

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

SEP 23 2013

OFFICE OF
MANAGING DIRECTOR

Rod Vasquez
Unitel, Inc.
2200 South Dixie Highway
Suite 401
Miami, FL 33133

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: Unitel, Inc.

Station: N/A

Fees: Fiscal Year (FY) 2011 Regulatory Fee Late Fee

Date Request Filed: Mar. 27, 2012

Date Regulatory Fees Paid: Apr. 16, 2012

Date Late Penalty Fees Paid: Apr. 16, 2012

Unpaid FY 2010 Reg Fees and Charges: \$3,105.59

Unpaid FY 2012 Reg Fees and Charges: \$2,416.03

Fee Control No.: RROG-11-00014258

Dear Mr. Vasquez:

This responds to Licensee's *Request*¹ for waiver and refund of the statutory penalty, interest and penalty charges, and collection charges (*penalties*) that accrued because Licensee did not pay its Fiscal Year (FY) 2011 regulatory fees. The Commission's records show Licensee is delinquent in paying non-tax debts to the Commission, e.g., FY 2010 and 2012 regulatory fees and penalties, and required contributions² to the Universal Service Fund that are collected by the fund administrator, the Universal Service Administrative Company. Thus, because Licensee's account is delinquent, under our rules,³ we dismiss. That ends the matter; however as a courtesy and, in the alternative, we explain why we deny the requested relief, even had Licensee paid all debts and accrued charges.⁴

¹ Email from Rod Vasquez [rod.vasquez@calldirek.com] to ARINQUIRES (ARINQUIRES@fcc.gov) (Mar. 27, 2012)(*Request*).

² See 47 C.F.R. § 54.706, *et seq.*

³ 47 C.F.R. §§ 1.1164(e) ("Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee The application may be resubmitted only if accompanied by the required regulatory fee and by any assessed penalty payment."); 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."); 1.1167(b) ("The filing of a petition for reconsideration or an application for review of a fee determination will not relieve licensees from the requirement that full and proper payment of the underlying fee payment be submitted"); 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").

⁴ 31 U.S.C. § 3717; 47 C.F.R. §§ 1.1164, 1.1940.

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,⁵ and "[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."⁶

Each year, the Commission establishes the final day on which payment must be received before it is considered late, *i.e.*, a deadline after which the Commission must assess charges that include the statutory late payment penalty required by 47 U.S.C. § 159(c)(1) and 47 C.F.R. § 1.1164, as well as interest, penalties, and charges of collection required by 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940. For FY 2010, FY 2011, and FY 2012, the deadlines were August 31, 2010,⁷ September 16, 2011,⁸ and September 13, 2012,⁹ respectively. We did not receive Licensee's payments by the specified deadlines, thus we assessed charges. Although Licensee's payment for the FY 2011 regulatory fee was received and credited on April 16, 2012, each other delinquent debt is a procedural barrier to Licensee's *Request*. Licensee's assertion that "[it] never received any previous communication or letter with the original amount to pay"¹⁰ is not a legal ground or clear mitigating circumstance to waive collection of the penalties. Repeatedly, the Commission has 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."¹¹

For example, the absence of a reminder notice is not an excuse. Indeed, beginning in 2009, the Commission provided ample notice that it would not be sending paper pre-bills to regulatees.

On May 14, 2009, the Commission proposed to mandate electronic filing of regulatory fee information through the agency's Fee Filer system.¹² 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."¹³ On July 31, 2009, the Commission released its order adopting these proposals,¹⁴ and notifying 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."¹⁵ Thereafter, 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

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

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

⁷ See FY 2010 Regulatory Fees Due No Later Than August 31, 2010, Eastern Time, *Public Notice*, DA 10-1451 (Aug. 9, 2010).

⁸ 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).

⁹ See FY 2012 Regulatory Fees Due No Later Than September 13, 2012, *Public Notice*, DA 12-1295 (Aug. 13, 2012) ("Filers must ensure that their regulatory fee payments are RECEIVED at the Commission's St. Louis, Missouri address by 11:59 PM on September 13, 2012, Eastern Daylight Time, to avoid incurring a 25 percent late-payment penalty, along with interest and other fees."); Reminder That FY 2012 Regulatory Fees Are Due No Later Than September 13, 2012, Eastern Time (ET), *Public Notice*, DA 12-1423 (Aug. 31, 2012), 27 FCC Rcd 10297 (2012).

¹⁰ *Request*.

¹¹ 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).

¹² *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Notice of Proposed Rulemaking and Order*, 24 FCC Rcd 5966, 5972, ¶ 16 (2009).

¹³ *Id.* at 5973, ¶ 20.

¹⁴ *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*).

¹⁵ *Id.* at 10309, ¶ 26.

be viewed by logging on the Fee Filer.”¹⁶ Finally, on September 2, 2009, the Commission released a third public notice that “**HARDCOPY BILLS WILL NO LONGER BE MAILED BY THE FCC.**”¹⁷

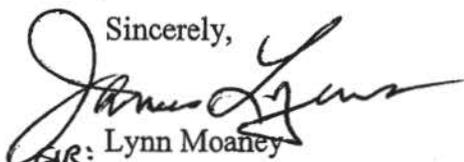
Similarly, the Commission’s final order on the FY 2010 regulatory fees reaffirmed that regulatees should “check[] the Commission’s website periodically beginning in July” in order to “ascertain the fee due date, and receive instructions on how to access Fee Filer, view their bill, and make a fee payment.”¹⁸ This notification was part of the Commission’s increased effort to notify licensees that hardcopy bills will no longer be mailed.¹⁹

Every licensee is obliged to make the fee payment by the deadline. 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; indeed, the penalty for late payment applies even to situations where the deadline is missed by a short period of time.²⁰ Furthermore, the penalty required by 47 U.S.C. § 159(c)(1) and charges required by 31 U.S.C. § 3717 are not limited to situations where the failure to pay was knowing or willful. If the penalty is to be waived, it is “only in the most extraordinary circumstances,”²¹ which Licensee did not establish. Thus, we deny the *Request*.

Payment of \$5,521.62, Licensee’s FY 2010 and FY 2012 regulatory fees is now due. Because charges continue to accrue until the debt is paid, Licensee should verify the payoff amount at the Commission’s Fee Filer web site. Under 31 U.S.C. § 3717,²² we are required to assess interest and applicable additional penalties and charges on delinquent debts. Furthermore, under 47 C.F.R. § 1.1910(b), Licensee is subject to the Commission’s red light rule, which means that the Commission will withhold action on any application filed or pending, and if the debt is not paid, or other satisfactory arrangements are not made, the Commission may dismiss the application. *See* 47 C.F.R. §§ 1.1108, 1.1109, 1.1116, and 1.1118. Additionally, any Commission action taken prior to the payment of delinquent non-tax debt owed to the Commission is contingent and subject to rescission. Finally, the Commission may collect amounts due by administrative offset.²³

If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,


Lynn Moaney
Acting Chief Financial Officer

¹⁶ *Fee Filer Mandatory for FY 2009 Regulatory Fees, Public Notice*, 24 FCC Rcd 10893 (Aug. 21, 2009).

¹⁷ *Payment Methods and Procedures for Fiscal Year 2009 Regulatory Fees, Public Notice*, 24 FCC Rcd 11513, 11514 (2009) (emphasis in original).

¹⁸ *Assessment and Collection of Regulatory Fees for Fiscal Year 2010, Report and Order*, 25 FCC Rcd 9278, 9291 ¶ 37 (2010).

¹⁹ *See Assessment and Collection of Regulatory Fees for Fiscal Year 2010, Notice of Proposed Rulemaking*, 25 FCC Rcd 3918, 3923 ¶ 12 (2010).

²⁰ *See XO Communications, LLC (OMD)*, Nov. 10, 2010).

²¹ *McLeodUSA Telecommunications Services, Inc., Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589 (2004) (denying the request for waiver of 25 percent penalty).

²² 31 U.S.C. § 3717; 47 C.F.R. § 1.1940.

²³ 47 C.F.R. § 1.1912.