

**DIGITAL EXPRESS, INC.**

September 18, 2008

Ann Cole, Commission Clerk  
Office of the Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

080477-TX

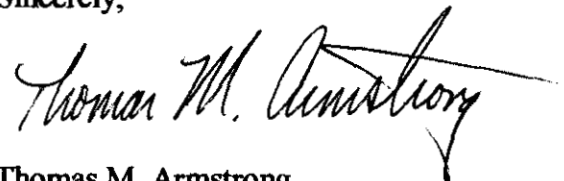
**Re: PETITION TO REQUEST RELIEF FROM IMPOSITION OF FEES  
AND INTEREST IN ADDITION TO MINIMUM TOTAL AMOUNT  
DUE ESTABLISHED BY REGULATORY ASSESSMENT FEE  
RETURN**

Dear Ms. Cole:

Enclosed is Digital Express, Inc.'s Petition to Request Relief from Imposition of Fees and Interest in Addition to Minimum Total Amount Due Established by Regulatory Assessment Fee Return, which we ask you to file in the captioned Docket No.080477-TX.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,



Thomas M. Armstrong  
Vice-President

Phone/fax  
updated  
9/18/08 R.V.N.

1803 W. Fairfield Drive, Unit 1  
Pensacola, Florida 32501  
850-291-6451  
850-308-1151 fax  
tom@dei.gccoxmail.com

DOCUMENT NUMBER-DATE  
08803 SEP 18 08

FPSC-COMMISSION CLERK

**CERTIFICATE OF SERVICE**

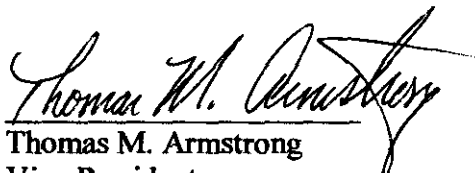
**Docket No. 080477-TX**

**In re: Digital Express, Inc.'s Petition to Request Relief from Imposition of Fees and Interest in Addition to Minimum Total Amount Due Established by Regulatory Assessment Fee Return**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail and First Class U.S. Mail on this 18th day of September 2008 to the following:

Paula Isler  
Division of Competitive Markets & Enforcement  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850  
[pisler@psc.state.fl.us](mailto:pisler@psc.state.fl.us)

Victor McKay  
Office of General Counsel  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850  
[vmckay@psc.state.fl.us](mailto:vmckay@psc.state.fl.us)

  
Thomas M. Armstrong  
Vice-President  
Digital Express, Inc.

DOCUMENT NUMBER-DATE  
08803 SEP 18 08  
FPSC-COMMISSION CLERK

# DIGITAL EXPRESS, INC.

September 18, 2008

Ann Cole, Commission Clerk  
Office of the Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

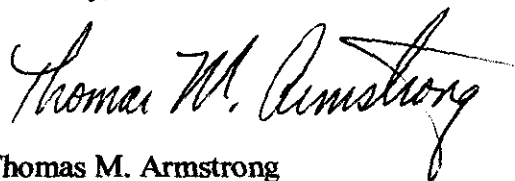
**Re: PETITION TO REQUEST RELIEF FROM IMPOSITION OF FEES  
AND INTEREST IN ADDITION TO MINIMUM TOTAL AMOUNT  
DUE ESTABLISHED BY REGULATORY ASSESSMENT FEE  
RETURN**

Dear Ms. Cole:

Enclosed is Digital Express, Inc.'s Petition to Request Relief from Imposition of Fees and Interest in Addition to Minimum Total Amount Due Established by Regulatory Assessment Fee Return, which we ask you to file in the captioned Docket No.080477-TX.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,



Thomas M. Armstrong  
Vice-President

1803 W. Fairfield Drive, Unit 1  
Pensacola, Florida 32501  
850-291-6451  
850-308-1151 fax  
tom@dei.gccoxmail.com

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Proposed Agency Action Order No. ) Docket No.080477- TX  
PSC-08-0562-PAA-TX Imposing Penalties and )  
Collection Costs, and Requiring Payment of )  
Delinquent Regulatory Assessment Fees, or )  
Cancelling Competitive Local Exchange Company )  
Certificates for Violation of Rule 25-4.0161, )  
Florida Administrative Code )  
\_\_\_\_\_ ) Filed: September 18, 2008

**DIGITAL EXPRESS, INC.'S PETITION TO REQUEST RELIEF FROM  
IMPOSITION OF FEES AND INTEREST IN ADDITION TO MINIMUM TOTAL  
AMOUNT DUE ESTABLISHED BY REGULATORY ASSESSMENT FEE  
RETURN**

Digital Express, Inc. ("Express") hereby petitions the Florida Public Service Commission ("Commission") to grant Express relief from the imposition of fees and interest in addition to the Minimum Total Amount Due established by the Regulatory Assessment Fee Return promulgated by the Commission. In support thereof, Express states the following:

1. Petitioner, Express, is a Florida corporation certificated to provide and actually providing telecommunication services in the State of Florida.
2. Express' principal place of business is 1803 W. Fairfield Drive, Unit 1, Pensacola, Florida, 32501.
3. All pleading, notices and other documents directed to Express in this proceeding should be provided to:

Digital Express, Inc.  
Thomas M. Armstrong, Vice-President  
1803. W. Fairfield Drive, Unit 1  
Pensacola, Florida 32501  
[tom@dei.gccoxmail.com](mailto:tom@dei.gccoxmail.com)  
850-291-6415 (voice)  
850-308-1151 (fax)

### **Jurisdiction**

4. The Commission has jurisdiction over this Petition pursuant to the authority granted to the Commission in Chapter 364, Florida Statutes. The substantial interests of Express will be affected by the Commission's determination as to the matter set forth below.

### **Commission Orders**

5. On August 29, 2008, the Commission issued Order No. PSC-08-0562-PAA-TX , Notice of Proposed Agency Action Order Imposing Penalties and Collection Costs, and Requiring Payment of Delinquent Regulatory Assessment Fees, or Cancelling Competitive Local Exchange Company Certificates for Violation of Rule 25-4.0161, Florida Administrative Code. Express received notice of the Order via electronic mail on August 29, 2008 and by U.S. Mail on September 2, 2008.

### **Request for Relief**

6. Express filed its Competitive Local Exchange Company Regulatory Assessment Fee Return on May 1, 2008 using Form PSC/CMP 007 (Rev 04/07) as promulgated by the Commission.
7. On the front of Form PSC/CMP 007, Line 10 reads, verbatim, "Regulatory Assessment Fee Due (Multiply Line 9 by 0.0020)".
8. Express calculated its Regulatory Assessment Fee Due to be the amount of \$439.07 and entered that amount on Form PSC/CMP 007, Line 10.
9. Line 11 on the front of Form PSC/CMP 007 reads, verbatim, "Penalty for Late Payment (see "3. Failure to File by Due Date" on back)".

10. Line 12 on the front of Form PSC/CMP 007 reads, verbatim, "Interest for Late Payment (see "3. Failure to File by Due Date" on back)".
11. The header on the back of Form PSC/CMP 007 reads, verbatim, "**FLORIDA PUBLIC SERVICE COMMISSION**, Instructions For Filing Regulatory Assessment Fee Return, (Competitive Local Exchange Company).
12. Instruction number 3 on the back of Form PSC/CMP 007, reads, verbatim, "**3. FAILURE TO PAY BY DUE DATE:** Failure to file a return by the established due date will result in a penalty being added to the amount of fee due, 5% for each 30 days or fraction thereof, not to exceed a total penalty of 25% (Line 11). In addition, interest shall be added in the amount of 1% for each 30 days or fraction thereof, not to exceed a total penalty of 12% per year (Line 12)."
13. Using the instructions provided on the back of Form PSC/CMP 007, Express calculated its late payment penalty to be the amount of \$87.81 and entered that amount on Line 11 on the front of Form PSC/CMP 007.
14. Using the instructions provided on the back of Form PSC/CMP 007, Express calculated its interest for late payment to be the amount of \$17.56 and entered that amount on Line 12 on the front of Form PSC/CMP 007.
15. Line 14 on the front of Form PSC/CMP 007 reads, verbatim, "**TOTAL AMOUNT DUE (\$600.00 MINIMUM)**".

16. Following the instruction provided, Express entered the amount of \$600.00 on Line 14 on the front of Form PSC/CMP 007 and remitted payment in that same amount to the Commission along the filing of its return.
17. In Order No. PSC-08-0562-PAA-TX, issued by the Commission on August 29, 2008, the Commission staff states that Express is one of the entities that “paid the fee more than 15 days after receipt of the delinquent notice but owe statutory late payment charges.”
18. Commission Rules and Florida Administrative Code do not establish the calculation procedures for the penalty and interest for late filing of the Regulatory Assessment Fee but rather simply establish that the Commission shall have the authority to impose a penalty and interest amount.
19. In the absence of Commission Rules and Florida Administrative Code establishing calculation procedures for the penalty and interest amounts, the instructions and procedures printed on Form PSC/CMP 007 have to be considered the procedural rules for the calculation of all parts of the Regulatory Assessment Fee reported on Form PSC/CMP 007.
20. In phone conversation with Commission staff member Ms. Paula Isler on September 16, 2008, Express was advised that the amount of statutory late payment charges owed by Express was \$120.00 as Penalty for Late Payment and \$24.00 as Interest for Late Payment for a total amount due of \$144.00 from Express.

21. As established as a matter of fact earlier in this Petition, on the front of Form PSC/CMP 007, Line 14 reads, verbatim, “**TOTAL AMOUNT DUE (\$600.00 MINIMUM)**”. It should be noted that the capitalization and bold type on this Petition is not being added for effect herein but is being noted to illustrate exactly how this line visibly appears on Form PSC/CMP 007. It should be further noted that this capitalization and bold type is only used on three lines on the front of Form PSC/CMP 007; lines 7, 9 and 14. This limited use of these text enhancements serves to draw the filer’s particular attention to those specific lines on Form PSC/CMP 007.
22. In addition to the visual effect of the capitalization and bold type used in Line 14 on the front of Form PSC/CMP 007, the language used on Line 14, **TOTAL AMOUNT DUE**, defines that this line will be a sum of parts preceding this line. The previous lines are Line 10 (Regulatory Assessment Fee Due), Line 11 (Penalty for Late Payment), Line 12 (Interest for Late Payment) and Line 13 (Extension Payment Fee).
23. Line 10 on the front of Form PSC/CMP 007 makes no indication or declaration, direct, implied or otherwise, that the minimum amount of Regulatory Assessment Fee Due should be considered to be the amount of \$600.00. Conversely, it specifically states to “Multiply Line 9 by 0.0020”.
24. The statement made directly on line 14 of Form PSC/CMP 007 is that the **TOTAL AMOUNT DUE** with this return is to be **\$600.00 MINIMUM**.
25. On the back of Form PSC/CMP 007, instruction number 3. **FAILURE TO PAY BY DUE DATE** establishes that the penalty is “not to exceed a total



penalty of 25% (Line 11).” The calculation expressed by Commission staff member Ms. Paula Isler amounts to a penalty of \$120.00 being applied to a Regulatory Assessment Fee Due of \$439.07, equating to a penalty equal to 27.33% of the fee due.

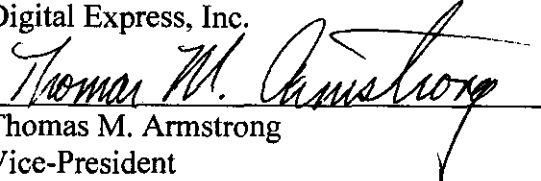
26. Express believes that given the fact that there is no promulgated procedure or process for calculation of the penalties and interest for late payment outside of those contained within Form PSC/CMP 007, the printed contents of Form PSC/CMP 007 have to be considered the authoritative instructions for the procedure or process for calculation of the amounts to be reported on Form PSC/CMP 007.
27. Express believes that the Commission cannot arbitrarily change a procedure or process for calculation after the fact when there is a form promulgated by the Commission that contains definitive instructions for that procedure or process for calculation.
28. Express believes that it followed, in sincere good faith, the rules and instructions promulgated by the Commission and available to Express in completing its Regulatory Assessment Fee Return for the period January 1, 2007 to December 31, 2007.
29. Express believes that the amount of \$600.00 previously remitted by Express is a complete and proper payment in full of the minimum amount due and that it owes no further statutory late payment charges as alleged by Commission staff in Order No. PSC-08-0562-PAA-TX.

30. If the relief in this Petition is not granted, Express will be penalized by the Commission for following instructions promulgated by the Commission itself as well as being subjected to a penalty rate that is in excess of the amount allowed by Commission Rules and/or Florida Administrative Code.

WHEREFORE, for the foregoing reasons, Express respectfully requests that the Commission grant relief to Express from the imposition of additional statutory late payment charges as provided for in Commission Order No. PSC-08-0562-PAA-TX.

Respectfully submitted this 18th day of September 2008.

Digital Express, Inc.



Thomas M. Armstrong

Vice-President

1803 W. Fairfield Drive, Unit 1

Pensacola, Florida 32501

850-291-6415