

**STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS**

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Appeal from Richland County  
Court of Common Pleas

Robert E. Hood, Circuit Judge  
G. Thomas Cooper, Jr., Circuit Judge

Case No. 2017-CP-40-06433  
Appeal No. 2020-000218

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**RECEIVED**

**Jun 22 2020**

**SC Court of Appeals**

PTA-FLA, Inc,

v.

TW Telecom Holdings, Inc., a Delaware  
corporation; and DOES 1-10, inclusive,

Appellant-Respondent,

Respondent-Appellant.

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**MOTION TO ALLOW A LATE FILING OF  
THE INITIAL APPELLANT'S BRIEF AND DESIGNATIONS  
OF RESPONDENT-APPELLANT TW TELECOM HOLDINGS, INC.**

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At the direction of the Court, by letter dated June 18, 2020, the Respondent-Appellant TW Telecom Holdings, Inc. submits this motion to allow a late filing of its Initial Appellant's Brief and Designation of Matters to be Included in the Record on Appeal in connection with its cross appeal. While the Respondent-Appellant maintains that the brief and designations are being timely served and filed this day, the Respondent-Appellant would otherwise show good cause to allow the filing and service based on the following facts:

1. The Appellant Respondent served a Notice of Appeal on February 11, 2020.
2. The Respondent-Appellant served a Notice of Cross Appeal on February 17, 2020.
3. The Court sua sponte dismissed the cross appeal by order filed February 25, 2020.
4. The Respondent-Appellant filed and served a Petition for Rehearing on February 28, 2020.

5. The Court reinstated the cross appeal by order dated May 22, 2020, but the Court did not set a specific due date for the initial appellant's brief and designations of Respondent-Appellant in its order.
6. By letter of May 22, 2020, accompanying its order, the Court directed the Respondent-Appellant to notify the Court of the status of the transcript within 10 days, which deadline was automatically extended until June 22, 2020<sup>1</sup> by operation of the coronavirus emergency order issued by the Supreme Court on March 20, 2020, which granted 20-day extensions to all appeal deadlines with the exception of notices of appeal.
7. On June 18, 2020, the Court sent a letter indicating that the time for filing and serving the appellant's initial brief and designation of matter has expired, and directed that the initial brief and designations be filed with a motion requesting permission for a late filing within 10 days.
8. On this date, June 22, 2020, the Respondent-Appellant is herewith filing and serving its Initial Appellant's Brief and Designations; and providing the Court with the requested notice regarding the transcripts ordered in connection with these appeals.

Rules 208 and 209, SCACR, provide that an appellant's initial brief and designation of matter to be included in the Record on appeal must be filed within 30 days of serving the notice of appeal or of receipt of the transcript(s). As calculated from the service of the notice of cross appeal, the initial brief and designations could have been due on or before March 29, 2020; however, the Court dismissed the appeal prior to that date. Moreover, there were four transcripts to be ordered in association with these appeals, the last of which was completed by the court reporter and received by the Respondent-Appellant on or about April 20, 2020, during which time the cross

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<sup>1</sup> June 21, 2020 was a Sunday, so the deadline fell to Monday, June 22, 2020.

appeal had been dismissed. Also, during this time, the Supreme Court has issued orders governing appellate proceedings during the coronavirus emergency, which included automatic extensions of 20 days for all appellate deadlines (except for a notice of appeal) which fell between March 20, 2020 and June 8, 2020. [Orders, dated March 20, 2020 and May 29, 2020.]

The Respondent-Appellant is unaware of what deadline the Court had calculated as the basis for its conclusion that the time for filing and service already has expired. However, in the absence of an appellate rule particularly governing deadlines after reinstatement of appeals under these circumstances, and given the lack of a specified deadline for the filing and service of the initial brief and designations in the order reinstating the cross appeal, Counsel for the Respondent Appellant reasonably calculated and diaried the due date for June 22, 2020 -- 30 days from the date of the Court's order.

WHEREFORE, based on the foregoing, the Respondent-Appellant TW Telecom respectfully requests the Court's permission to serve and file the Initial Appellant's Brief and Designation submitted with this Motion.

Respectfully submitted,

HOOD LAW FIRM, LLC

/s/ Robert H. Hood, Jr.

Robert H. Hood, Jr. (SC #13491)

John O. Radeck, Jr. (SC #77849)

Deborah H. Sheffield, *Of Counsel* (SC #2757)

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**Attorneys for the Respondent-Appellant**

**TW Telecom Holdings, Inc.**

**June 22, 2020**

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IN THE COURT OF APPEALS

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Court of Common Pleas

Robert E. Hood, Circuit Judge  
G. Thomas Cooper, Jr., Circuit Judge

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Respondent-Appellant.

CERTIFICATE OF SERVICE

The undersigned certifies that on this 22nd day of June, 2020, the **Initial Appellant's Brief on behalf of Respondent-Appellant TW Telecom Holdings, Inc.** together with its **Designation of Matter to be Included in the Record Appeal** and a **Motion to Allow Late Filing**, were served by depositing copies in the U.S. Mail, with sufficient first class postage, on Counsel for the Appellant-Respondent at the address listed below:

Joshua E. Austin, S.C.# 101664  
Post Office Box 8839  
Columbia, South Carolina 29202

HOOD LAW FIRM, LLC

/s/ Robert H. Hood, Jr.

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**Attorneys for the Respondent-Appellant  
TW Telecom Holdings, Inc.**



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June 22, 2020

**RECEIVED**  
**Jun 22 2020**  
**SC Court of Appeals**

Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211

Re: PTA-FLA, Inc. v. TW Telecom Holdings, Inc., a Delaware corporation; and DOES 1-10, inclusive  
C/A No. 2017-CP-40-06433, Richland CP  
Appellate Case No. 2020-000218  
HLF File No. 576.000

Dear Ms. Kitchings:

We are in receipt of the correspondence from the Court dated June 18, 2020, regarding the initial appellant's brief in connection with the cross appeal by the Respondent-Appellant TW Telecom Holdings. When this Court issued an order on May 22, 2020 reinstating the cross appeal, there was no direction regarding a due date for our brief so we calculated and diaried for the initial brief and designation to be due within 30 days per Rules 208(a) and 209, SCACR -- Monday, June 22, 2020. In accordance with our calculations, we are this day serving and filing our initial appellant's brief and designations in connection with our cross appeal. To the extent that the Court has determined that the time for filing already has expired, we also are submitting a motion requesting permission to serve and file the brief out of time as directed by the letter of June 18th. Also enclosed is our certificate of service evidencing service on same on Counsel for the Appellant-Respondent and a check for the \$50.00 motion filing fee.

Kind regards,

Yours truly,

*/s/ Robert H. Hood, Jr.*

Robert H. Hood, Jr.

RHHjr./mde

Enclosure

cc: Joshua E. Austin, Esquire