Universal Service Administrator*, WC Docket No. 06-122 (filed Feb. 6, 2012).

<sup>5</sup> See InComm 2010 Tax Return. Attachment #3.

<sup>6</sup> See 47 U.S.C. § 159(d).

associated penalties. For example, in 2010 the FCC waived regulatory fees for a television station that was not operating on the date the fees were due.<sup>7</sup>

In InComm's case, the 2011 Regulatory Fees at issue were due September 16, 2011. InComm was in serious financial distress at that time and, as a direct result, two months later, InComm ceased to exist as a going concern.<sup>8</sup> InComm did not become aware of the obligation to pay 2011 Regulatory Fee until July 2013. To the extent InComm was responsible for being aware of this obligation prior to issuance by the FCC of the Demand Notice, InComm staff was overwhelmed by declining business prospects and urgent efforts to save or liquidate the business.

As indicated, InComm is tomorrow providing payment of the fees that were due on September 16, 2011, along with the 25% late penalty. For reasons of financial hardship – the fact that InComm has had zero revenue since November 16, 2011 and that losses prior to November 16, 2011 forced the sale and closure of the business – InComm respectfully requests that the initial fee of \$8,382.00 plus the 25% statutory penalty amount of \$2095.50 be reversed and refunded. At a minimum, InComm respectfully requests reversal of any interest, additional fees, and penalties beyond the principal and statutory penalty.

Please contact me if you have further questions.

Sincerely,



Jeffrey A. Mitchell  
Counsel for InComm Solutions, Inc.

Attachment #1 – FCC Demand Letter, dated Mar. 1, 2012

Attachment #2 – Bill of Sale, dated Nov. 16, 2011

Attachment #3 – InComm 2010 Federal Tax Return

Attachment #4 – In re Request for Waiver of FY 2009 by Pocatello Channel 15, LLC

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<sup>7</sup> See *Request for Waiver of FY 2009 Regulatory Fees by Pocatello Channel 15, LLC*, GEN Docket No. 86-285, Letter from Mark Stephens, FCC Chief Financial Officer, at 2 (Dec. 6, 2010) ("*Pocatello Letter*"). (Attachment 4).

<sup>8</sup> While we recognize that profit loss alone is not the determiner of "financial hardship – see *Pocatello Letter* at 2 – the 2010 Tax Return is provided as evidence supporting the reason for the closure and sale of the business which itself provides clear evidence of financial hardship.