

Relevant to the due date for paying the fee, 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. §§ 1.1157(c)(1) and 1.1164, and additional charges of interest, penalties, and charges of collection required by 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940. September 20, 2013, and September 23, 2014, respectively, were the deadlines for paying the FY 2013 and FY 2014 annual regulatory fees.⁴⁵ For example, in regard to the deadline, the Commission's *2014 Regulatory Fee Order*, 30 FCC Rcd at 10286, ¶ 50, warned,

To be considered timely, regulatory fee payments must be made received and stamped at the lockbox bank by the payment due date for regulatory fees. Section 9(c) of the Act requires us to impose a late payment penalty of 25 percent of the unpaid amount to be assessed on the first day following the deadline for filing 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, which generally requires the Commission to withhold action 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" and in the ... (DCIA). We also assess administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the 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 the case of partial payments (underpayments) of regulatory fees, the payor 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. [Footnotes deleted.]

After the deadline, the full amount of the regulatory fee includes the 25% late payment penalty⁴⁶ and, if the debt remains unpaid, the balance owed includes the accrued charges of collection, interest, and penalties.

If a regulatee tenders less than the full amount owed, it is a partial payment, which is applied to the amount owed as set forth in 47 C.F.R. § 1.1940(f)--first to the penalties and accrued charges, and then to the principal amount owed.⁴⁷ Afterwards, any unpaid portion is a delinquent regulatory fee that incurs interest, penalties, and charges of collection under 31 U.S.C.

⁴⁵ See FY 2013 Regulatory Fees Due No Later Than September 20, 2013, 11:59 pm Eastern Time (ET), *Public Notice*, DA 13-1796. (Sep. 4, 2013); FY 2014 Regulatory Fees Due No Later Than September 23, 2014, 11:59 PM Eastern Time (ET), *Public Notice*, DA 14-1261 (Aug. 29, 2014).

⁴⁶ 47 C.F.R. § 1.1164 ("[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 of installment payment which was not paid in a timely manner.").

⁴⁷ 47 C.F.R. §§ 1.1940(f) ("When a debt is paid in partial ... payments, amounts received ... shall be applied first to outstanding penalties and administrative cost charges, second to accrued interest, and third to the outstanding principal."), 1.1157(c)(1), 1.1164(c).

§ 3717 and 47 C.F.R. § 1.1940. Moreover, until the full amount is paid or satisfactory arrangements are made, the licensee remains a delinquent debtor subject to the Commission's administrative sanctions of dismissal as set forth at 47 C.F.R. §§ 1.1161, 1.1164(e) and 1.1910.⁴⁸

Under the Commission's rules, an *application* includes, in addition to petitions and applications elsewhere defined in the Commission's rules, any request, as for assistance, relief, declaratory ruling, or decision, by the Commission or on delegated authority.⁴⁹ A debt is delinquent when it "has not been paid by the date specified."⁵⁰ Upon filing, the Commission will examine an "application (including a petition for reconsideration or any application for review of a fee determination) ... to determine if the applicant has paid the appropriate application fee, appropriate regulatory fees, is delinquent in its debts owed the Commission, or is debarred from receiving Federal benefits[, and a]ction will be withheld on applications, including on a petition for reconsideration or any application for review of a fee determination ... until full payment or arrangement to pay any non-tax delinquent debt owed to the Commission is made and ... the application may be dismissed."⁵¹ Moreover, "[i]f a delinquency has not been paid or the debtor has not made other satisfactory arrangements within 30 days of the date of the notice provided pursuant to paragraph (b)(2) of this section, the application or request for authorization will be dismissed."⁵² Additionally, under 47 C.F.R. § 1.1161(c),⁵³ the Commission will withhold action on any application or request filed by a delinquent debtor applicant, and if after 30 days payment or a satisfactory arrangement is not made, dismiss the application.

In addition to the examination to determine whether the applicant is delinquent in paying a debt owed to the Commission, the Commission reviews the submission to determine compliance with the Commission's rules of practice and procedure. For example, an applicant must submit to the Commission's Secretary a petition for reconsideration,⁵⁴ and an applicant may

⁴⁸ 47 C.F.R. §§ 1.1161(c) ((1) "failure to pay may result in the Commission withholding action on any application or request filed ... (2) If, after final determination that the fee is due or that the applicant is delinquent in the payment of fees and the payment is not made in a timely manner, the staff will withhold action on the application or filing [and i]f payment ... in not made ... the application will be dismissed."), 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."), 1.1910.

⁴⁹ 47 C.F.R. § 1.1901(d).

⁵⁰ 47 C.F.R. § 1.1901(i).

⁵¹ 47 C.F.R. § 1.1910(a) & (b).

⁵² 47 C.F.R. § 1.1910(b)(3).

⁵³ 47 C.F.R. § 1.1161(c) provides:

(1) Where an applicant is found to be delinquent in the payment of regulatory fees, the Commission will make a written request for the fee, together with any penalties that may be rendered under this subpart. Such request shall inform the regulatee that failure to pay may result in the Commission withholding action on any application or request filed by the applicant. The staff shall also inform the regulatee of the procedures for seeking Commission review of the staff's determination.

(2) If, after final determination that the fee is due or that the applicant is delinquent in the payment of fees and payment is not made in a timely manner, the staff will withhold action on the application or filing until payment or other satisfactory arrangement is made. If payment or satisfactory arrangement is not made within 30 days, the application will be dismissed.

⁵⁴ 47 C.F.R. § 1.106.

not combine requests requiring action by any person or persons pursuant to delegated authority with requests for action by any other person or persons acting pursuant to delegated authority.⁵⁵

An applicant seeking a waiver, reduction, or deferral of a fee must comply with 47 C.F.R. § 1.1166, which provides,

The fees ... may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest. ... (a) ... All such filings within the scope of the fee rules shall be filed as a separate pleading and clearly marked to the attention of the Managing Director. Any such request that is not filed as a separate pleading will not be considered by the Commission. (1) If the request for waiver, reduction or deferral is accompanied by a fee payment, the request must be submitted to the Commission's lockbox bank at the address for the appropriate service set forth in §§1.1152 through 1.1156 of this subpart. (2) If no fee payment is submitted, the request should be filed with the Commission's Secretary.

An applicant seeking a waiver of the penalty and assessed charges has the burden of demonstrating compelling and "most extraordinary circumstances"⁵⁶ that a waiver or deferral would override the public interest, as determined by Congress, that the government should be reimbursed for the Commission's regulatory action.⁵⁷

Under 47 C.F.R. § 1.2, a regulatee may request a declaratory ruling to remove an uncertainty.

Discussion

Licensee submitted its *Petition* by email to the Commission staff seeking reconsideration of the second of two demand letters to collect a delinquent FY 2014 regulatory fee debt, and requesting a refund of Licensee's payment of that debt. The first demand, dated October 28, 2014, is not part of this *Petition*. Both demand letters⁵⁸ addressing the same debt notified Licensee it was delinquent in paying a debt to the United States, and it explained the basis for the debt, certain rights, that if not exercised were waived, procedures for review of the basis for the debt, and consequences of non-payment, including withholding action. At its essence, the *Petition* is Licensee's opinion that it should pay a reduced fee of a satellite television station

⁵⁵ 47 C.F.R. § 1.44.

⁵⁶ *McLeodUSA Telecommunications Services, Inc., Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589, ¶ 8 (2004) (denying the request for waiver of 25 percent penalty).

⁵⁷ 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166 ("The fees ... may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest."). See also *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), *recon. granted in part*, 10 FCC Rcd 12759 (1995) (1994 *Report and Order*); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*); *Phoenix Broadcasting, Inc. Stations KSWD and KPFN Seward, Alaska, Memorandum Opinion and Order*, 18 FCC Rcd 26464, 26466, ¶ 5 (2003) (*Phoenix Broadcasting, Inc.*).

⁵⁸ *Oct. 2014 Demand Letter*; *Jun. 2016 Demand Letter*.

because it did so in the past and because a television industry publication reported the station as a satellite of another station. This does not present grounds for reconsideration, and as we discuss below, Licensee's *Petition* is fatally deficient because Licensee failed to comply with the Commission's procedures for filing applications and paying obligations to the Commission, and Licensee's submission does not raise a matter warranting reconsideration.

Licensee failed to file its *Petition*.

Licensee's first fatal procedural error is its failure to *file* the *Petition*. Licensee submitted this and "similar *Petitions* ... via email to ARINQUIRIES@FCC.GOV in accordance with the instructions in the June 2016 Demand Letter."⁵⁹ The problems with this approach are twofold: the *Jun. 2016 Demand Letter* does not instruct Licensee to *file a petition for reconsideration* by email, but even if it did, the *Jun. 2016 Demand Letter* does not alter the Commission's codified rules that require filing with the Commission's Secretary.

Licensee did not comply with the Commission's rules⁶⁰ that require submission of a petition for reconsideration to the Commission's Secretary. Instead, Licensee sent the *Petition* by email to ARINQUIRIES, the Commission's help desk staff, with an explanatory misstatement that the *Jun. 2016 Demand Letter* provides instruction as how to file a petition for reconsideration. It does not. The *Jun. 2016 Demand Letter* is a demand that Licensee pay a delinquent debt,⁶¹ and a statement of three rights, *i.e.*, "(a) to inspect or copy Debt-related records; (b) as permitted by FCC rules, obtain a written installment payment plan, or (c) as permitted by FCC rules, seek agency review of the basis of the Debt."⁶² The *Jun. 2016 Demand Letter* cautions Licensee that "FCC's rules specify conditions that may apply to one or more of these rights, including, *e.g.*, under 47 CFR 1.1167, the full amount of a regulatory fee must be paid before filing a petition for reconsideration[.],"⁶³ it explains that Licensee should "deliver to the address below, a written request ... specifying the nature of the request and providing relevant verified supporting documentation,"⁶⁴ and it warns that under 47 C.F.R. § 1.1910, the Commission will withhold action on applications from delinquent debts. Contrary to Licensee's assertion, the *Jun. 2016 Demand Letter* does not instruct a debtor to file a petition for reconsideration under 47 C.F.R. § 1.106 by email to ARINQUIRIES and it does not alter the several rules pertaining to reconsideration, *e.g.*, 47 C.F.R. §§ 1.106(i), 1.1159(b) and 1.1167(b) that require submission of a petition for reconsideration to the Commission's Secretary. Particularly, section 1.106(i) warns, "Petitions submitted only by electronic mail and petitions submitted directly to staff without submission to the Secretary shall not be considered to have

⁵⁹ *Petition* at 1, n. 1.

⁶⁰ 47 C.F.R. §§ 1.106(i) Petitions for reconsideration ... shall be submitted to the Secretary, Federal Communications Commission, Washington, DC 20554 Petitions submitted only by electronic mail and petitions submitted directly to staff without submission to the Secretary shall not be considered to have been properly filed, 1.1159(b), 1.1167(b).

⁶¹ See 47 C.F.R. § 1.1911.

⁶² *Jun. 2016 Demand Letter* at 1.

⁶³ *Id.*; 47 U.S.C. § 405(a); 47 C.F.R. §§ 1.1167(b) ("filing of a petition for reconsideration ... of a fee determination will not relieve licensee from the requirement that full and proper payment of the underlying fee payment be submitted, as required by the Commission's action, or delegated action", 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").

⁶⁴ *Id.*

been properly filed.” Because Licensee failed to submit the *Petition* in accordance with the required addresses and locations, it is not filed, and we dismiss.⁶⁵

Licensee Combines Requests.

Licensee asks the Commission to “(i) determine ... the Station is a satellite station, entitled to pay [a] lower regulatory fee amount; (ii) change [Licensee’s] red light status from ‘red’ to ‘green;’ and (iii) refund in full [Licensee’s] payment of the FY2014 Bill.”⁶⁶ We need not discuss in detail the merits of these multiple requests in order to conclude that the relief Licensee seeks categorically involves different action from different bureaus and offices within the Commission. Specifically, the matters involve action by the Media Bureau and the Office of the Managing Director. For example, on one hand, the determination whether Licensee’s station is a satellite of another is a matter for the Media Bureau within its authority to act on applications for authorization, petitions for special relief, and request for declaratory rulings.⁶⁷ On the other hand, determinations whether Licensee is delinquent in paying a debt owed the Commission and whether Licensee has established a ground for a refund are matters for the Office of the Managing Director that is authorized to perform administrative determinations under debt collection laws.⁶⁸ As such, Licensee’s submission violates 47 C.F.R. §1.44 that requires separate pleadings for different requests and permits us to return the submission without consideration.⁶⁹ On this separate ground, we dismiss.

Licensee is delinquent in paying debts owed to the Commission.

Next, under 47 C.F.R. §§1.1161(c)(2), 1.1164(e), 1.1167(b), and 1.1910(b), we dismiss because Licensee is delinquent in paying debts owed to the Commission. Specifically, the Commission’s records show that Licensee is delinquent in paying regulatory fees for FY 2013 (Bill No. R13T027431) and FY 2014 (Bill No. BRF R 14T027431), and that those delinquent debts have been referred to the U.S. Department of the Treasury for collection action.

The Commission’s rule, 47 C.F.R. § 1.1161(c), provides, in relevant part, that upon finding that an applicant is delinquent in paying a regulatory fee, and making demand for payment of the delinquent fee and accrued charges, the Commission will withhold action on any

⁶⁵ 47 C.F.R. §§ 0.401 (“Applications and other filings not submitted in accordance with the addresses or locations set forth below will be returned to the applicant without processing.”), 1.7 (“documents are considered to be filed with the Commission upon their receipt at the location designated by the Commission”), 1.106(i) (“Petitions for reconsideration ... shall be submitted to the Secretary, Federal Communications Commission Petitions submitted only by electronic mail and petitions submitted directly to staff without submission to the Secretary shall not be considered to have been properly filed.”), 1.1159(b) (“Petitions for reconsideration ... submitted with no accompanying payment should be filed with the Secretary, Federal Communications Commission, Attention: Managing Director, Washington, D.C. 20554.”), 1.1167(b) (“Petitions for reconsideration ... not accompanied by a fee payment should be filed with the Commission’s Secretary and clearly marked to the attention of the Managing Director.”).

⁶⁶ *Petition* at 10.

⁶⁷ 47 C.F.R. § 0.61.

⁶⁸ 47 C.F.R. § 0.231.

⁶⁹ 47 C.F.R. § 1.44(d).

application or request filed by an applicant, and if within 30 days, payment or satisfactory arrangement for payment is not made, the application will be dismissed.⁷⁰

Moreover, 47 C.F.R. § 1.1164(e) requires dismissal of a “pending or subsequently filed application” where the applicant is “determined to be delinquent in paying a standard regulatory fee,”⁷¹ and 47 C.F.R. § 1.1167(b) provides that “filing of a petition for reconsideration ... of a fee determination will not relieve licensees from the requirement that full and proper payment of the underlying fee payment be submitted, as required by the Commission’s action, or delegated action, on a request for waiver, reduction or deferment.”⁷² *Accord* 47 U.S.C. § 405, 47 C.F.R. §§ 1.102, 1.106(n).

Furthermore, 47 C.F.R. § 1.1910(b)(2),⁷³ the Commission’s red light rule, provides, “[a]ction 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 The entity will be informed that action will be withheld on the application until full payment ... is made and/or that the application may be dismissed.”

Having identified and discussed several sections in Part 1, Subpart G of the Commission’s rules providing sanctions of withholding action on and dismissing applications, and the unambiguous statement that a petition for reconsideration does not stay Licensee’s obligation to pay the debt, we need not discuss in detail Licensee’s misunderstanding of our rules or whether 47 C.F.R. § 1.1910 applies to debtors’ delinquent in paying a fee. Hence, because Licensee is delinquent in paying debts owed to the Commission, we withheld action on the submission⁷⁴ and now, on this additional separate ground, we dismiss.⁷⁵

Licensee’s *Petition* to reconsider the
Jun. 2016 Demand Letter is moot.

Licensee paid the debt that is both the reason for the *Jun. 2016 Demand Letter*, and the action that Licensee asks to be reconsidered. Licensee’s payment renders both reconsideration of the demand letter and the requested removal of the red light status for that specific debt moot, and we dismiss the *Petition*. Nonetheless, the Commission continues to withhold action on any other application or request Licensee has submitted because it is delinquent in paying regulatory fees for FY 2014 and FY 2013.

⁷⁰ 47 C.F.R. § 1.1161(c).

⁷¹ 47 C.F.R. § 1.1164(e).

⁷² 47 C.F.R. § 1.1167(b).

⁷³ 47 C.F.R. § 1.1910(b)(2).

⁷⁴ 47 C.F.R. §§ 1.1161 and 1.1910.

⁷⁵ 47 C.F.R. §§ 1.1161, 1.1164, 1.1167, and 1.1910.

Licensee's *Petition* does not warrant consideration.

Before the Commission considers a petition for reconsideration, the petitioner must meet procedural requirements and show either a material error in the Commission's original order or raise changed circumstances or unknown additional facts not known or existing at the time of petitioner's last opportunity to present such matters.⁷⁶ The petition must "state with particularity the respects in which petitioner believes the action taken by the Commission ... should be changed"⁷⁷ and to cite, where appropriate, "the findings [of fact] and/or conclusions [of law] which petitioner believes to be erroneous, and shall state with particularity the respects in which [the petitioner] believes such findings and/or conclusions should be changed."⁷⁸ Even so, petitions for reconsideration that "plainly do not warrant consideration by the Commission may be dismissed or denied by the relevant bureau(s) or office(s)."⁷⁹ Section 1.106(p)⁸⁰ sets out several examples, e.g., a failure to identify a material error, omission, or reason warranting reconsideration; relate to matters outside the scope of the order for which reconsideration is sought; or fail to comply with the procedural requirements set forth in paragraphs (f) and (i) of section 1.106. In that regard, there are three problems with the *Petition*. First, Licensee has not identified an error in the *Jun. 2016 Demand Letter*, instead it claims the amount of Licensee's partial payment equal to the smaller fee for a television satellite station is a correct fee payment merely because Licensee believes it should pay no more than the fee due for a television satellite station. Second, Licensee's *Petition* seeking reclassified of its station to one of a television satellite station extends to matters outside the scope of the *Jun. 2016 Demand Letter*. And third, Licensee failed to comply with the Commission's rules for filing, deciding instead to send the *Petition* by email to the Commission's help desk. Hence, as we discuss next, under 47 C.F.R. § 1.106(p), we dismiss and deny.

Licensee did not identify an error in the *Jun. 2016 Demand Letter*.

The *Jun. 2016 Demand Letter* seeks payment of the remaining portion of an unpaid regulatory fee that is the difference between a full service television station and a television satellite station, plus the accrued but unpaid amounts of the penalties and charges of collection that arise when a licensee or regulatee fails to pay the full amount due by the last day of the annual regulatory fee payment cycle. As noted above, during the fee cycle at issue (and now), Licensee's station was not a commonly owned television satellite station, authorized under 47 C.F.R. § 73.3555, Note 5, that retransmit programming of a primary station. Licensee has not established that it possesses all of these elements. Indeed, Licensee's *Email* confirms the accuracy of the bill, *i.e.*, the debt is for the annual regulatory fee due for full power television station, and Licensee never requested either a fee reduction or a Commission determination that the station is a satellite station. The debt is valid, and unless it is waived, it must be paid.

⁷⁶ See 47 C.F.R. § 1.106(c); *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966); *National Association of Broadcasters*, Memorandum Opinion and Order, 18 FCC Rcd 24414, 24415 (2003).

⁷⁷ 47 C.F.R. § 1.106(d)(1).

⁷⁸ 47 C.F.R. § 1.106(d)(2).

⁷⁹ 47 C.F.R. § 1.106(p).

⁸⁰ *Id.*

Specifically, a television satellite station is a full power terrestrial broadcast station authorized under Part 73 of the Commission's rules to retransmit all or part of the programming of a parent station that is ordinarily commonly owned,⁸¹ and under the Commission's regulatory fee rulemaking, the regulatory fee is based on the class of station and market unless the station is a commonly owned television satellite station, authorized pursuant to Note 5 of 47 C.F.R. § 73.3555, that retransmits programming of the primary station.⁸²

To accomplish the requested goal to be classified as a television satellite station, Licensee wants the Commission either to waive as to Licensee the rules in the *Satellite Station Review* and the several annual regulatory fee orders or engage in a new rulemaking permitting licensees in general to pay fees based on self-determination.

In support of that position, Licensee relies on the claims that "the Commission has never given notice that only satellite stations that obtain a Note 5 duopoly waiver are entitled to the lower satellite station regulatory fee"⁸³ and "the Commission has previously articulated rules of the road consistent with the position taken by [Licensee] ... the full Commission public notice concerning 2002 regulatory fees, after stating first that 'Television Satellite Stations' holding Note 5 duopoly waivers were entitled to pay the lower satellite station regulatory fee, went on to also make clear that "[t]hose stations designated as Television Satellite Stations in the 2002 Edition of the Television and Cable Factbook (or similar source) are subject to the fee applicable to Television Satellite Stations."⁸⁴ Licensee's characterization is wrong, and we disagree with both Licensee's interpretation of an extract of the FY 2002 annual regulatory fee guide. Indeed, the Commission's 1995 rulemaking amending the regulatory fee schedule shows Licensee is outside the definition of a television satellite station.

As noted above, the Commission has repeatedly announced the specific limits that pertain to television satellite stations. Ignoring those earlier determinations, Licensee picks part of the Commission's comments in the FY 2002 regulatory fee order as the basis for justifying an unauthorized underpayment of a valid annual regulatory fee for FY 2014. This attempted justification is erroneous.

Licensee fails to recognize the recorded history of the television satellite station since 1954.⁸⁵ A television satellite station is a full power terrestrial broadcast station authorized under Part 73 of the Commission's rules to retransmit all or part of the programming of a parent station

⁸¹ Television Satellite Stations Review of Policy Rules, *Report and Order*, 6 FCC Rcd 4212, ¶ 3 (1991) (*Satellite Station Review*); Review of Commission's Regulations Governing Television Broadcasting, *Television Stations Review of Policy and Rules, Further Notice of Proposed Rule Making*, 10 FCC Rcd 3524, 3569, ¶ 104 (1995) ("TV satellite stations are full power terrestrial broadcast stations authorized under Part 73 of the Commission's Rules to retransmit all or part of the programming of a parent station that is ordinarily commonly owned.").

⁸² 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, ¶ 82 (1994); Assessment & Collection of Regulatory Fees for Fiscal Year 1995, *Report and Order*, 10 FCC Rcd 13512, 13534 (1995) ("Television Satellite Stations (authorized pursuant to Note 5 of Section 73.3555 of the Commission's Rules) that retransmit programming of the primary station will be assessed a fee separate from the fee for fully operational television stations"); Assessment & Collection of Regulatory Fees for Fiscal Year 1999, *Report and Order*, 14 FCC Rcd 9868, 9936 (1999).

⁸³ *Email* at 2.

⁸⁴ *Id.*

⁸⁵ See *Satellite Station Review*, 6 FCC Rcd 4212, ¶ 5, n. 3.

that is ordinarily commonly owned.⁸⁶ Only commonly owned television satellite stations, authorized pursuant to Note 5 of 47 C.F.R. § 73.3555, that retransmit programming of the primary station may pay the lower assessed fee.⁸⁷ We note, the statutory fee schedule at 47 U.S.C. § 159 establishes specific fees for commercial television stations, and the text of the schedule as enacted made no distinction between commercial stations that are fully operational and those that are satellite stations. Further, we note that a satellite station is not a translator station, which is separately listed on the regulatory fee schedule. In that regard, the Commission found that Congress assessed the same fee for both commercial fully operational and commercial satellite stations.⁸⁸

Even so, in later years, the Commission established a reduced fee for commonly owned television satellite stations that are authorized under 47 C.F.R. § 73.3555, Note 5. In contrast, Licensee here limits its view to the FY 2002 fee order appendix. Even so, that referenced language has its origin in the Commission's fee orders from 1994 and 1995. In 1995, the Commission explained the authorization for the smaller fee applicable to television satellite stations, "[p]ursuant to our authority to make permissive amendments to our regulatory fees, Television Satellite Stations (authorized pursuant to Note 5 of Section 73.3555 of the Commission's Rules) that retransmit programming of the primary station will be assessed a fee separate from the fee for fully operational television stations. This fee is based upon the \$500 fee passed by the House of Representatives for Television Satellite Stations for FY 1994."⁸⁹ The Commission made a permitted amendment to the fee schedule allowing those stations authorized under Note 5 of section 73.3555 and designated as television satellite stations in the Television and Cable Factbook to submit a fee applicable to the television satellite stations. Other full-service television licensees remained, then and now, subject to the regulatory fee payment required for the class of station and market. Indeed, in the Commission's earlier rulemaking, 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, ¶ 82 (1994), it explained in response to other regulatees challenging whether a satellite television station should pay the same fee as a fully powered station:

Section 9(g)'s fee schedule establishes specific fees for commercial television stations. These fees are to be assessed against a licensee solely on the basis of the market in which the station operates. The text of the schedule makes no distinction between commercial stations that are fully operational and those that are satellite stations. It is also clear that these satellite stations are not "translator

⁸⁶ *Satellite Station Review*, 6 FCC Rcd 4212, ¶ 3.

⁸⁷ 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, ¶ 82 (1994); Assessment & Collection of Regulatory Fees for Fiscal Year 1995, *Report and Order*, 10 FCC Rcd 13512, 13534 (1995) ("Television Satellite Stations (authorized pursuant to Note 5 of Section 73.3555 of the Commission's Rules) that retransmit programming of the primary station will be assessed a fee separate from the fee for fully operational television stations"); Assessment & Collection of Regulatory Fees for Fiscal Year 1999, *Report and Order*, 14 FCC Rcd 9868, 9936 (1999).

⁸⁸ 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, ¶ 82 (1994).

⁸⁹ Assessment and Collection of Regulatory Fees for Fiscal Year 1995, *Report and Order*, 10 FCC Rcd 13512, 13534-35, ¶ 60 (1995).

stations,” which are also listed in the schedule. TV translator stations are low-powered facilities that rebroadcast the signals of a full service television broadcast station, including a satellite station, and are afforded secondary status vis-a-vis full service television stations. Also, unlike satellite stations, they are not subject to the technical, operational and program service obligations that are imposed on all full service broadcast stations, including satellite stations. [footnote deleted] Consequently, we find that in establishing fees for commercial stations, Congress assessed the same fee for both commercial fully operational and commercial satellite television stations.

Contrary to Licensee’s misperception that “the Commission has never given notice that only satellite stations that obtain a Note 5 duopoly waiver are entitled to the lower satellite station regulatory fee,” the conditions under which a licensee may qualify for a reduced fee are repeated in several fee orders. Each time, that explanation has been consistent; the first of two paragraphs explains that commercial television stations are those covered under part 73 of the Commission’s rules, except commonly owned Television Satellite Stations, addressed separately in the second paragraph. In the second paragraph, the Commission explains, “Commonly owned Television Satellite Stations in any market (authorized pursuant to Note 5 of § 73.3555 of the Commission’s Rules) that retransmit programming of the primary station are assessed a [reduced] fee”⁹⁰ Since 1995, the status of a television satellite station has been defined as one commonly owned, authorized under Note 5 of 47 C.F.R. § 73.3555, and retransmitting programming of a primary station, and also shown as such in the Television and Cable Factbook. Licensee does not make its case that it possesses all of these necessary attributes. Indeed, for the relevant years, 2013 and 2014, the Television & Cable Factbook, Volume 81, pp. A-843 and A-846 (2013) and Television & Cable Factbook, Volume 82, pp. A-849 and A-846 (2014) show that Licensee’s station is not a satellite station. Accordingly, Licensee has not shown either that it is a television satellite station or that there is a valid reason why the *Jun. 2016 Demand Letter* should be reconsidered. Hence, under 47 C.F.R. § 1.106(p), we deny the *Petition*. Furthermore, because Licensee has not established a material error, omission or reason warranting reconsideration of the *Jun. 2016 Demand Letter*, it has not established under 47 C.F.R. § 1.1160 a ground for a refund.⁹¹

The *Petition* relates to matters outside the scope
of the *Jun. 2016 Demand Letter*.

The crux of Licensee’s *Petition* is a determination that it is a television satellite station; however, that desired result is not within the scope of the determination whether the *Jun. 2016*

⁹⁰ E.g., Assessment and Collection of Regulatory Fees for Fiscal Year 1995, *Report and Order*, 10 FCC Rcd 13512, 13577 (1995); Assessment and Collection of Regulatory Fees for Fiscal Year 1997, *Report and Order*, 12 FCC Rcd 17161, 17243 (1997); Assessment and Collection of Regulatory Fees for Fiscal Year 1998, *Report and Order*, 12 Communications Reg. 392 (1998).

⁹¹ See 47 C.F.R. § 1.1167(a) Challenges to determinations or an insufficient regulatory fee payment or delinquent fees should be made in writing. A challenge to a determination that a party is delinquent in paying a standard regulatory fee must be accompanied by suitable proof that the fee had been paid or waived (deferred from payment during the period in question), or by the required regulatory payment and any assessed penalty payment (see §1.1164(c) of this subpart).

Demand Letter was valid under the circumstances when it was issued. Licensee's goal, to be classed a television satellite station, is a matter for the Media Bureau. Accordingly, under 47 C.F.R. § 1.106(p)(5), we deny the *Petition*.

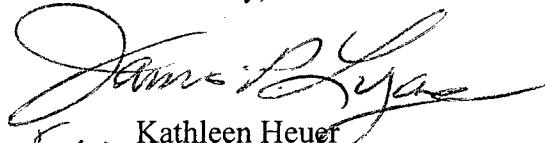
The *Petition* does not comply with procedural requirements.

As explained above, Licensee submitted the *Petition* by email to ARINQUIRIES. As such, Licensee fails to comply with 47 C.F.R. § 1.106(i) that requires submission to the Commission's Secretary. On the separate ground of failing to comply with procedures, under 47 C.F.R. § 1.106(p), we deny.

Licensee is a delinquent debtor, hence until the full amount is paid or satisfactory arrangements are made, Licensee is subject to the Commission's administrative sanctions of withholding action on and dismissal of any application or request as is set forth at 47 C.F.R. §§ 1.1161, 1.1164(e)⁹² and 1.1910.

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

Sincerely,


For: Kathleen Heuer
Chief Financial Officer

⁹² 47 C.F.R. §§ 1.1161(c) ((1) "failure to pay may result in the Commission withholding action on any application or request filed ... (2) If, after final determination that the fee is due or that the applicant is delinquent in the payment of fees and the payment is not made in a timely manner, the staff will withhold action on the application or filing [and if] payment ... is not made ... the application will be dismissed."), 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."), 1.1910.

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAR 27 2017

OFFICE OF
MANAGING DIRECTOR

Dennis P. Corbett, Esquire
Telecommunications Law Professionals PLLC
1025 Connecticut Avenue, N.W., Suite 1011
Washington, DC 20036

Licensee/Applicant: Ramar Communications, Inc.
Request for Reduction and Refund: Regulatory Fees
Disposition: Dismissed and Denied (47 U.S.C. §§
159; 47 C.F.R. §§ 1.1157(c)(1), 1.1160, 1.1161,
1.1164, 1.1166, 1.1167, 1.1910)
Fee: Fiscal Year (FY) 2016 Regulatory Fee
Station(s): KTEL-TV
Date of Payment: Sep. 23, 2016
Date Request Submitted: Sep. 26, 2016
Fee Control No.: RROG 16-00016244

Dear Counsel:

This responds to Ramar Communications, Inc. (Licensee's) Request (*Request*)¹ for a reduction in, and partial refund of, the Fiscal Year (FY) 2016 regulatory fees paid on September 23, 2016. Specifically, Licensee seeks "a reduction of KTEL-TV's regulatory fee for the 2016 fiscal year from \$30,525, the fee assessed ... for TV stations in Markets 26-50, to \$5,000, the fee for stations in Remaining Markets (*i.e.*, those below the top 100). [Licensee] also seeks a waiver to the extent deemed necessary ... to grant the requested reduction,"² and because Licensee paid the higher fee, it seeks refund of the \$25,525 difference. As we discuss below, we dismiss because Licensee is delinquent in paying debts owed to the Commission and, in the alternative, we deny because Licensee failed to establish a basis for a reduction of the regulatory fee. Finally, this is a demand that Licensee pay immediately the delinquent regulatory fees.

Background

Licensee paid its FY 2016 regulatory fee, and now, it asks the Commission to reduce the fee and refund the difference. Specifically, Licensee seeks "a reduction of KTEL-TV's regulatory fee for the 2016 fiscal year from \$30,525, the fee assessed ... for TV stations in Markets 26-50, to \$5,000, the fee for stations in Remaining Markets (*i.e.*, those below the top

¹ Letter from Dennis P. Corbett, Lerman Senter PLLC, 2001 L Street, N.W., Suite 400, Washington, DC 20036 to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, Attn: Office of the Managing Director, Regulatory Fee Waiver/Reduction Request, 445 12th St., S.W., Rm TW-B204, Washington, DC 20554 (Sep. 26, 2016) (*Request*) with Exhibit 1, Payment record; Exhibit 2, Engineering Statement Coverage of DMA prepared for Ramar Communications, Inc., KTEL-TV Carlsbad, NM (*Engineering Statement*); Exhibit 3, Extract page New Mexico-Carlsbad, TV & Cable Factbook No. 84; Exhibit 4, FCC 2016 Regulatory Fee Information Site KOBf, FCC 2016 Regulatory Fee Information Site KOBf.

² *Id.* at 1.

100). [Licensee] also seeks a waiver to the extent deemed necessary ... to grant the requested reduction,”³ and because Licensee paid the higher fee, it seeks refund of the \$25,525 difference.

In support of its position, Licensee refers to a 1995 Memorandum Opinion and Order and 1996 Report and Order that explained the standards at the time in reviewing a request for a reduction in fee⁴ and the standard set forth at 47 C.F.R. § 1.1166 that requires a showing of good cause and that the reduction would serve the public interest.⁵ Licensee asserts it established good cause by showing certain features of KTEL-TV’s signal⁶ and that the “2016 edition of the Television & Cable Factbook show[] KTEL-TV operates as a satellite of KTEL-CD,” but it does not pay a satellite station regulatory fee.⁷ Next, Licensee asserts the public interest is served, in part, because “a small station like KTEL-TV cannot equitably be saddled with top 50 market regulatory fees that fail to take into account its inferior competitive and technical status within the larger market. In-market disparities are only exacerbated when comparable competitors ... pay only very low satellite regulatory fees.”⁸ Licensee acknowledges its “carriage by certain cable systems,” but asserts that situation “does not place the station on par with stations that directly serve the major population centers over the air,” even so, the factor is not dispositive because, in Licensee’s view, in 1995, the Commission did not assign the amount of weight given to cable carriage and, the “primary focus in the 1995 and 1996 rulings [was] on the relative over the air coverage.” Furthermore, Licensee acknowledges its network affiliation with Telemundo network, but asserts the “affiliation is of marginal relevance”⁹ with the explanation “there is a substantial and material difference between a major network affiliation of that kind prevalent in 1995 (ABC, CBS, FOX, and NBC) and affiliation with Telemundo.”¹⁰ Hence, in Licensee’s view, its station is “on a par with stations in the Remaining Markets ... decidedly *not* with the considerably more powerful stations that broadcast their signals and major network programming to the ... population centers in an around Albuquerque.”¹¹

³ *Id.* at 1.

⁴ *Id.* at 2; Implementation of Section 9 of the Communications Act and Assessment and Collection of Regulatory Fees of the 1994 Fiscal Year, *Memorandum Opinion and Order*, 10 FCC Rcd 12759, 12763 ¶ 21 (1995) (Applicants considered for relief “were generally UHF stations ... lack[ing] network affiliations ... located outside of the principle city’s metropolitan area and do not provide a Grade B signal to a substantial portion of the market’s metropolitan areas. Often these stations are not carried by cable systems serving the principal metropolitan areas.”); Assessment and Collection of Regulatory Fees for Fiscal Year 1996, *Report and Order*, 11 FCC Rcd 18774, 18786 ¶ 32 (1996) (“We ... rely on Nielsen’s DMA market rankings ... Nielsen data is generally accepted throughout the industry and will be updated and published annually ... We will consider the equities concerning the fees of licensees that change markets on a case-by-case basis, upon request, and, where a licensee demonstrates that it does not serve its assigned market, we will consider reducing the assigned fees to a more equitable level, based upon the area actually served by the licensee.”).

⁵ *Id.* at 3.

⁶ *Id.* Licensee acknowledges its Nielsen DMA, and asserts over-the-air viewing is “particularly important to a station’s chance of success” and that the station’s “over the air signal reaches comparatively few viewers.” Licensee refers to the *Engineering Statement* as demonstrating the “relevant digital noise-limited service [station] contour” covers 53,077 viewers.

⁷ *Id.* at 4.

⁸ *Id.* at 5.

⁹ *Id.* at 6.

¹⁰ *Id.*

¹¹ *Id.* at 7.

Prior to filing this *Request*, Licensee submitted several email messages, letters, and a Petition for Reconsideration (*Petition*) seeking to alter Licensee's fee status to that of a satellite television station,¹² but without first obtaining a "formal Rule 73.3555 Note 5 'satellite station waiver' of the FCC's duopoly rules."¹³ We dismissed Licensee's *Petition* for several separate reasons, *e.g.*, it was not filed with the Commission,¹⁴ Licensee combined requests requiring action by different bureaus and offices,¹⁵ Licensee was delinquent in paying debts owed to the Commission,¹⁶ and the *Petition* was moot. In the alternative, on separate grounds, we denied the *Petition* because it did not warrant consideration by the Managing Director,¹⁷ and Licensee failed to establish grounds for a refund.¹⁸

¹² *Id.* at 1. See *e.g.*, Email from Dennis P. Corbett (DCorbett@lermansenter.com) to ARINQUIRIES (Nov. 24, 2014) (2014 Request I) with Attachment A, Advanced TV Factbook Listing for KUPT (TV), Attachment B, BIA Listing for KUPT (TV); email from Dennis P. Corbett (DCorbett@lermansenter.com) to ARINQUIRIES (Nov. 24, 2014) (2014 Request II) with Attachment A, Advanced TV Factbook Listing for KETL-TV, Nielsen TV Station Circulation, BIA Kelsey TV Analysis Report; Letter from Dennis P. Corbett, Lerman Senter, PLLC, 2000 K Street, N.W., Suite 600, Washington, DC 20006-1809 to Department of the Treasury, Debt Management Services, Post Office Box 830794, Birmingham, AL 35283-0794 (Mar. 17, 2016) (*Letter*) with attachments (A) letter from Department of the Treasury, Bureau of the Fiscal Service, P.O. Box 830794, Birmingham, AL 35283-0794 to Ramar Communications Inc., 2000 K Street, NW, Suite 600, Washington, DC 20006 (Feb. 22, 2016) (Feb. 22, 2016, *Treasury Demand*) and (B) email from Corbett, Dennis P. to ARINQUIRIES, FCC Washington, DC (Mar. 7, 2016) (*Email*) with summary of correspondence (*Summary*) and copy of Feb. 22, 2016, *Treasury Demand*; Letter from Dennis P. Corbett, Lerman Senter, PLLC, 2001 L Street NW, Suite 400, Washington, DC 20036 to Pioneer Credit Recovery, Inc., 26 Edward St., Arcade, NY 14009 (Jun. 29, 2016) (*Letter II*) with Attachment A, Letter from Pioneer Credit Recovery, Inc., 26 Edward St., Arcade, NY 14009 to Ramar Communications, Atty Dennis P Corbett, 2000 K St., NW, Ste 600, Washington, DC 20006 (Jun. 2, 2016), email from Corbett, Dennis P. to ARINQUIRIES, FCC Washington, DC (Mar. 7, 2016) (*Email*) with summary of correspondence (*Summary*) and copy of Feb. 22, 2016, *Treasury Demand*.

¹³ Email from Berman, Laura M. [LBerman@lermansenter.com] to ARINQUIRIES (Jun. 22, 2016), with Petition for Reconsideration of Regulatory Fee Demand Letter and Request for Refund of Regulatory Fees, KTEL-TV, Carlsbad, NM (Facility ID No. 83707), *Petition for Reconsideration and Request for Refund of Regulatory Fees*, To Office of the Managing Director (Jun. 22, 2016) (*Petition*) at 3, with Exhibit 1, Demand Letter from FCC, Washington, DC 20554 to Ramar Communications, Inc., 2001 L Street, NW, Suite 400, Washington, DC 20036 (Jun. 7, 2016) (Jun. 2016 Demand Letter), FCC, Remittance Advice Bill for Collection, Copy of Transfer of Funds Receipt (6/22/2016); Exhibit 2, Email from Mooradian, Jeffrey C. to ARINQUIRIES [ARINQUIRIES@fcc.gov] (Oct 22, 2015) with attachments, email from Corbett, Dennis P. to ARINQUIRIES@FCC.GOV (Nov. 24, 2014) (2014 Request I) with Attachment A, Advanced TV Factbook Listing for KTEL-TV, Nielsen TV Station Circulation, BIA Kelsey TV Analysis Report, email from Corbett, Dennis P. to ARINQUIRIES@FCC.GOV (Nov. 24, 2014) (2014 Request II) with Attachment A, Advanced TV Factbook Listing for KUPT, Nielsen TV Station Circulation, BIA Kelsey TV Analysis Report; Exhibit 3, Email from Mooradian, Jeffrey C. to ARINQUIRIES [ARINQUIRIES@FCC.GOV] (Feb. 24, 2016) with FCC, Remittance Advice, Bill for Collection, email from Corbett, Dennis P. to ARINQUIRIES@FCC.GOV, (Nov. 24, 2014) (*duplicate of 2014 Request II*) with Attachment A, Advanced TV Factbook Listing for KUPT, Nielsen TV Station Circulation, BIA Kelsey TV Analysis Report; Exhibit 4, email from Corbett, Dennis P. to ARINQUIRIES@FCC.GOV (Mar. 7, 2016) (*Email*) with summary of correspondence (*Summary*) and copy of Feb. 22, 2016, *Treasury Demand*.

¹⁴ 47 C.F.R. §§ 1.106(i) & (p), 1.1159(b), and 1.1167(b) ("Petitions for reconsideration and applications for review not accompanied by a fee payment should be filed with the Commission's Secretary and clearly marked to the attention of the Managing Director.").

¹⁵ 47 C.F.R. § 1.44(d).

¹⁶ 47 C.F.R. § 1.1164(e), 1.1167(b) ("filing of a petition for reconsideration ... of a fee determination will not relieve licensees from the requirement that full and proper payment of the underlying fee payment be submitted, as required by the Commission's action, or delegated action, on a request for waiver, reduction or deferment.")

¹⁷ 47 C.F.R. § 1.106(p).

¹⁸ 47 C.F.R. § 1.1160.

The Commission's records show that Licensee is delinquent in paying regulatory fees.

Standards

The Commission's orders and rules include well-established procedures for assessing and collecting annual regulatory fees, and procedures for filing applications at the Commission including, for example, petitions for declaratory relief, petitions to defer, waive, reduce, or refund a payment, petitions for reconsideration, and other matters seeking Commission action, and the consequences when a licensee fails to comply.¹⁹

Relevant to television station regulatory fees, a television licensee is subject to the regulatory fee payment required for its class of station and market unless the station is a commonly owned television satellite station, authorized pursuant to Note 5 of 47 C.F.R. § 73.3555, that retransmits programming of the primary station.²⁰ A television satellite station is a full power terrestrial broadcast station authorized under Part 73 of the Commission's rules to retransmit all or part of the programming of a parent station that is ordinarily commonly owned.²¹ Licensees are expected to know these rules and procedures,²² and the consequences for non-compliance including debt collection procedures. In that regard, a debt is "any amount of funds or property that has been determined by an appropriate official of the Federal Government to be owed to the United States by a person, organization, or entity other than another Federal agency."²³

In the 1994 *MO&O*, the Commission discussed then-relevant circumstances upon which a licensee may apply for a reduction of its regulatory fee. Specifically, the Commission opined that a licensee of a UHF station, lacking network affiliation, operating in a large market, not providing a signal to a substantial portion of DMA, and not carried by cable systems serving the DMA principal metropolitan areas, may apply to the Managing Director for a reduction of the fee. Thereafter, the Managing Director, under delegated authority, will determine if the station with these characteristics demonstrates it should be charged a fee "based on the number of television households served, and it will be charged the same fee as stations serving markets with the same number of television households" using information derived from "the Arbitron [now A.C. Nielsen] market data in the [Nielsen Station Index Directory and Nielsen Station Index US

¹⁹ See 47 C.F.R. Part 1, e.g., Subparts A, G, and O, 47 C.F.R. §§ 1.2, 1.43, 1.44, 1.106, 1.1153, 1.1157, 1.1164, 1.1166.

²⁰ Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Report and Order*, 9 F.C.C. Rcd. 5333, ¶ 82 (1994); Assessment & Collection of Regulatory Fees for Fiscal Year 1995, *Report and Order*, 10 F.C.C. Rcd. 13512, 13534 (1995) ("Television Satellite Stations (authorized pursuant to Note 5 of Section 73.3555 of the Commission's Rules) that retransmit programming of the primary station will be assessed a fee separate from the fee for fully operational television stations"); Assessment & Collection of Regulatory Fees for Fiscal Year 1999, *Report and Order*, 14 F.C.C. Rcd. 9868, 9936 (1999).

²¹ Television Satellite Stations Review of Policy Rules, *Report and Order*, 6 FCC Rcd 4212, ¶ 3 (1991) (*Satellite Station Review*).

²² 47 C.F.R. § 0.406; see *Life on the Way Communications, Inc., Forfeiture Order* 30 FCC Rcd 2603, 2607 (2015).

²³ 31 U.S.C. § 3701(b)(1); accord 31 C.F.R. § 900.2; 47 C.F.R. 1.1901(e).

Television Household Estimates or any successor publications].”²⁴ These characteristics have changed.

Relevant to annual regulatory fees, section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, codified at 47 U.S.C. § 534, provides that a station’s market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns. See 47 U.S.C. § 534(h)(1)(C). Section 76.55(e)(2) of the Commission’s rules specifies that a commercial broadcast television station’s market is its Designated Market Area (DMA), which reflects viewing patterns, as determined by Nielsen Media Research and published in its Nielsen Station Index Directory and Nielsen Station Index US Television Household Estimates or any successor publications.²⁵

Under 47 C.F.R. §§1.1160(a) and 1.1166, a refund may be made only under specific circumstances, e.g., “[w]hen no regulatory fee is required or an excessive fee has been paid” or “[w]hen a waiver is granted in accordance with § 1.1166.”²⁶ Under § 1.1166, fees may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest.²⁷ An applicant seeking a waiver of the penalty and assessed charges has the burden of demonstrating compelling and “most extraordinary circumstances”²⁸ to justify waiver of the penalty.

²⁴ Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Memorandum Opinion and Order*, 10 FCC Rcd 12759, 12763, ¶¶ 21-22 (1995) (1994 MO&O); Assessment and Collection of Regulatory Fees for Fiscal Year 1996, *Report and Order*, 11 FCC Rcd 18774, 18786, ¶ 32 (1996) (“We ... rely on Nielsen’s DMA market rankings ... Nielsen data is generally accepted throughout the industry and will be updated and published annually ... We will consider the equities concerning the fees of licensees that change markets on a case-by-case basis, upon request, and, where a licensee demonstrates that it does not serve its assigned market, we will consider reducing the assigned fees to a more equitable level, based upon the area actually served by the licensee.”).

²⁵ 47 C.F.R. § 76.55(e)(2); Assessment and Collection of Regulatory Fees for Fiscal Year 2000, *Report and Order*, 15 FCC Rcd 14478, 14492, ¶ 34 (2000) (“Fees for television stations are based on market size as determined by Nielsen. This is the only consistent source the Commission has for determining which market a station serves.”). See also Amendment to the Commission’s Rules Concerning Market Modification, 30 FCC Rcd 10406 ¶ 6, n. 19 (2015), (“The Nielsen Company delineates television markets by assigning each U.S. county (except for certain counties in Alaska) to one market based on measured viewing patterns both off-air and via MVPD distribution.”); Designated Market Areas: Report to Congress, 31 FCC Rcd 5463, 5465-66 ¶ 6 (2015),

Nielsen divides the United States into 210 DMAs. DMAs describe each television market in terms of a group of counties and are defined by Nielsen based on measured viewing patterns. [fn deleted] The counties included in a DMA generally are clustered geographically around the major metropolitan area or areas in that DMA, where the majority of the market’s television stations usually are located. DMAs are in part primarily designed to facilitate commercial purposes — such as program acquisition, the sale of advertising, and network compensation — and thus primarily represent market areas where broadcasters acquire programming and sell advertising. [fn deleted] Because DMAs are based on viewing patterns as measured by Nielsen irrespective of state boundaries, a large number of DMAs cross state lines and include counties from multiple states. [fn deleted]

²⁶ 47 C.F.R. § 1.1160(a)(1) & (3).

²⁷ 47 C.F.R. § 1.1166; cf 47 C.F.R. § 1.3.

²⁸ McLeodUSA Telecommunications Services, Inc., *Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589, ¶ 8 (2004) (*McLeodUSA Telecommunications*) (denying the request for waiver of 25 percent penalty).

Under the Commission's rules, an *application* includes, in addition to petitions and applications elsewhere defined in the Commission's rules, any request, as for assistance, relief, declaratory ruling, or decision, by the Commission or on delegated authority.²⁹ A debt is delinquent when it "has not been paid by the date specified."³⁰ Upon filing, the Commission will examine an "application (including a petition for reconsideration or any application for review of a fee determination) ... to determine if the applicant has paid the appropriate application fee, appropriate regulatory fees, is delinquent in its debts owed the Commission, or is debarred from receiving Federal benefits[, and a]ction will be withheld on applications, including on a petition for reconsideration or any application for review of a fee determination ... until full payment or arrangement to pay any non-tax delinquent debt owed to the Commission is made and ... the application may be dismissed."³¹ Moreover, "[i]f a delinquency has not been paid or the debtor has not made other satisfactory arrangements within 30 days of the date of the notice provided pursuant to paragraph (b)(2) of this section, the application or request for authorization will be dismissed."³² Additionally, under 47 C.F.R. § 1.1161(c),³³ the Commission will withhold action on any application or request filed by a delinquent debtor applicant, and if after 30 days payment or a satisfactory arrangement is not made, dismiss the application.

An applicant seeking a waiver, reduction, or deferral of a fee must comply with 47 C.F.R. § 1.1166, which provides,

The fees ... may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest. ... (a) ... All such filings within the scope of the fee rules shall be filed as a separate pleading and clearly marked to the attention of the Managing Director. Any such request that is not filed as a separate pleading will not be considered by the Commission. (1) If the request for waiver, reduction or deferral is accompanied by a fee payment, the request must be submitted to the Commission's lockbox bank at the address for the appropriate service set forth in §§1.1152 through 1.1156 of this subpart. (2) If no fee payment is submitted, the request should be filed with the Commission's Secretary.

Under 47 C.F.R. § 1.2, a regulatee may request a declaratory ruling to remove an uncertainty.

²⁹ 47 C.F.R. § 1.1901(d).

³⁰ 47 C.F.R. § 1.1901(i).

³¹ 47 C.F.R. § 1.1910(a) & (b).

³² 47 C.F.R. § 1.1910(b)(3).

³³ 47 C.F.R. § 1.1161(c) provides:

(1) Where an applicant is found to be delinquent in the payment of regulatory fees, the Commission will make a written request for the fee, together with any penalties that may be rendered under this subpart. Such request shall inform the regulatee that failure to pay may result in the Commission withholding action on any application or request filed by the applicant. The staff shall also inform the regulatee of the procedures for seeking Commission review of the staff's determination.

(2) If, after final determination that the fee is due or that the applicant is delinquent in the payment of fees and payment is not made in a timely manner, the staff will withhold action on the application or filing until payment or other satisfactory arrangement is made. If payment or satisfactory arrangement is not made within 30 days, the application will be dismissed.

Discussion

We dismiss the *Request* because Licensee is delinquent in paying debts owed to the Commission and, for the separate alternative grounds, we deny the *Request* because Licensee failed to establish that the fee should be reduced. We discuss each point below.

Licensee is delinquent in paying debts owed to the Commission.

We dismiss the *Request* as provided for under 47 C.F.R. §§1.1161(c)(2), 1.1164(e), 1.1167(b), and 1.1910(b), because Licensee is delinquent in paying debts owed to the Commission. Specifically, the Commission's records show that Licensee is delinquent in paying regulatory fees for FY 2013 and FY 2014.³⁴ Licensee knows it is delinquent in paying these debts owed to the Commission.

The Commission's rule, 47 C.F.R. § 1.1161(c), provides, in relevant part, that upon finding that an applicant is delinquent in paying a regulatory fee, and making demand for payment of the delinquent fee and accrued charges, the Commission will withhold action on any application or request filed by an applicant, and if within 30 days, payment or satisfactory arrangement for payment is not made, the application will be dismissed.³⁵

Moreover, 47 C.F.R. § 1.1164(e) requires dismissal of a "pending or subsequently filed application" where the applicant is "determined to be delinquent in paying a standard regulatory fee."³⁶

Furthermore, 47 C.F.R. § 1.1910(b)(2),³⁷ the Commission's red light rule, provides, "[a]ction 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 The entity will be informed that action will be withheld on the application until full payment ... is made and/or that the application may be dismissed."

Because Licensee is delinquent in paying debts owed to the Commission, we dismiss the *Request*.³⁸ This ends the matter; however, as a matter of administrative economy, we will discuss the separate alternative grounds for denying the *Request*.

Licensee fails to demonstrate payment of an excessive fee or the basis for a waiver or refund.

³⁴ 31 U.S.C. § 3711(g); 31 C.F.R. § 285.12; 47 C.F.R. § 1.1917.

³⁵ 47 C.F.R. § 1.1161(c).

³⁶ 47 C.F.R. § 1.1164(e).

³⁷ 47 C.F.R. § 1.1910(b)(2).

³⁸ 47 C.F.R. §§ 1.1161, 1.1164, 1.1167, and 1.1910.

In the alternative, for the following separate reasons that Licensee failed to demonstrate it paid an excessive fee or that its situation warrants a waiver of the fee and a refund, we deny the *Request*.

Under the Commission's rules at 47 C.F.R. §§ 1.1160(a) and 1.1166, a refund may be made only under specific circumstances, *e.g.*, "[w]hen no regulatory fee is required or an excessive fee has been paid" or "[w]hen a waiver is granted in accordance with § 1.1166."³⁹ Under § 1.1166, fees may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest.⁴⁰ Licensee fails to establish grounds for a refund or waiver.⁴¹

Licensee's fee for a commercial television station is based upon the size of the Nielsen DMA,⁴² the fact and procedure for which Licensee neither disputes nor challenges as being erroneous. Rather, the essence of Licensee's *Request* is that a reduction of the determined fee amount is appropriate because the station's over-the-air broadcast signal reaches a reduced portion of the population of the designated DMA and it asserts (without benefit of a Commission determination) that it is a satellite station of a television station of a different classification. Licensee adds that its cable carriage and Telemundo network affiliation are of marginal value in determining whether the fee paid is excessive. In Licensee's view, the Commission's discussion in paragraph 21 of 1994 *MO&O* should control.⁴³ Licensee's approach is wrong.

The Nielsen DMA reflects actual viewing patterns including cable and satellite delivery and network affiliation.⁴⁴ Moreover, as we discuss next, Licensee's reliance on the 1994 *MO&O* is misplaced because Licensee fails to demonstrate that the circumstances described as the grounds for relief in 1994 *MO&O* are valid now, that the characteristics enumerated in the 1994 *MO&O* apply to Licensee, and that Licensee's payment is excessive.

First, Licensee asserts that the "Commission [determined it] would entertain regulatory fee reduction requests from [certain] television broadcast station licensee ... [and t]he Commission has *not* modified [the 1995 and 1996] rulings,"⁴⁵ so, based on the discussion in paragraph 21 of the 1994 *MO&O*, in Licensee's view, the Commission "did not require that all of the[] ... characteristics be present to warrant a fee reduction[, rather] reductions are appropriate on an equitable basis for relatively small stations outlying ... of large markets, where

³⁹ 47 C.F.R. § 1.1160(a)(1) & (3).

⁴⁰ 47 C.F.R. § 1.1166; *cf.* 47 C.F.R. § 1.3.

⁴¹ Consistent with 47 C.F.R. § 1.1160(a)(1), we considered Licensee's entire submission.

⁴² 47 U.S.C. § 534(h)(1)(C); 47 C.F.R. § 76.55(e)(2); Assessment and Collection of Regulatory Fees for Fiscal Year 2000, *Report and Order*, 15 FCC Rcd 14478, 14492, ¶ 34 (2000); *see* FY 2001 Mass Media Regulatory Fees, *Public Notice* (Aug. 7, 2001); FY 2002 Media Services Regulatory Fees, *Public Notice* (Aug. 7, 2002), What You Owe-Media Services Licensees For FY 2013, *Regulatory Fees Fact Sheet* (Sep. 5, 2013), What You Owe-Media Services Licensees For FY 2014, *Regulatory Fees Fact Sheet* (Sep. 5, 2014) ("Fees for commercial television stations are based upon the size of the Nielsen Designated Market Area"), What You Owe-Media Services Licensees For FY 2015, *Regulatory Fees Fact Sheet* (Sep. 11, 2015) ("Fees for commercial television stations are based upon the size of the Nielsen Designated Market Area").

⁴³ *Request* at 2.

⁴⁴ Amendment to the Commission's Rules Concerning Market Modification, 30 FCC Rcd 10406 ¶ 6, n. 19, *supra*; Designated Market Areas: Report to Congress, 31 FCC Rcd at 5465-66 ¶ 6, *supra*.

⁴⁵ *Id.* at 1.

the smaller stations are not on a par with stations ... within that same market's principal city or cities."⁴⁶ Next, Licensee acknowledges the Managing Director may "consider reducing the assigned fees" where "a licensee demonstrates that it does not serve its assigned market."⁴⁷

Even as the discussion in the 1994 *MO&O* forming the basis for a reduction of the fee are enumerated necessary characteristics, characteristics existing in 1995 have changed. At that time, applicants considered for relief "were generally UHF stations ... lack[ing] network affiliations ... located outside of the principle city's metropolitan area and do not provide a Grade B signal to a substantial portion of the market's metropolitan areas. Often these stations are not carried by cable systems serving the principal metropolitan areas"⁴⁸ To show whether a station "serve[s] the principal metropolitan areas within their assigned markets and serve[s]" a particular number of "television households ... [the applicant should present information] derived from the Arbitron market data in the Television and Cable Fact Book."⁴⁹

Over time, however, circumstances existing in 1995 changed. For example, major changes since then modify the characteristics. Hence, an applicant for relief now must consider and address those relevant changes or invite denial of the relief. Licensee's *Request* fails to align its situation to the characteristics.

First, the Commission relies on A.C. Nielsen ratings to determine which market a station serves,⁵⁰ and thereafter "[f]ees for television stations are based on market size as determined by Nielsen."⁵¹ As to fee determinations, in 1996, the Commission said it would consider cases in which an applicant demonstrated it does not serve its assigned market, however, in 2000, the Commission noted that it "is unaware of the existence of any reliable published source that can identify which television stations are serving small markets at the fringe of larger DMA's."⁵² Thus, Licensee must shoulder the heavy burden of establishing that its circumstances fall within these defined limits and that the Nielsen ratings are wrong. The Nielsen rating standard is codified at 47 C.F.R. § 76.55(e)(2), which provides, "[e]ffective January 1, 2000, a commercial broadcast television station's market, unless amended pursuant to § 76.59, shall be defined as its Designated Market Area (DMA) as determined by Nielsen Media Research and published in its

⁴⁶ *Id.* at 2.

⁴⁷ *Id.* at 2-3.

⁴⁸ 1994 *MO&O*, 10 FCC Rcd at 12763, ¶ 21.

⁴⁹ *Id.* at 12763, ¶ 22.

⁵⁰ Assessment and Collection of Regulatory Fees for Fiscal Year 1996, *Report and Order*, 11 FCC Rcd 18774, 18786, ¶ 32 (1996) ("We ... rely on Nielsen's DMA market rankings ... Nielsen data is generally accepted throughout the industry and will be updated and published annually ... We will consider the equities concerning the fees of licensees that change markets on a case-by-case basis, upon request, and, where a licensee demonstrates that it does not serve its assigned market, we will consider reducing the assigned fees to a more equitable level, based upon the area actually served by the licensee."); Assessment and Collection of Regulatory Fees for Fiscal Year 2000, *Report and Order*, 15 FCC Rcd 14478, 14492, ¶ 34 (2000) (Commission rejected commenter's "argu[ment] that small television stations located near large designated market areas (DMA) are assessed disproportionately high fees because the A.C. Nielsen ratings include them in the DMA but they do not serve households in the DMA. Fees for television stations are based on market size as determined by Nielsen. This is the only consistent source the Commission has for determining which market a station serves.").

⁵¹ Assessment and Collection of Regulatory Fees for Fiscal Year 2000, *Report and Order*, 15 FCC Rcd at 14492, ¶ 34, *supra*.

⁵² *Id.* at 14493.

Nielsen Station Index Directory and Nielsen Station Index US Television Household Estimates or any successor publications.” The DMA recognizes viewing patterns, and the annual regulatory fee is based upon the size of the Nielsen DMA. Licensee has not distinguished its situation from that accepted fact or shown that the designation is wrong.

Next, although Licensee acknowledges it must demonstrate the “area actually served,” it focuses instead on its over the air signal, and points to its *Engineering Statement*. Even though Licensee acknowledges its “carriage by certain cable systems,”⁵³ it does not identify the system or systems, instead choosing to state the “factor is hardly dispositive.”⁵⁴ Moreover, Licensee fails to discuss the pertinent fact that by statute (47 U.S.C. § 534) cable operators are required to carry the signals of all qualified television stations in their local market and that DBS providers are required to carry the signals of all qualified television stations in a local market if they choose to carry the signal of at least one local television station in that market. *See* 47 U.S.C. § 338; 17 U.S.C. § 122. These are material factors in the consideration of the reach into the DMA. Additionally, Licensee claims its “affiliat[ion] with the Telemundo network” is “of marginal relevance” and that Telemundo is not “a major network ... of the kind prevalent in 1995.”⁵⁵ Licensee’s effort to marginalize its affiliation with a Hispanic or Latino network in a state whose Hispanic population is over 46%⁵⁶ is unsupported. Indeed, Licensee’s unsupported generalizations do not demonstrate Nielsen DMA information is erroneous. Furthermore, Licensee fails to disclose fully ADS systems, including specific carriage arrangements (which appears to be state wide⁵⁷), United States census information relating DMA population and Licensee’s reach, and network affiliation information concerning Hispanic or Latino TV homes in the Albuquerque-Santa Fe DMA. Plainly, Licensee fails to show its area actually served or to present “the existence of any reliable published source that can identify which television stations are serving small markets at the fringe of larger DMA’s.”⁵⁸ Licensee’s *Request* fails to demonstrate under 47 C.F.R. § 1.1160(a) that the fee paid is excessive (or that no fee is due).

Finally, even if we construe Licensee’s *Request* as seeking a waiver under 47 C.F.R. § 1.1166, Licensee fails to establish for a waiver both *good cause*⁵⁹ and a finding that the *public interest will be served thereby*.⁶⁰ Licensee’s unsupported assertions (as are discussed above) do not present either good cause or that the public interest will be served by granting a waiver. Accordingly, we deny the *Request*.

Licensee is a delinquent debtor, hence until the full amount is paid or satisfactory arrangements are made, Licensee is subject to the Commission’s administrative sanctions of withholding action on and dismissal of any application or request as is set forth at 47 C.F.R. §§

⁵³ *Request* at 6.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *See* <http://www.census.gov/quickfacts/table/PST045215/35>.

⁵⁷ *See* <https://en.wikipedia.org/wiki/KTEL-CD>.

⁵⁸ Assessment and Collection of Regulatory Fees for Fiscal Year 2000, *Report and Order*, *supra*, 15 FCC Rcd at 14492, ¶ 34.

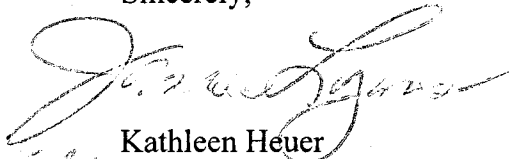
⁵⁹ 47 C.F.R. § 1.3.

⁶⁰ 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166. *See also* 1994 *Report and Order*, 9 FCC Rcd at 5354, ¶ 65; *WAIT Radio v. FCC*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166; *Phoenix Broadcasting, Inc.*, *supra*, 18 FCC Rcd at 26466.

1.1161, 1.1164(e)⁶¹ and 1.1910. To be clear, this renews our demand that Licensee pay immediately the full amount of all delinquent debts owed the Commission.

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

Sincerely,



Kathleen Heuer
Chief Financial Officer

⁶¹ 47 C.F.R. §§ 1.1161(c) ((1) "failure to pay may result in the Commission withholding action on any application or request filed ... (2) If, after final determination that the fee is due or that the applicant is delinquent in the payment of fees and the payment is not made in a timely manner, the staff will withhold action on the application or filing [and i]f payment ... in not made ... the application will be dismissed."), 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."), 1.1910.

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

FEB 13 2017

OFFICE OF
MANAGING DIRECTOR

Dennis P. Corbett, Esquire
Telecommunications Law Professionals PLLC
1025 Connecticut Avenue, N.W., Suite 1011
Washington, DC 20036

Licensee/Applicant: Ramar Communications, Inc.
Petition for Reconsideration & Request for Refund:
Regulatory Fees and Late Payment Penalty
Disposition: Dismissed and Denied (47 U.S.C. §§
159, 405; 31 U.S.C. § 1301; 47 C.F.R. §§ 0.401,
1.2, 1.3, 1.44, 1.106(p), 1.1157(c)(1), 1.1160,
1.1161, 1.1164, 1.1166, 1.1167, 1.1910)
Fee: Fiscal Year (FY) 2015 Regulatory Fee and
Regulatory Fee Late Payment Penalties
Station(s): KTEL-TV
Date of Payment: Jun. 22, 2016
Date Request Submitted: Jun. 22, 2016
Fee Control No.: RROG 16-00016185

Dear Counsel:

This responds to Ramar Communications, Inc. (Licensee's) Petition for Reconsideration and Request for Refund of Regulatory Fees (*Petition*),¹ submitted to ARINQUIRIES seeking reconsideration of the *Jun. 2016 Demand Letter*² and a refund of the amount Licensee paid to the Commission in response to that *Demand Letter*. Specifically, Licensee seeks "reconsideration of the June 7, 2016 Demand Letter ... related to [Bill No. BRF R15T083707] for amounts allegedly

¹ Email from Berman, Laura M. [LBerman@lrmansenter.com] to ARINQUIRIES (Jun. 22, 2016), with Petition for Reconsideration of Regulatory Fee Demand Letter and Request for Refund of Regulatory Fees, KTEL-TV, Carlsbad, NM (Facility ID No. 83707), *Petition for Reconsideration and Request for Refund of Regulatory Fees*, To Office of the Managing Director (Jun. 22, 2016) (*Petition*) with Exhibit 1, Demand Letter from FCC, Washington, DC 20554 to Ramar Communications, Inc., 2001 L Street, NW, Suite 400, Washington, DC 20036 (Jun. 7, 2016) (*Jun. 2016 Demand Letter*), FCC, Remittance Advice Bill for Collection, Copy of Transfer of Funds Receipt (6/22/2016); Exhibit 2, Email from Mooradian, Jeffrey C. to ARINQUIRIES [ARINQUIRIES@fcc.gov] (Oct 22, 2015) with attachments, email from Corbett, Dennis P. to ARINQUIRIES@FCC.GOV (Nov. 24, 2014) (2014 Request I) with Attachment A, Advanced TV Factbook Listing for KTEL-TV, Nielsen TV Station Circulation, BIA Kelsey TV Analysis Report, email from Corbett, Dennis P. to ARINQUIRIES@FCC.GOV (Nov. 24, 2014) (2014 Request II) with Attachment A, Advanced TV Factbook Listing for KUPT, Nielsen TV Station Circulation, BIA Kelsey TV Analysis Report; Exhibit 3, Email from Mooradian, Jeffrey C. to ARINQUIRIES [ARINQUIRIES@FCC.GOV] (Feb. 24, 2016) with FCC, Remittance Advice, Bill for Collection, email from Corbett, Dennis P. to ARINQUIRIES@FCC.GOV, (Nov. 24, 2014) (*duplicate of 2014 Request II*) with Attachment A, Advanced TV Factbook Listing for KUPT, Nielsen TV Station Circulation, BIA Kelsey TV Analysis Report; Exhibit 4, email from Corbett, Dennis P. to ARINQUIRIES@FCC.GOV, (Mar. 7, 2016) (*Email*) with summary of correspondence (*Summary*) and copy of Feb. 22, 2016, *Treasury Demand*.

² *Jun. 2016 Demand Letter*.

owed by [Licensee] in connection with ... FY2015 regulatory fees, and [Licensee] request[s] that these fees (including all penalties and interest) ... paid [June 22, 2016] be refunded.”³ In addition, Licensee asks the Commission to “(i) determine ... for purposes of regulatory fees, the Station is a satellite station, entitled to pay the lower ... fee amount; (ii) change Ramar’s red light status from ‘red’ to ‘green;’ and (iii) refund in full [Licensee’s] payment of the FY2015 Bill.”⁴

In summary, Licensee asserts that it has an “unresolved ... challenge to [the Commission’s] imposition of [annual regulatory] fees”⁵ that is based on Licensee’s described “disagreement between [Licensee] and the Commission about whether [Licensee’s] television station KTEL-TV ... owes higher non-satellite regulatory fees, or lower satellite [television station] fees.”⁶ Licensee asserts, “for several years, [it] paid a satellite station fee ... without any dispute from the Commission” even as Licensee acknowledges that “the only television satellite stations entitled to the benefit of the lesser satellite fees are those to which the Commission has issued a formal Rule 73.3555 Note 5 ‘satellite station waiver’ of the FCC’s duopoly rules.”⁷ Licensee includes in its labeled “unresolved challenge” earlier *2014 Requests*⁸ asking the “Commission [to change its] regulatory fee records ... to reflect the television satellite status of [station call signs KUPT TV and KTEL-TV] and that the Demand Letter[s] be rescinded.”⁹ As we discuss below, we dismiss the *Petition* because it is not filed with the Commission,¹⁰ Licensee combined requests requiring action by different bureaus and offices,¹¹ Licensee is delinquent in paying debts owed to the Commission,¹² and the *Petition* is moot because Licensee

³ *Petition* at 1.

⁴ *Id.* at 10.

⁵ *Id.* at 1. See e.g., Email from Dennis P. Corbett (DCorbett@lermansenter.com) to ARINQUIRIES (Nov. 24, 2014) (*2014 Request I*) with Attachment A, Advanced TV Factbook Listing for KUPT (TV), Attachment B, BIA Listing for KUPT (TV); email from Dennis P. Corbett (DCorbett@lermansenter.com) to ARINQUIRIES (Nov. 24, 2014) (*2014 Request II*) with Attachment A, Advanced TV Factbook Listing for KTEL-TV, Nielsen TV Station Circulation, BIA Kelsey TV Analysis Report; Letter from Dennis P. Corbett, Lerman Senter, PLLC, 2000 K Street, N.W., Suite 600, Washington, DC 20006-1809 to Department of the Treasury, Debt Management Services, Post Office Box 830794, Birmingham, AL 35283-0794 (Mar. 17, 2016) (*Letter*) with attachments (A) letter from Department of the Treasury, Bureau of the Fiscal Service, P.O. Box 830794, Birmingham, AL 35283-0794 to Ramar Communications Inc., 2000 K Street, NW, Suite 600, Washington, DC 20006 (Feb. 22, 2016) (*Feb. 22, 2016, Treasury Demand*) and (B) email from Corbett, Dennis P. to ARINQUIRIES, FCC Washington, DC (Mar. 7, 2016) (*Email*) with summary of correspondence (*Summary*) and copy of *Feb. 22, 2016, Treasury Demand*; Letter from Dennis P. Corbett, Lerman Senter, PLLC, 2001 L Street NW, Suite 400, Washington, DC 20036 to Pioneer Credit Recovery, Inc., 26 Edward St., Arcade, NY 14009 (Jun. 29, 2016) (*Letter II*) with Attachment A, Letter from Pioneer Credit Recovery, Inc., 26 Edward St., Arcade, NY 14009 to Ramar Communications, Atty Dennis P Corbett, 2000 K St., NW, Ste 600, Washington, DC 20006 (Jun. 2, 2016), email from Corbett, Dennis P. to ARINQUIRIES, FCC Washington, DC (Mar. 7, 2016) (*Email*) with summary of correspondence (*Summary*) and copy of *Feb. 22, 2016, Treasury Demand*.

⁶ *Petition* at 2.

⁷ *Id.* at 3.

⁸ *2014 Request I; 2014 Request II.*

⁹ *2014 Request I* at 2, *2014 Request II* at 2.

¹⁰ 47 C.F.R. §§ 1.106(i) & (p), 1.1159(b), and 1.1167(b) (“Petitions for reconsideration and applications for review not accompanied by a fee payment should be filed with the Commission’s Secretary and clearly marked to the attention of the Managing Director.”).

¹¹ 47 C.F.R. § 1.44(d).

¹² 47 C.F.R. § 1.1164(e), 1.1167(b) (“filing of a petition for reconsideration ... of a fee determination will not relieve licensees from the requirement that full and proper payment of the underlying fee payment be submitted, as required by the Commission’s action, or delegated action, on a request for waiver, reduction or deferment.”)

paid Bill No. R15T083707, which is the reason the Commission sent the *Jun. 2016 Demand Letter*. In the alternative, we deny the *Petition* because it does not warrant consideration by the Managing Director,¹³ and Licensee failed to establish grounds for a refund.¹⁴

As a procedural matter, it is apparent from other records that Licensee's counsel has changed his mailing address; however, counsel should have but did not file an information change related to this proceeding.

Background

The Commission's records show that Licensee is delinquent in paying regulatory fees for Fiscal Year (FY) 2013 (Bill No. R13T027431) and FY 2014 (Bill No. BRF R 14T027431), and that those delinquent debts have been referred to the U.S. Department of the Treasury for collection action. Additionally, the Commission's records show that on June 22, 2016, licensee paid the balance owed on Bill No.: BRF R15T083707, which was the basis for the *Jun. 2016 Demand Letter* (the subject of the *Petition*).

On June 22, 2016, Licensee submitted by "email to ARINQUIRIES@FCC.GOV in accordance with the instructions in the June 2016 Demand Letter"¹⁵ a pleading captioned as a "PETITION FOR RECONSIDERATION AND REQUEST FOR REFUND OF REGULATORY FEES." In the introductory section, Licensee asks for "reconsideration of the June 7, 2016 Demand Letter [and a refund] of the FY 2015 regulatory fees ... (including all penalties and interest) ... paid,"¹⁶ and in its conclusion Licensee asks the Commission to: "(i) determine that for purposes of regulatory fees, the Station [KTEL-TV, Facility ID No. 83707] is a satellite station, entitled to pay the lower regulatory fee amount; (ii) change [Licensee's] red light status from 'red' to 'green;' and (iii) refund in full [Licensee's] payment of the FY2015 Bill."¹⁷ In between those two parts, Licensee asserts its reasons for refusing to pay the full amount of the annual regulatory fee when it was due.

Licensee asserts, "[a]t all times during the dispute, [Licensee] *timely remit[ed] payment of satellite station regulatory fees*, and then, in accordance with what it understands to be the FCC rules of the road governing error claims related to regulatory fees, filing timely written challenges to FCC demand for payment of higher non-satellite fees."¹⁸ Continuing, Licensee asserts, "for several years, [Licensee] paid a satellite station fee ... without any dispute from the Commission. However, the FY 2015 Bill invoices [Licensee] for the difference between a satellite station payment and the amount the station would be required to pay if not deemed a satellite."¹⁹ Even so, Licensee acknowledges, "only television satellite stations entitled to the benefit of the lesser satellite fees are those to which the Commission has issued a formal Rule 73.3555 Note 5 'satellite station waiver' of the FCC's duopoly rules."²⁰ Nonetheless, Licensee

¹³ 47 C.F.R. § 1.106(p).

¹⁴ 47 C.F.R. § 1.1160.

¹⁵ *Petition* at 1.

¹⁶ *Id.*

¹⁷ *Id.* at 10.

¹⁸ *Id.* at 2.

¹⁹ *Id.* at 3.

²⁰ *Id.*

opines, that as far as it is aware, “the Commission has never given notice that only satellite stations that obtain a Note 5 duopoly waiver are entitled to the lower satellite station regulatory fee.”²¹

On January 30, 2013, the Commission demanded that Licensee pay \$22,179.17 set forth in Bill No. R13T027431 (*FY 2013 Demand I*)²² (a debt currently at Treasury for collection), and the Commission provided Licensee with notice that it had 15 days in which to request an opportunity to inspect or copy debt-related records, to request an installment payment plan, or, as permitted by FCC rules, seek agency review of the basis of the debt. Specifically, the notice explained, to exercise “any of these rights, [the debtor] must, within the allowed time, deliver to the FCC’s address ... a written request (letter or email) specifying the nature of the request and providing relevant verified supporting documentation. After 15-days, [the debtor] will be deemed to have waived any right not exercised, and any notice that [debtor] may receive later does not extend or renew that period.”²³ On the same date, the Commission provided a demand for payment with the same notifications for the payment of Bill No. R13T083707 1,²⁴ (which Licensee paid on September 19, 2013). On October 28, 2014, the Commission demanded payment of Bill No. BRF R14T027431 1²⁵ (at Treasury for collection) and Bill No. BRF R14T083707 1,²⁶ which Licensee paid on June 22, 2016. These two demand letters provided Licensee 30 days to exercise the identified rights.

On March 7, 2016, Licensee submitted to the Commission’s staff an *Email* asserting it “learned that the Commission’s online LMS system [would] not accept [Licensee’s] application[, and that] the block [was] related to [Licensee’s delinquent] regulatory fee bills.”²⁷ Continuing, Licensee asserted it “has consistently been paying regulatory fees for KTEL-TV and KUPT based on their recognized status within the television industry as satellite stations and that [Licensee] has a long standing as yet unresolved challenge to the FCC’s position that [the] two stations should pay regulatory fees as if they were full power *non-satellite* stations.”²⁸ Licensee asserted, the so-called challenge has been of “substantial duration,” and as such, under 47 C.F.R. § 1.1910(b)(3)(i), the Commission’s procedure to withhold action on any application filed by a delinquent debtor should be deferred.²⁹ Licensee asserted that from its “informal discussions with [the Commission’s] Media Bureau,” Licensee “believe[s] that [the Commission] staff is taking the position that the only television satellite stations entitled to the benefit of the lesser satellite fees are those to which the Commission has issued a formal [waiver under 47 C.F.R. §] 73.3555 Note 5.”³⁰ Licensee, however, asserted it does not “need [a] Note 5

²¹ *Id.* at 4.

²² Demand Letter, FCC, Washington, DC 20554 to Ramar Communications, Inc., 2000K Street, NW, Suite 600, Washington, DC 20006 (Jan. 30, 2014)(*FY 2013 Demand Letter I*).

²³ *Id.*

²⁴ Demand Letter, FCC, Washington, DC 20554 to Ramar Communications, Inc., 2000K Street, NW, Suite 600, Washington, DC 20006 (Jan. 30, 2014)(*FY 2013 Demand Letter II*).

²⁵ Demand Letter, FCC, Washington, DC 20554 to Ramar Communications, Inc., 2000K Street, NW, Suite 600, Washington, DC 20006 (Oct. 28, 2014)(*FY 2014 Demand Letter I*).

²⁶ Demand Letter, FCC, Washington, DC 20554 to Ramar Communications, Inc., 2000K Street, NW, Suite 600, Washington, DC 20006 (Oct. 28, 2014)(*FY 2014 Demand Letter II*).

²⁷ *Email* at 1.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 2.

duopoly waiver” and it is Licensee’s “understanding that the Commission has historically consulted industry publications to determine whether a particular station qualifies as a satellite [and Licensee’s two stations] are listed as satellite stations in BIA’s database.”³¹

Licensee asserted, the Commission’s statement in the FY 2002 regulatory fee report and order, *i.e.*, “stations designated as Television Satellite Stations in the 2002 Edition of the *Television and Cable Factbook* ... are subject to the fee applicable to Television Satellite Stations,” in Assessment and Collection of Regulatory Fees for Fiscal Year 2002, *Report and Order*, 17 FCC Rcd 13203, 13268 (2002), is “dispositive here.”³² Notably, Licensee failed to include the balance of the cited text, *i.e.*,

Commonly owned Television Satellite Stations in any market (authorized pursuant to Note 5 of §73.3555 of the Commission’s Rules) that retransmit programming of the primary station are assessed a fee of \$805 annually. Those stations designated as Television Satellite Stations in the 2002 Edition of the Television and Cable Fact book are subject to the fee applicable to Television Satellite Stations. All other television licensees are subject to the regulatory fee payment required for their class of station and market.

Next, in its effort to establish disparate treatment, in the *Email*, Licensee “requests that FCC staff review broadly the Commission’s regulatory fee database to determine the extent to which the universe of satellite stations that pay satellite fees ... also encompasses non-Note 5 stations that are listed as satellites in industry publications.”³³ Beyond that approach, Licensee did not provide evidence supporting disparate fee payment, rather as Licensee asserted in the *2014 Requests* and *Email*, it is “reliant on the staff’s obtaining this information,” and from that, Licensee posits it is entitled to pay only a portion of the required annual regulatory fees for its stations.³⁴

Conspicuously, and contrary to Licensee’s asserted self-determination, in two related years, 2013 and 2014, the *Television & Cable Factbook*, Volume 81, pp. A-843 and A-846 (2013) and *Television & Cable Factbook*, Volume 82, pp. A-849 and A-846 (2014) do not report either station KUPT or KTEL-TV as a satellite station.

The delinquent debts are unpaid portions of annual regulatory fees after Licensee unilaterally decided to pay a smaller fee amounts. Under 47 U.S.C. § 159 and the Commission’s rules, we are required to “assess and collect regulatory fees” to recover the costs of the Commission’s regulatory activities.³⁵ When the required payment is received late or it is incomplete, under the law, the Commission automatically assesses a penalty equal to “25 percent of the amount of the fee which was not paid in a timely manner.”³⁶ Specifically, “[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the

³¹ *Id.*

³² *Id.*

³³ *Id.* at 2-3.

³⁴ *Id.* at 3.

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

³⁶ 47 U.S.C. §159(c)(1); 47 C.F.R. §§ 1.1157(c)(1), 1.1164.

regulatee to a 25 percent penalty of the amount of the fee ... which was not paid in a timely manner.”³⁷

Standards

The Commission’s orders and rules include the well-established procedures for assessing and collecting annual regulatory fees, and procedures for filing applications at the Commission including, for example, petitions for declaratory relief, petitions to defer, waive, reduce, or refund a payment, petitions for reconsideration, and other matters seeking Commission action, and the consequences when a licensee fails to comply.³⁸

The Commission will consider a petition for reconsideration only when petitioner shows either a material error in the Commission’s original order or raises changed circumstances or unknown additional facts not known or existing at the time of petitioner’s last opportunity to present such matters.³⁹ See 47 C.F.R. § 1.106(d)(1) (petitions for reconsideration must “state with particularity the respects in which petitioner believes the action taken by the Commission ... should be changed”) and 47 C.F.R. § 1.106(d)(2) (requiring petitioner to cite, where appropriate, “the findings [of fact] and/or conclusions [of law] which petitioner believes to be erroneous, and shall state with particularity the respects in which [the petitioner] believes such findings and/or conclusions should be changed”). Petitions for reconsideration that “plainly do not warrant consideration by the Commission may be dismissed or denied by the relevant bureau(s) or office(s).”⁴⁰

Relevant to television station regulatory fees, a television licensee is subject to the regulatory fee payment required for its class of station and market unless the station is a commonly owned television satellite station, authorized pursuant to Note 5 of 47 C.F.R. § 73.3555, that retransmits programming of the primary station.⁴¹ A television satellite station is a full power terrestrial broadcast station authorized under Part 73 of the Commission’s rules to retransmit all or part of the programming of a parent station that is ordinarily commonly owned.⁴² Licensees are expected to know these rules and procedures,⁴³ and the consequences for non-compliance including debt collection procedures. In that regard, a debt is “any amount of funds or property that has been determined by an appropriate official of the Federal Government

³⁷ 47 C.F.R. § 1.1164.

³⁸ See 47 C.F.R. Part 1, e.g., Subparts A, G, and O, 47 C.F.R. §§ 1.2, 1.43, 1.44, 1.106, 1.1153, 1.1157, 1.1164, 1.1166.

³⁹ See 47 C.F.R. § 1.106(c); *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff’d sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966); *National Association of Broadcasters*, Memorandum Opinion and Order, 18 FCC Rcd 24414, 24415 (2003).

⁴⁰ 47 C.F.R. § 1.106(p).

⁴¹ Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Report and Order*, 9 F.C.C. Rcd. 5333, ¶ 82 (1994); Assessment & Collection of Regulatory Fees for Fiscal Year 1995, *Report and Order*, 10 F.C.C. Rcd. 13512, 13534 (1995) (“Television Satellite Stations (authorized pursuant to Note 5 of Section 73.3555 of the Commission’s Rules) that retransmit programming of the primary station will be assessed a fee separate from the fee for fully operational television stations”); Assessment & Collection of Regulatory Fees for Fiscal Year 1999, *Report and Order*, 14 F.C.C. Rcd. 9868, 9936 (1999).

⁴² Television Satellite Stations Review of Policy Rules, *Report and Order*, 6 FCC Rcd 4212, ¶ 3 (1991) (*Satellite Station Review*).

⁴³ 47 C.F.R. § 0.406; see *Life on the Way Communications, Inc.*, *Forfeiture Order* 30 FCC Rcd 2603, 2607 (2015).

to be owed to the United States by a person, organization, or entity other than another Federal agency.”⁴⁴

Relevant to the due date for paying the fee, 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. §§ 1.1157(c)(1) and 1.1164, and additional charges of interest, penalties, and charges of collection required by 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940. September 20, 2013, and September 23, 2014, respectively, were the deadlines for paying the FY 2013 and FY 2014 annual regulatory fees,⁴⁵ and the Commission’s 2014 *Regulatory Fee Order*, 30 FCC Rcd at 10286, ¶ 50, warned,

To be considered timely, regulatory fee payments must be made received and stamped at the lockbox bank by the payment due date for regulatory fees. Section 9(c) of the Act requires us to impose a late payment penalty of 25 percent of the unpaid amount to be assessed on the first day following the deadline for filing 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, which generally requires the Commission to withhold action 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” and in the ... (DCIA). We also assess administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the 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 the case of partial payments (underpayments) of regulatory fees, the payor 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. [Footnotes deleted.]

After the deadline, the full amount of the regulatory fee includes the 25% late payment penalty⁴⁶ and, if the debt remains unpaid, the balance owed includes the accrued charges of collection, interest, and penalties.

If a regulatee tenders less than the full amount owed, it is a partial payment, which is applied to the amount owed as set forth in 47 C.F.R. § 1.1940(f)--first to the penalties and

⁴⁴ 31 U.S.C. § 3701(b)(1); *accord* 31 C.F.R. § 900.2; 47 C.F.R. 1.1901(e).

⁴⁵ See FY 2013 Regulatory Fees Due No Later Than September 20, 2013, 11:59 pm Eastern Time (ET), *Public Notice*, DA 13-1796. (Sep. 4, 2013); FY 2014 Regulatory Fees Due No Later Than September 23, 2014, 11:59 PM Eastern Time (ET), *Public Notice*, DA 14-1261 (Aug. 29, 2014).

⁴⁶ 47 C.F.R. § 1.1164 (“[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 of installment payment which was not paid in a timely manner.”).

accrued charges, and then to the principal amount owed.⁴⁷ Afterwards, any unpaid portion is a delinquent regulatory fee that incurs interest, penalties, and charges of collection under 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940. Moreover, until the full amount is paid or satisfactory arrangements are made, the licensee remains a delinquent debtor subject to the Commission's administrative sanctions of dismissal as set forth at 47 C.F.R. §§ 1.1161, 1.1164(e) and 1.1910.⁴⁸

Under the Commission's rules, an *application* includes, in addition to petitions and applications elsewhere defined in the Commission's rules, any request, as for assistance, relief, declaratory ruling, or decision, by the Commission or on delegated authority.⁴⁹ A debt is delinquent when it "has not been paid by the date specified."⁵⁰ Upon filing, the Commission will examine an "application (including a petition for reconsideration or any application for review of a fee determination) ... to determine if the applicant has paid the appropriate application fee, appropriate regulatory fees, is delinquent in its debts owed the Commission, or is debarred from receiving Federal benefits[, and a]ction will be withheld on applications, including on a petition for reconsideration or any application for review of a fee determination ... until full payment or arrangement to pay any non-tax delinquent debt owed to the Commission is made and ... the application may be dismissed."⁵¹ Moreover, "[i]f a delinquency has not been paid or the debtor has not made other satisfactory arrangements within 30 days of the date of the notice provided pursuant to paragraph (b)(2) of this section, the application or request for authorization will be dismissed."⁵² Additionally, under 47 C.F.R. § 1.1161(c),⁵³ the Commission will withhold action on any application or request filed by a delinquent debtor applicant, and if after 30 days payment or a satisfactory arrangement is not made, dismiss the application.

In addition to the examination to determine whether the applicant is delinquent in paying a debt owed to the Commission, the Commission reviews the submission to determine

⁴⁷ 47 C.F.R. §§ 1.1940(f) ("When a debt is paid in partial ... payments, amounts received ... shall be applied first to outstanding penalties and administrative cost charges, second to accrued interest, and third to the outstanding principal."), 1.1157(c)(1), 1.1164(c).

⁴⁸ 47 C.F.R. §§ 1.1161(c) ((1) "failure to pay may result in the Commission withholding action on any application or request filed ... (2) If, after final determination that the fee is due or that the applicant is delinquent in the payment of fees and the payment is not made in a timely manner, the staff will withhold action on the application or filing [and i]f payment ... in not made ... the application will be dismissed."), 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."), 1.1910.

⁴⁹ 47 C.F.R. § 1.1901(d).

⁵⁰ 47 C.F.R. § 1.1901(i).

⁵¹ 47 C.F.R. § 1.1910(a) & (b).

⁵² 47 C.F.R. § 1.1910(b)(3).

⁵³ 47 C.F.R. § 1.1161(c) provides:

(1) Where an applicant is found to be delinquent in the payment of regulatory fees, the Commission will make a written request for the fee, together with any penalties that may be rendered under this subpart. Such request shall inform the regulatee that failure to pay may result in the Commission withholding action on any application or request filed by the applicant. The staff shall also inform the regulatee of the procedures for seeking Commission review of the staff's determination.

(2) If, after final determination that the fee is due or that the applicant is delinquent in the payment of fees and payment is not made in a timely manner, the staff will withhold action on the application or filing until payment or other satisfactory arrangement is made. If payment or satisfactory arrangement is not made within 30 days, the application will be dismissed.

compliance with the Commission's rules of practice and procedure. For example, an applicant must submit to the Commission's Secretary a petition for reconsideration,⁵⁴ and an applicant may not combine requests requiring action by any person or persons pursuant to delegated authority with requests for action by any other person or persons acting pursuant to delegated authority.⁵⁵

An applicant seeking a waiver, reduction, or deferral of a fee must comply with 47 C.F.R. § 1.1166, which provides,

The fees ... may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest. ... (a) ... All such filings within the scope of the fee rules shall be filed as a separate pleading and clearly marked to the attention of the Managing Director. Any such request that is not filed as a separate pleading will not be considered by the Commission. (1) If the request for waiver, reduction or deferral is accompanied by a fee payment, the request must be submitted to the Commission's lockbox bank at the address for the appropriate service set forth in §§1.1152 through 1.1156 of this subpart. (2) If no fee payment is submitted, the request should be filed with the Commission's Secretary.

An applicant seeking a waiver of the penalty and assessed charges has the burden of demonstrating compelling and "most extraordinary circumstances"⁵⁶ that a waiver or deferral would override the public interest, as determined by Congress, that the government should be reimbursed for the Commission's regulatory action.⁵⁷

Under 47 C.F.R. § 1.2, a regulatee may request a declaratory ruling to remove an uncertainty.

Discussion

Licensee submitted its *Petition* by email to the Commission staff seeking reconsideration of the *Jun. 2016 Demand Letter* the FCC sent to Licensee to collect a delinquent FY 2015 regulatory fee debt, and requesting a refund of Licensee's payment of that debt. The demand letter⁵⁸ notified Licensee it was delinquent in paying a debt to the United States, and it explained the basis for the debt, certain rights, that if not exercised were waived, procedures for review of the basis for the debt, and consequences of non-payment, including withholding action. At its

⁵⁴ 47 C.F.R. § 1.106.

⁵⁵ 47 C.F.R. § 1.44.

⁵⁶ *McLeodUSA Telecommunications Services, Inc., Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589, ¶ 8 (2004) (denying the request for waiver of 25 percent penalty).

⁵⁷ 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166 ("The fees ... may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest."). See also *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), *recon. granted in part*, 10 FCC Rcd 12759 (1995) (1994 *Report and Order*); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*); *Phoenix Broadcasting, Inc. Stations KSWD and KPFN Seward, Alaska, Memorandum Opinion and Order*, 18 FCC Rcd 26464, 26466, ¶ 5 (2003) (*Phoenix Broadcasting, Inc.*).

⁵⁸ *Jun. 2016 Demand Letter*.

essence, the *Petition* expresses Licensee's opinion, unsupported by legal authority, that it should pay a reduced fee of a satellite television station because it did so in the past and because a television industry publication reported the station as a satellite of another station. This does not present grounds for reconsideration, and as we discuss below, Licensee's *Petition* is fatally deficient because Licensee failed to comply with the Commission's procedures for filing applications and paying obligations to the Commission, and Licensee's submission does not raise a matter warranting reconsideration.

Licensee failed to file its Petition.

Licensee's first fatal procedural error is its failure to file the *Petition*. Licensee submitted this and "similar Petitions ... via email to ARINQUIRIES@FCC.GOV in accordance with the instructions in the June 2016 Demand Letter."⁵⁹ The problems with this approach are twofold: the *Jun. 2016 Demand Letter* does not instruct Licensee to file a petition for reconsideration by email, but even if it did, the Commission's codified rules require filing with the Commission's Secretary.

Licensee did not comply with the Commission's rules⁶⁰ that require submission of a petition for reconsideration to the Commission's Secretary. Instead, Licensee sent the *Petition* by email to ARINQUIRIES, the Commission's help desk staff, with an explanatory misstatement that the *Jun. 2016 Demand Letter* provides instruction as how to file a petition for reconsideration. It does not. The *Jun. 2016 Demand Letter* is a demand that Licensee pay a delinquent debt,⁶¹ and a statement of three rights, *i.e.*, "(a) to inspect or copy Debt-related records; (b) as permitted by FCC rules, obtain a written installment payment plan, or (c) as permitted by FCC rules, seek agency review of the basis of the Debt."⁶² The *Jun. 2016 Demand Letter* cautions Licensee that "FCC's rules specify conditions that may apply to one or more of these rights, including, *e.g.*, under 47 CFR 1.1167, the full amount of a regulatory fee must be paid before filing a petition for reconsideration[.]"⁶³ it explains that Licensee should "deliver to the address below, a written request ... specifying the nature of the request and providing relevant verified supporting documentation,"⁶⁴ and it warns that under 47 C.F.R. § 1.1910, the Commission will withhold action on applications from delinquent debts. Contrary to Licensee's assertion, the *Jun. 2016 Demand Letter* does not instruct a debtor to file a petition for reconsideration under 47 C.F.R. § 1.106 by email to ARINQUIRIES and it does not alter the several rules pertaining to reconsideration, *e.g.*, 47 C.F.R. §§ 1.106(i), 1.1159(b) and 1.1167(b) that require submission of a petition for reconsideration to the Commission's Secretary.

⁵⁹ *Petition* at 1, n. 1.

⁶⁰ 47 C.F.R. §§ 1.106(i) Petitions for reconsideration ... shall be submitted to the Secretary, Federal Communications Commission, Washington, DC 20554 ... Petitions submitted only by electronic mail and petitions submitted directly to staff without submission to the Secretary shall not be considered to have been properly filed, 1.1159(b), 1.1167(b).

⁶¹ See 47 C.F.R. § 1.1911.

⁶² *Jun. 2016 Demand Letter* at 1.

⁶³ *Id.*; 47 U.S.C. § 405(a); 47 C.F.R. §§ 1.1167(b) ("filing of a petition for reconsideration ... of a fee determination will not relieve licensee from the requirement that full and proper payment of the underlying fee payment be submitted, as required by the Commission's action, or delegated action ...", 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").

⁶⁴ *Id.*

Particularly, section 1.106(i) warns, "Petitions submitted only be electronic mail and petitions submitted directly to staff without submission to the Secretary shall not be considered to have been properly filed." Because Licensee failed to submit the *Petition* in accordance with the required addresses and locations, it is not filed, and we dismiss.⁶⁵

Licensee Combines Requests.

Licensee asks the Commission to "(i) determine ... the Station is a satellite station, entitled to pay [a] lower regulatory fee amount; (ii) change [Licensee's] red light status from 'red' to 'green;' and (iii) refund in full [Licensee's payment of the FY2014 Bill]." ⁶⁶ We need not discuss in detail the merits of these multiple requests in order to conclude that the relief Licensee seeks categorically involves different action from different bureaus and offices within the Commission. Specifically, the matters involve action by the Media Bureau and the Office of the Managing Director. For example, on one hand, the determination whether Licensee's station is a satellite of another is a matter for the Media Bureau within its authority to act on applications for authorization, petitions for special relief, and request for declaratory rulings.⁶⁷ On the other hand, determinations whether Licensee is delinquent in paying a debt owed the Commission and whether Licensee has established a ground for a refund are matters for the Office of the Managing Director that is authorized to perform administrative determinations under debt collection laws.⁶⁸ As such, Licensee's submission violates 47 C.F.R. §1.44 that requires separate pleadings for different requests and permits us to return an improper submission without consideration.⁶⁹ On this separate ground, we dismiss.

Licensee is delinquent in paying debts owed to the Commission.

Next, under 47 C.F.R. §§1.1161(c)(2), 1.1164(e), 1.1167(b), and 1.1910(b), we dismiss because Licensee is delinquent in paying debts owed to the Commission. Specifically, the Commission's records show that Licensee is delinquent in paying regulatory fees for FY 2013 (Bill No. R13T027431) and FY 2014 (Bill No. BRF R 14T027431), and that those delinquent debts have been referred to the U.S. Department of the Treasury for collection.⁷⁰

⁶⁵ 47 C.F.R. §§ 0.401 ("Applications and other filings not submitted in accordance with the addresses or locations set forth below will be returned to the applicant without processing."), 1.7 ("documents are considered to be filed with the Commission upon their receipt at the location designated by the Commission"), 1.106(i) ("Petitions for reconsideration ... shall be submitted to the Secretary, Federal Communications Commission Petitions submitted only by electronic mail and petitions submitted directly to staff without submission to the Secretary shall not be considered to have been properly filed."), 1.1159(b) ("Petitions for reconsideration ... submitted with no accompanying payment should be filed with the Secretary, Federal Communications Commission, Attention: Managing Director, Washington, D.C. 20554."), 1.1167(b) ("Petitions for reconsideration ... not accompanied by a fee payment should be filed with the Commission's Secretary and clearly marked to the attention of the Managing Director.").

⁶⁶ *Petition* at 10.

⁶⁷ 47 C.F.R. § 0.61.

⁶⁸ 47 C.F.R. § 0.231.

⁶⁹ 47 C.F.R. § 1.44(d).

⁷⁰ 31 U.S.C. § 3711(g); 31 C.F.R. § 285.12; 47 C.F.R. § 1.1917.

The Commission's rule, 47 C.F.R. § 1.1161(c), provides, in relevant part, that upon finding that an applicant is delinquent in paying a regulatory fee, and making demand for payment of the delinquent fee and accrued charges, the Commission will withhold action on any application or request filed by an applicant, and if within 30 days, payment or satisfactory arrangement for payment is not made, the application will be dismissed.⁷¹

Moreover, 47 C.F.R. § 1.1164(e) requires dismissal of a "pending or subsequently filed application" where the applicant is "determined to be delinquent in paying a standard regulatory fee,"⁷² and 47 C.F.R. § 1.1167(b) provides that "filing of a petition for reconsideration ... of a fee determination will not relieve licensees from the requirement that full and proper payment of the underlying fee payment be submitted, as required by the Commission's action, or delegated action, on a request for waiver, reduction or deferment."⁷³ *Accord* 47 U.S.C. § 405, 47 C.F.R. §§ 1.102, 1.106(n).

Furthermore, 47 C.F.R. § 1.1910(b)(2),⁷⁴ the Commission's red light rule, provides, "[a]ction 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 The entity will be informed that action will be withheld on the application until full payment ... is made and/or that the application may be dismissed."

Having identified and discussed several sections in Part 1, Subpart G of the Commission's rules providing sanctions of withholding action on and dismissing applications, and the unambiguous statement that a petition for reconsideration does not stay Licensee's obligation to pay the debt, we need not discuss in detail Licensee's misunderstanding of our rules or whether 47 C.F.R. § 1.1910 applies to debtors' delinquent in paying a fee. Hence, because Licensee is delinquent in paying debts owed to the Commission, we withheld action on the submission⁷⁵ and now, on this additional separate ground, we dismiss.⁷⁶

Licensee's Petition to reconsider the
Jun. 2016 Demand Letter is moot.

Licensee paid the debt that is both the reason for the *Jun. 2016 Demand Letter*, and the action that Licensee asks to be reconsidered. Licensee's payment renders both reconsideration of the demand letter and the requested removal of the red light status for that specific debt moot, and we dismiss the *Petition*. Nonetheless, the Commission continues to withhold action on any other application or request Licensee has submitted or may submit because it is delinquent in paying regulatory fees for FY 2014 and FY 2013.⁷⁷

⁷¹ 47 C.F.R. §1.1161(c).

⁷² 47 C.F.R. § 1.1164(e).

⁷³ 47 C.F.R. § 1.1167(b).

⁷⁴ 47 C.F.R. § 1.1910(b)(2).

⁷⁵ 47 C.F.R. §§ 1.1161 and 1.1910.

⁷⁶ 47 C.F.R. §§ 1.1161, 1.1164, 1.1167, and 1.1910.

⁷⁷ *Id.*

Licensee's Petition does not warrant consideration.

Before the Commission considers a petition for reconsideration, the petitioner must meet procedural requirements and show either a material error in the Commission's original order or raise changed circumstances or unknown additional facts not known or existing at the time of petitioner's last opportunity to present such matters.⁷⁸ The petition must "state with particularity the respects in which petitioner believes the action taken by the Commission ... should be changed"⁷⁹ and to cite, where appropriate, "the findings [of fact] and/or conclusions [of law] which petitioner believes to be erroneous, and shall state with particularity the respects in which [the petitioner] believes such findings and/or conclusions should be changed."⁸⁰ Even so, petitions for reconsideration that "plainly do not warrant consideration by the Commission may be dismissed or denied by the relevant bureau(s) or office(s)."⁸¹ Section 1.106(p)⁸² sets out several examples, *e.g.*, a failure to identify a material error, omission, or reason warranting reconsideration; relate to matters outside the scope of the order for which reconsideration is sought; or fail to comply with the procedural requirements set forth in paragraphs (f) and (i) of section 1.106. In that regard, there are three problems with the *Petition*. First, Licensee has not identified an error in the *Jun. 2016 Demand Letter*, instead it claims the amount of Licensee's partial payment equal to the smaller fee for a television satellite station is a correct fee payment merely because Licensee believes it should pay no more than the fee due for a television satellite station. Second, Licensee's *Petition* seeking reclassified of its station to one of a television satellite station extends to matters outside the scope of the *Jun. 2016 Demand Letter*. And third, Licensee failed to comply with the Commission's rules for filing, deciding instead to send the *Petition* by email to the Commission's help desk. Hence, as we discuss next, under 47 C.F.R. § 1.106(p), we dismiss and deny.

Licensee did not identify an error in the *Jun. 2016 Demand Letter*.

The *Jun. 2016 Demand Letter* seeks payment of the remaining portion of an unpaid regulatory fee that is the difference between a full service television station and a television satellite station, plus the accrued but unpaid amounts of the penalties and charges of collection that arise when a licensee or regulatee fails to pay the full amount due by the last day of the annual regulatory fee payment cycle. As noted above, during the fee cycle at issue (and now), Licensee's station was not a commonly owned television satellite station, authorized under 47 C.F.R. § 73.3555, Note 5, that retransmit programming of a primary station. Licensee has not established that it possesses all of these elements. Indeed, Licensee's *Email* confirms the accuracy of the bill, *i.e.*, the debt is for the annual regulatory fee due for full power television station, and that Licensee never requested either a fee reduction or a Commission determination that the station is a satellite station. The debt is valid, and unless it is waived, it must be paid.

⁷⁸ See 47 C.F.R. § 1.106(c); *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966); *National Association of Broadcasters*, Memorandum Opinion and Order, 18 FCC Rcd 24414, 24415 (2003).

⁷⁹ 47 C.F.R. § 1.106(d)(1).

⁸⁰ 47 C.F.R. § 1.106(d)(2).

⁸¹ 47 C.F.R. § 1.106(p).

⁸² *Id.*

Specifically, a television satellite station is a full power terrestrial broadcast station authorized under Part 73 of the Commission's rules to retransmit all or part of the programming of a parent station that is ordinarily commonly owned,⁸³ and under the Commission's regulatory fee rulemaking, the regulatory fee is based on the class of station and market unless the station is a commonly owned television satellite station, authorized pursuant to Note 5 of 47 C.F.R. § 73.3555, that retransmits programming of the primary station.⁸⁴

To accomplish the requested goal to be classified as a television satellite station, Licensee wants the Commission either to waive as to Licensee the rules in the *Satellite Station Review* and the several annual regulatory fee orders or engage in a new rulemaking permitting licensees in general to pay fees based on self-determination. Licensee's approach and the end result are outside the scope of a petition for reconsideration of the *Jun. 2016 Demand Letter*.

Even so, in support of its position, Licensee relies on the claims that "the Commission has never given notice that only satellite stations that obtain a Note 5 duopoly waiver are entitled to the lower satellite station regulatory fee"⁸⁵ and "the Commission has previously articulated rules of the road consistent with the position taken by [Licensee] ... the full Commission public notice concerning 2002 regulatory fees, after stating first that 'Television Satellite Stations' holding Note 5 duopoly waivers were entitled to pay the lower satellite station regulatory fee, went on to also make clear that "[t]hose stations designated as Television Satellite Stations in the 2002 Edition of the Television and Cable Factbook (or similar source) are subject to the fee applicable to Television Satellite Stations."⁸⁶ Licensee's predicate excuse that that the Commission never explained the basis for the standard, and Licensee's characterization of the so-called rules of the road are wrong, and we disagree. In particular, Licensee's interpretation of an incomplete extract of the FY 2002 annual regulatory fee guide is incorrect. Indeed, as a first point, the Commission's 1995 rulemaking amending the regulatory fee schedule shows Licensee is outside the definition of a television satellite station.

As noted above, the Commission has repeatedly announced the specific limits that pertain to television satellite stations. Ignoring those earlier determinations, Licensee picks part of the Commission's comments in the FY 2002 regulatory fee order as the basis for justifying an unauthorized underpayment of a valid annual regulatory fee for FY 2015. This attempted justification is erroneous.

⁸³ Television Satellite Stations Review of Policy Rules, *Report and Order*, 6 FCC Rcd 4212, ¶ 3 (1991) (*Satellite Station Review*); Review of Commission's Regulations Governing Television Broadcasting, Television Stations Review of Policy and Rules, *Further Notice of Proposed Rule Making*, 10 FCC Rcd 3524, 3569, ¶ 104 (1995) ("TV satellite stations are full power terrestrial broadcast stations authorized under Part 73 of the Commission's Rules to retransmit all or part of the programming of a parent station that is ordinarily commonly owned.").

⁸⁴ 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, ¶ 82 (1994); Assessment & Collection of Regulatory Fees for Fiscal Year 1995, *Report and Order*, 10 FCC Rcd 13512, 13534 (1995) ("Television Satellite Stations (authorized pursuant to Note 5 of Section 73.3555 of the Commission's Rules) that retransmit programming of the primary station will be assessed a fee separate from the fee for fully operational television stations"); Assessment & Collection of Regulatory Fees for Fiscal Year 1999, *Report and Order*, 14 FCC Rcd 9868, 9936 (1999).

⁸⁵ *Email at 2*.

⁸⁶ *Id.*

Licensee fails to recognize the history of the television satellite station since 1954.⁸⁷ A television satellite station is a full power terrestrial broadcast station authorized under Part 73 of the Commission's rules to retransmit all or part of the programming of a parent station that is ordinarily commonly owned.⁸⁸ Only commonly owned television satellite stations, authorized pursuant to Note 5 of 47 C.F.R. § 73.3555, that retransmit programming of the primary station may pay the lower assessed fee.⁸⁹ We note, the statutory fee schedule at 47 U.S.C. § 159 establishes specific fees for commercial television stations, and the text of the schedule as enacted made no distinction between commercial stations that are fully operational and those that are satellite stations. Further, we note that a satellite station is not a translator station, which is separately listed on the regulatory fee schedule. In that regard, the Commission found that Congress assessed the same fee for both commercial fully operational and commercial satellite stations.⁹⁰

Even so, in later years, the Commission established a reduced fee for commonly owned television satellite stations that are authorized under 47 C.F.R. § 73.3555, Note 5. In contrast, Licensee limits its view to the FY 2002 fee order appendix. Even so, that referenced language has its origin in the Commission's fee orders from 1994 and 1995. In 1995, the Commission explained the authorization for the smaller fee applicable to television satellite stations, "[p]ursuant to our authority to make permissive amendments to our regulatory fees, Television Satellite Stations (authorized pursuant to Note 5 of Section 73.3555 of the Commission's Rules) that retransmit programming of the primary station will be assessed a fee separate from the fee for fully operational television stations. This fee is based upon the \$500 fee passed by the House of Representatives for Television Satellite Stations for FY 1994."⁹¹ The Commission made a permitted amendment to the fee schedule allowing those stations authorized under Note 5 of section 73.3555 and designated as television satellite stations in the Television and Cable Factbook to submit a fee applicable to the television satellite stations. Other full-service television licensees remained, then and now, subject to the regulatory fee payment required for the class of station and market. Indeed, in the Commission's earlier rulemaking, 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, ¶ 82 (1994), it explained in response to other regulatees challenging whether a satellite television station should pay the same fee as a fully powered station:

Section 9(g)'s fee schedule establishes specific fees for commercial television stations. These fees are to be assessed against a licensee solely on the basis of the market in which the station operates. The text of the schedule makes no

⁸⁷ See *Satellite Station Review*, 6 FCC Rcd 4212, ¶ 5, n. 3.

⁸⁸ *Satellite Station Review*, 6 FCC Rcd 4212, ¶ 3.

⁸⁹ 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, ¶ 82 (1994); Assessment & Collection of Regulatory Fees for Fiscal Year 1995, *Report and Order*, 10 FCC Rcd 13512, 13534 (1995) ("Television Satellite Stations (authorized pursuant to Note 5 of Section 73.3555 of the Commission's Rules) that retransmit programming of the primary station will be assessed a fee separate from the fee for fully operational television stations"); Assessment & Collection of Regulatory Fees for Fiscal Year 1999, *Report and Order*, 14 FCC Rcd 9868, 9936 (1999).

⁹⁰ 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, ¶ 82 (1994).

⁹¹ Assessment and Collection of Regulatory Fees for Fiscal Year 1995, *Report and Order*, 10 FCC Rcd 13512, 13534-35, ¶ 60 (1995).

distinction between commercial stations that are fully operational and those that are satellite stations. It is also clear that these satellite stations are not "translator stations," which are also listed in the schedule. TV translator stations are low-powered facilities that rebroadcast the signals of a full service television broadcast station, including a satellite station, and are afforded secondary status vis-a-vis full service television stations. Also, unlike satellite stations, they are not subject to the technical, operational and program service obligations that are imposed on all full service broadcast stations, including satellite stations. [footnote deleted] Consequently, we find that in establishing fees for commercial stations, Congress assessed the same fee for both commercial fully operational and commercial satellite television stations.

Contrary to Licensee's misperception that "the Commission has never given notice that only satellite stations that obtain a Note 5 duopoly waiver are entitled to the lower satellite station regulatory fee," the conditions under which a licensee may qualify for a reduced fee are repeated in several fee orders. Each time, that explanation has been consistent; the first of two paragraphs explains that commercial television stations are those covered under part 73 of the Commission's rules, except commonly owned Television Satellite Stations, addressed separately in the second paragraph. In the second paragraph, the Commission explains, "Commonly owned Television Satellite Stations in any market (authorized pursuant to Note 5 of § 73.3555 of the Commission's Rules) that retransmit programming of the primary station are assessed a [reduced] fee"⁹² Since 1995, the status of a television satellite station has been defined as one commonly owed, authorized under Note 5 of 47 C.F.R. § 73.3555, and retransmitting programming of a primary station, and also shown as such in the Television and Cable Factbook. Licensee does not make its case that it possesses all of these necessary attributes. Indeed, for the relevant years of the delinquent debts, 2013 and 2014, the Television & Cable Factbook, Volume 81, pp. A-843 and A-846 (2013) and Television & Cable Factbook, Volume 82, pp. A-849 and A-846 (2014) show that Licensee's station is not a satellite station. Accordingly, Licensee has not shown either that it is a television satellite station or that there is a valid reason why the *Jun. 2016 Demand Letter* should be reconsidered. Hence, under 47 C.F.R. § 1.106(p), we deny the *Petition*. Furthermore, because Licensee has not established a material error, omission or reason warranting reconsideration of the *Jun. 2016 Demand Letter*, it has not established under 47 C.F.R. § 1.1160 a ground for a refund.⁹³

⁹² E.g., Assessment and Collection of Regulatory Fees for Fiscal Year 1995, *Report and Order*, 10 FCC Rcd 13512, 13577 (1995); Assessment and Collection of Regulatory Fees for Fiscal Year 1997, *Report and Order*, 12 FCC Rcd 17161, 17243 (1997); Assessment and Collection of Regulatory Fees for Fiscal Year 1998, *Report and Order*, 12 Communications Reg. 392 (1998).

⁹³ See 47 C.F.R. § 1.1167(a) Challenges to determinations or an insufficient regulatory fee payment or delinquent fees should be made in writing. A challenge to a determination that a party is delinquent in paying a standard regulatory fee must be accompanied by suitable proof that the fee had been paid or waived (deferred from payment during the period in question), or by the required regulatory payment and any assessed penalty payment (see §1.1164(c) of this subpart).

The Petition relates to matters outside the scope
of the Jun. 2016 Demand Letter.

The crux of Licensee's *Petition* is a determination that it is a television satellite station; however, that desired result is not within the scope of the determination whether the *Jun. 2016 Demand Letter* was valid under the circumstances when it was issued. Licensee's goal, to be classed a television satellite station, is a matter for the Media Bureau. Accordingly, under 47 C.F.R. § 1.106(p)(5), we deny the *Petition*.

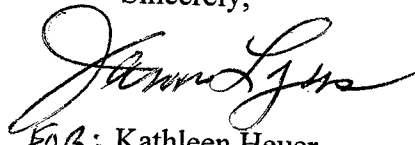
The Petition does not comply with procedural requirements.

As explained above, Licensee submitted the *Petition* by email to ARINQUIRIES. As such, Licensee fails to comply with 47 C.F.R. § 1.106(i) that requires submission to the Commission's Secretary. On the separate ground of failing to comply with procedures, under 47 C.F.R. § 1.106(p), we deny.

Licensee is a delinquent debtor, hence until the full amount is paid or satisfactory arrangements are made, Licensee is subject to the Commission's administrative sanctions of withholding action on and dismissal of any application or request as is set forth at 47 C.F.R. §§ 1.1161, 1.1164(e)⁹⁴ and 1.1910.

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

Sincerely,



FOR: Kathleen Heuer
Chief Financial Officer

Copy furnished:

Laura M. Berman
Lerman Senter PLLC
2001 L Street, NW, Suite 400
Washington, DC 20036

⁹⁴ 47 C.F.R. §§ 1.1161(c) ((1) "failure to pay may result in the Commission withholding action on any application or request filed ... (2) If, after final determination that the fee is due or that the applicant is delinquent in the payment of fees and the payment is not made in a timely manner, the staff will withhold action or the application or filing [and if] payment ... in not made ... the application will be dismissed."), 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."), 1.1910.

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAR 27 2017

OFFICE OF
MANAGING DIRECTOR

Dennis P. Corbett, Esquire
Telecommunications Law Professionals PLLC
1025 Connecticut Avenue, N.W., Suite 1011
Washington, DC 20036

Licensee/Applicant: Ramar Communications, Inc.
Request for Reduction and Refund: Regulatory Fees
Disposition: Dismissed and Denied (47 U.S.C. §§
159; 47 C.F.R. §§ 1.1157(c)(1), 1.1160, 1.1161,
1.1164, 1.1166, 1.1167, 1.1910)
Fee: Fiscal Year (FY) 2016 Regulatory Fee
Station(s): KTEL-TV
Date of Payment: Sep. 23, 2016
Date Request Submitted: Sep. 26, 2016
Fee Control No.: RROG 16-00016244

Dear Counsel:

This responds to Ramar Communications, Inc. (Licensee's) Request (*Request*)¹ for a reduction in, and partial refund of, the Fiscal Year (FY) 2016 regulatory fees paid on September 23, 2016. Specifically, Licensee seeks "a reduction of KTEL-TV's regulatory fee for the 2016 fiscal year from \$30,525, the fee assessed ... for TV stations in Markets 26-50, to \$5,000, the fee for stations in Remaining Markets (*i.e.*, those below the top 100). [Licensee] also seeks a waiver to the extent deemed necessary ... to grant the requested reduction,"² and because Licensee paid the higher fee, it seeks refund of the \$25,525 difference. As we discuss below, we dismiss because Licensee is delinquent in paying debts owed to the Commission and, in the alternative, we deny because Licensee failed to establish a basis for a reduction of the regulatory fee. Finally, this is a demand that Licensee pay immediately the delinquent regulatory fees.

Background

Licensee paid its FY 2016 regulatory fee, and now, it asks the Commission to reduce the fee and refund the difference. Specifically, Licensee seeks "a reduction of KTEL-TV's regulatory fee for the 2016 fiscal year from \$30,525, the fee assessed ... for TV stations in Markets 26-50, to \$5,000, the fee for stations in Remaining Markets (*i.e.*, those below the top

¹ Letter from Dennis P. Corbett, Lerman Senter PLLC, 2001 L Street, N.W., Suite 400, Washington, DC 20036 to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, Attn: Office of the Managing Director, Regulatory Fee Waiver/Reduction Request, 445 12th St., S.W., Rm TW-B204, Washington, DC 20554 (Sep. 26, 2016) (*Request*) with Exhibit 1, Payment record; Exhibit 2, Engineering Statement Coverage of DMA prepared for Ramar Communications, Inc., KTEL-TV Carlsbad, NM (*Engineering Statement*); Exhibit 3, Extract page New Mexico-Carlsbad, TV & Cable Factbook No. 84; Exhibit 4, FCC 2016 Regulatory Fee Information Site KOB, FCC 2016 Regulatory Fee Information Site KOB.

² *Id.* at 1.

100). [Licensee] also seeks a waiver to the extent deemed necessary ... to grant the requested reduction,"³ and because Licensee paid the higher fee, it seeks refund of the \$25,525 difference.

In support of its position, Licensee refers to a 1995 Memorandum Opinion and Order and 1996 Report and Order that explained the standards at the time in reviewing a request for a reduction in fee⁴ and the standard set forth at 47 C.F.R. § 1.1166 that requires a showing of good cause and that the reduction would serve the public interest.⁵ Licensee asserts it established good cause by showing certain features of KTEL-TV's signal⁶ and that the "2016 edition of the Television & Cable Factbook show[] KTEL-TV operates as a satellite of KTEL-CD," but it does not pay a satellite station regulatory fee.⁷ Next, Licensee asserts the public interest is served, in part, because "a small station like KTEL-TV cannot equitably be saddled with top 50 market regulatory fees that fail to take into account its inferior competitive and technical status within the larger market. In-market disparities are only exacerbated when comparable competitors ... pay only very low satellite regulatory fees."⁸ Licensee acknowledges its "carriage by certain cable systems," but asserts that situation "does not place the station on par with stations that directly serve the major population centers over the air," even so, the factor is not dispositive because, in Licensee's view, in 1995, the Commission did not assign the amount of weight given to cable carriage and, the "primary focus in the 1995 and 1996 rulings [was] on the relative over the air coverage." Furthermore, Licensee acknowledges its network affiliation with Telemundo network, but asserts the "affiliation is of marginal relevance"⁹ with the explanation "there is a substantial and material difference between a major network affiliation of that kind prevalent in 1995 (ABC, CBS, FOX, and NBC) and affiliation with Telemundo."¹⁰ Hence, in Licensee's view, its station is "on a par with stations in the Remaining Markets ... decidedly *not* with the considerably more powerful stations that broadcast their signals and major network programming to the ... population centers in an around Albuquerque."¹¹

³ *Id.* at 1.

⁴ *Id.* at 2; Implementation of Section 9 of the Communications Act and Assessment and Collection of Regulatory Fees of the 1994 Fiscal Year, *Memorandum Opinion and Order*, 10 FCC Rcd 12759, 12763 ¶ 21 (1995) (Applicants considered for relief "were generally UHF stations ... lack[ing] network affiliations ... located outside of the principle city's metropolitan area and do not provide a Grade B signal to a substantial portion of the market's metropolitan areas. Often these stations are not carried by cable systems serving the principal metropolitan areas."); Assessment and Collection of Regulatory Fees for Fiscal Year 1996, Report and Order, 11 FCC Rcd 18774, 18786 ¶ 32 (1996) ("We ... rely on Nielsen's DMA market rankings ... Nielsen data is generally accepted throughout the industry and will be updated and published annually ... We will consider the equities concerning the fees of licensees that change markets on a case-by-case basis, upon request, and, where a licensee demonstrates that it does not serve its assigned market, we will consider reducing the assigned fees to a more equitable level, based upon the area actually served by the licensee.").

⁵ *Id.* at 3.

⁶ *Id.* Licensee acknowledges its Nielsen DMA, and asserts over-the-air viewing is "particularly important to a station's chance of success" and that the station's "over the air signal reaches comparatively few viewers." Licensee refers to the *Engineering Statement* as demonstrating the "relevant digital noise-limited service [station] contour" covers 53,077 viewers.

⁷ *Id.* at 4.

⁸ *Id.* at 5.

⁹ *Id.* at 6.

¹⁰ *Id.*

¹¹ *Id.* at 7.

Prior to filing this *Request*, Licensee submitted several email messages, letters, and a Petition for Reconsideration (*Petition*) seeking to alter Licensee's fee status to that of a satellite television station,¹² but without first obtaining a "formal Rule 73.3555 Note 5 'satellite station waiver' of the FCC's duopoly rules."¹³ We dismissed Licensee's *Petition* for several separate reasons, e.g., it was not filed with the Commission,¹⁴ Licensee combined requests requiring action by different bureaus and offices,¹⁵ Licensee was delinquent in paying debts owed to the Commission,¹⁶ and the *Petition* was moot. In the alternative, on separate grounds, we denied the *Petition* because it did not warrant consideration by the Managing Director,¹⁷ and Licensee failed to establish grounds for a refund.¹⁸

¹² *Id.* at 1. See e.g., Email from Dennis P. Corbett (DCorbett@lermansenter.com) to ARINQUIRIES (Nov. 24, 2014) (2014 Request I) with Attachment A, Advanced TV Factbook Listing for KUPT (TV), Attachment B, BIA Listing for KUPT (TV); email from Dennis P. Corbett (DCorbett@lermansenter.com) to ARINQUIRIES (Nov. 24, 2014) (2014 Request II) with Attachment A, Advanced TV Factbook Listing for KETL-TV, Nielsen TV Station Circulation, BIA Kelsey TV Analysis Report; Letter from Dennis P. Corbett, Lerman Senter, PLLC, 2000 K Street, N.W., Suite 600, Washington, DC 20006-1809 to Department of the Treasury, Debt Management Services, Post Office Box 830794, Birmingham, AL 35283-0794 (Mar. 17, 2016) (Letter) with attachments (A) letter from Department of the Treasury, Bureau of the Fiscal Service, P.O. Box 830794, Birmingham, AL 35283-0794 to Ramar Communications Inc., 2000 K Street, NW, Suite 600, Washington, DC 20006 (Feb. 22, 2016) (Feb. 22, 2016, Treasury Demand) and (B) email from Corbett, Dennis P. to ARINQUIRIES, FCC Washington, DC (Mar. 7, 2016) (Email) with summary of correspondence (Summary) and copy of Feb. 22, 2016, Treasury Demand; Letter from Dennis P. Corbett, Lerman Senter, PLLC, 2001 L Street NW, Suite 400, Washington, DC 20036 to Pioneer Credit Recovery, Inc., 26 Edward St., Arcade, NY 14009 (Jun. 29, 2016) (Letter II) with Attachment A, Letter from Pioneer Credit Recovery, Inc., 26 Edward St., Arcade, NY 14009 to Ramar Communications, Atty Dennis P Corbett, 2000 K St., NW, Ste 600, Washington, DC 20006 (Jun. 2, 2016), email from Corbett, Dennis P. to ARINQUIRIES, FCC Washington, DC (Mar. 7, 2016) (Email) with summary of correspondence (Summary) and copy of Feb. 22, 2016, Treasury Demand.

¹³ Email from Berman, Laura M. [LBerman@lermansenter.com] to ARINQUIRIES (Jun. 22, 2016), with Petition for Reconsideration of Regulatory Fee Demand Letter and Request for Refund of Regulatory Fees, KTEL-TV, Carlsbad, NM (Facility ID No. 83707), Petition for Reconsideration and Request for Refund of Regulatory Fees, To Office of the Managing Director (Jun. 22, 2016) (Petition) at 3, with Exhibit 1, Demand Letter from FCC, Washington, DC 20554 to Ramar Communications, Inc., 2001 L Street, NW, Suite 400, Washington, DC 20036 (Jun. 7, 2016) (Jun. 2016 Demand Letter), FCC, Remittance Advice Bill for Collection, Copy of Transfer of Funds Receipt (6/22/2016); Exhibit 2, Email from Mooradian, Jeffrey C. to ARINQUIRIES [ARINQUIRIES@fcc.gov] (Oct 22, 2015) with attachments, email from Corbett, Dennis P. to ARINQUIRIES@FCC.GOV (Nov. 24, 2014) (2014 Request I) with Attachment A, Advanced TV Factbook Listing for KTEL-TV, Nielsen TV Station Circulation, BIA Kelsey TV Analysis Report, email from Corbett, Dennis P. to ARINQUIRIES@FCC.GOV (Nov. 24, 2014) (2014 Request II) with Attachment A, Advanced TV Factbook Listing for KUPT, Nielsen TV Station Circulation, BIA Kelsey TV Analysis Report; Exhibit 3, Email from Mooradian, Jeffrey C. to ARINQUIRIES [ARINQUIRIES@FCC.GOV] (Feb. 24, 2016) with FCC, Remittance Advice, Bill for Collection, email from Corbett, Dennis P. to ARINQUIRIES@FCC.GOV, (Nov. 24, 2014) (duplicate of 2014 Request II) with Attachment A, Advanced TV Factbook Listing for KUPT, Nielsen TV Station Circulation, BIA Kelsey TV Analysis Report; Exhibit 4, email from Corbett, Dennis P. to ARINQUIRIES@FCC.GOV (Mar. 7, 2016) (Email) with summary of correspondence (Summary) and copy of Feb. 22, 2016, Treasury Demand.

¹⁴ 47 C.F.R. §§ 1.106(i) & (p), 1.1159(b), and 1.1167(b) ("Petitions for reconsideration and applications for review not accompanied by a fee payment should be filed with the Commission's Secretary and clearly marked to the attention of the Managing Director.").

¹⁵ 47 C.F.R. § 1.44(d).

¹⁶ 47 C.F.R. § 1.1164(e), 1.1167(b) ("filing of a petition for reconsideration ... of a fee determination will not relieve licensees from the requirement that full and proper payment of the underlying fee payment be submitted, as required by the Commission's action, or delegated action, on a request for waiver, reduction or deferment.")

¹⁷ 47 C.F.R. § 1.106(p).

¹⁸ 47 C.F.R. § 1.1160.

The Commission's records show that Licensee is delinquent in paying regulatory fees.

Standards

The Commission's orders and rules include well-established procedures for assessing and collecting annual regulatory fees, and procedures for filing applications at the Commission including, for example, petitions for declaratory relief, petitions to defer, waive, reduce, or refund a payment, petitions for reconsideration, and other matters seeking Commission action, and the consequences when a licensee fails to comply.¹⁹

Relevant to television station regulatory fees, a television licensee is subject to the regulatory fee payment required for its class of station and market unless the station is a commonly owned television satellite station, authorized pursuant to Note 5 of 47 C.F.R. § 73.3555, that retransmits programming of the primary station.²⁰ A television satellite station is a full power terrestrial broadcast station authorized under Part 73 of the Commission's rules to retransmit all or part of the programming of a parent station that is ordinarily commonly owned.²¹ Licensees are expected to know these rules and procedures,²² and the consequences for non-compliance including debt collection procedures. In that regard, a debt is "any amount of funds or property that has been determined by an appropriate official of the Federal Government to be owed to the United States by a person, organization, or entity other than another Federal agency."²³

In the 1994 *MO&O*, the Commission discussed then-relevant circumstances upon which a licensee may apply for a reduction of its regulatory fee. Specifically, the Commission opined that a licensee of a UHF station, lacking network affiliation, operating in a large market, not providing a signal to a substantial portion of DMA, and not carried by cable systems serving the DMA principal metropolitan areas, may apply to the Managing Director for a reduction of the fee. Thereafter, the Managing Director, under delegated authority, will determine if the station with these characteristics demonstrates it should be charged a fee "based on the number of television households served, and it will be charged the same fee as stations serving markets with the same number of television households" using information derived from "the Arbitron [now A.C. Nielsen] market data in the [Nielsen Station Index Directory and Nielsen Station Index US

¹⁹ See 47 C.F.R. Part 1, *e.g.*, Subparts A, G, and O, 47 C.F.R. §§ 1.2, 1.43, 1.44, 1.106, 1.1153, 1.1157, 1.1164, 1.1166.

²⁰ Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Report and Order*, 9 F.C.C. Rcd. 5333, ¶ 82 (1994); Assessment & Collection of Regulatory Fees for Fiscal Year 1995, *Report and Order*, 10 F.C.C. Rcd. 13512, 13534 (1995) ("Television Satellite Stations (authorized pursuant to Note 5 of Section 73.3555 of the Commission's Rules) that retransmit programming of the primary station will be assessed a fee separate from the fee for fully operational television stations"); Assessment & Collection of Regulatory Fees for Fiscal Year 1999, *Report and Order*, 14 F.C.C. Rcd. 9868, 9936 (1999).

²¹ Television Satellite Stations Review of Policy Rules, *Report and Order*, 6 FCC Rcd 4212, ¶ 3 (1991) (*Satellite Station Review*).

²² 47 C.F.R. § 0.406; see *Life on the Way Communications, Inc., Forfeiture Order* 30 FCC Rcd 2603, 2607 (2015).

²³ 31 U.S.C. § 3701(b)(1); accord 31 C.F.R. § 900.2; 47 C.F.R. 1.1901(e).

Television Household Estimates or any successor publications].”²⁴ These characteristics have changed.

Relevant to annual regulatory fees, section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, codified at 47 U.S.C. § 534, provides that a station’s market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns. *See* 47 U.S.C. § 534(h)(1)(C). Section 76.55(e)(2) of the Commission’s rules specifies that a commercial broadcast television station’s market is its Designated Market Area (DMA), which reflects viewing patterns, as determined by Nielsen Media Research and published in its Nielsen Station Index Directory and Nielsen Station Index US Television Household Estimates or any successor publications.²⁵

Under 47 C.F.R. §§1.1160(a) and 1.1166, a refund may be made only under specific circumstances, *e.g.*, “[w]hen no regulatory fee is required or an excessive fee has been paid” or “[w]hen a waiver is granted in accordance with § 1.1166.”²⁶ Under § 1.1166, fees may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest.²⁷ An applicant seeking a waiver of the penalty and assessed charges has the burden of demonstrating compelling and “most extraordinary circumstances”²⁸ to justify waiver of the penalty.

²⁴ Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Memorandum Opinion and Order*, 10 FCC Rcd 12759, 12763, ¶¶ 21-22 (1995) (*1994 MO&O*); Assessment and Collection of Regulatory Fees for Fiscal Year 1996, *Report and Order*, 11 FCC Rcd 18774, 18786, ¶ 32 (1996) (“We ... rely on Nielsen’s DMA market rankings ... Nielsen data is generally accepted throughout the industry and will be updated and published annually ... We will consider the equities concerning the fees of licensees that change markets on a case-by-case basis, upon request, and, where a licensee demonstrates that it does not serve its assigned market, we will consider reducing the assigned fees to a more equitable level, based upon the area actually served by the licensee.”).

²⁵ 47 C.F.R. § 76.55(e)(2); Assessment and Collection of Regulatory Fees for Fiscal Year 2000, *Report and Order*, 15 FCC Rcd 14478, 14492, ¶ 34 (2000) (“Fees for television stations are based on market size as determined by Nielsen. This is the only consistent source the Commission has for determining which market a station serves.”). *See also* Amendment to the Commission’s Rules Concerning Market Modification, 30 FCC Rcd 10406 ¶ 6, n. 19 (2015), (“The Nielsen Company delineates television markets by assigning each U.S. county (except for certain counties in Alaska) to one market based on measured viewing patterns both off-air and via MVPD distribution.”); Designated Market Areas: Report to Congress, 31 FCC Rcd 5463, 5465-66 ¶ 6 (2015),

Nielsen divides the United States into 210 DMAs. DMAs describe each television market in terms of a group of counties and are defined by Nielsen based on measured viewing patterns. [fn deleted] The counties included in a DMA generally are clustered geographically around the major metropolitan area or areas in that DMA, where the majority of the market’s television stations usually are located. DMAs are in part primarily designed to facilitate commercial purposes — such as program acquisition, the sale of advertising, and network compensation — and thus primarily represent market areas where broadcasters acquire programming and sell advertising. [fn deleted] Because DMAs are based on viewing patterns as measured by Nielsen irrespective of state boundaries, a large number of DMAs cross state lines and include counties from multiple states. [fn deleted]

²⁶ 47 C.F.R. § 1.1160(a)(1) & (3).

²⁷ 47 C.F.R. § 1.1166; *cf.* 47 C.F.R. § 1.3.

²⁸ McLeodUSA Telecommunications Services, Inc., *Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589, ¶ 8 (2004) (*McLeodUSA Telecommunications*) (denying the request for waiver of 25 percent penalty).

Under the Commission's rules, an *application* includes, in addition to petitions and applications elsewhere defined in the Commission's rules, any request, as for assistance, relief, declaratory ruling, or decision, by the Commission or on delegated authority.²⁹ A debt is delinquent when it "has not been paid by the date specified."³⁰ Upon filing, the Commission will examine an "application (including a petition for reconsideration or any application for review of a fee determination) ... to determine if the applicant has paid the appropriate application fee, appropriate regulatory fees, is delinquent in its debts owed the Commission, or is debarred from receiving Federal benefits[, and a]ction will be withheld on applications, including on a petition for reconsideration or any application for review of a fee determination ... until full payment or arrangement to pay any non-tax delinquent debt owed to the Commission is made and ... the application may be dismissed."³¹ Moreover, "[i]f a delinquency has not been paid or the debtor has not made other satisfactory arrangements within 30 days of the date of the notice provided pursuant to paragraph (b)(2) of this section, the application or request for authorization will be dismissed."³² Additionally, under 47 C.F.R. § 1.1161(c),³³ the Commission will withhold action on any application or request filed by a delinquent debtor applicant, and if after 30 days payment or a satisfactory arrangement is not made, dismiss the application.

An applicant seeking a waiver, reduction, or deferral of a fee must comply with 47 C.F.R. § 1.1166, which provides,

The fees ... may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest. ... (a) ... All such filings within the scope of the fee rules shall be filed as a separate pleading and clearly marked to the attention of the Managing Director. Any such request that is not filed as a separate pleading will not be considered by the Commission. (1) If the request for waiver, reduction or deferral is accompanied by a fee payment, the request must be submitted to the Commission's lockbox bank at the address for the appropriate service set forth in §§1.1152 through 1.1156 of this subpart. (2) If no fee payment is submitted, the request should be filed with the Commission's Secretary.

Under 47 C.F.R. § 1.2, a regulatee may request a declaratory ruling to remove an uncertainty.

²⁹ 47 C.F.R. § 1.1901(d).

³⁰ 47 C.F.R. § 1.1901(i).

³¹ 47 C.F.R. § 1.1910(a) & (b).

³² 47 C.F.R. § 1.1910(b)(3).

³³ 47 C.F.R. § 1.1161(c) provides:

(1) Where an applicant is found to be delinquent in the payment of regulatory fees, the Commission will make a written request for the fee, together with any penalties that may be rendered under this subpart. Such request shall inform the regulatee that failure to pay may result in the Commission withholding action on any application or request filed by the applicant. The staff shall also inform the regulatee of the procedures for seeking Commission review of the staff's determination.

(2) If, after final determination that the fee is due or that the applicant is delinquent in the payment of fees and payment is not made in a timely manner, the staff will withhold action on the application or filing until payment or other satisfactory arrangement is made. If payment or satisfactory arrangement is not made within 30 days, the application will be dismissed.

Discussion

We dismiss the *Request* because Licensee is delinquent in paying debts owed to the Commission and, for the separate alternative grounds, we deny the *Request* because Licensee failed to establish that the fee should be reduced. We discuss each point below.

Licensee is delinquent in paying debts owed to the Commission.

We dismiss the *Request* as provided for under 47 C.F.R. §§1.1161(c)(2), 1.1164(e), 1.1167(b), and 1.1910(b), because Licensee is delinquent in paying debts owed to the Commission. Specifically, the Commission's records show that Licensee is delinquent in paying regulatory fees for FY 2013 and FY 2014.³⁴ Licensee knows it is delinquent in paying these debts owed to the Commission.

The Commission's rule, 47 C.F.R. § 1.1161(c), provides, in relevant part, that upon finding that an applicant is delinquent in paying a regulatory fee, and making demand for payment of the delinquent fee and accrued charges, the Commission will withhold action on any application or request filed by an applicant, and if within 30 days, payment or satisfactory arrangement for payment is not made, the application will be dismissed.³⁵

Moreover, 47 C.F.R. § 1.1164(e) requires dismissal of a "pending or subsequently filed application" where the applicant is "determined to be delinquent in paying a standard regulatory fee."³⁶

Furthermore, 47 C.F.R. § 1.1910(b)(2),³⁷ the Commission's red light rule, provides, "[a]ction 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 The entity will be informed that action will be withheld on the application until full payment ... is made and/or that the application may be dismissed."

Because Licensee is delinquent in paying debts owed to the Commission, we dismiss the *Request*.³⁸ This ends the matter; however, as a matter of administrative economy, we will discuss the separate alternative grounds for denying the *Request*.

Licensee fails to demonstrate payment of an excessive fee or the basis for a waiver or refund.

³⁴ 31 U.S.C. § 3711(g); 31 C.F.R. § 285.12; 47 C.F.R. § 1.1917.

³⁵ 47 C.F.R. §1.1161(c).

³⁶ 47 C.F.R. § 1.1164(e).

³⁷ 47 C.F.R. § 1.1910(b)(2).

³⁸ 47 C.F.R. §§ 1.1161, 1.1164, 1.1167, and 1.1910.

In the alternative, for the following separate reasons that Licensee failed to demonstrate it paid an excessive fee or that its situation warrants a waiver of the fee and a refund, we deny the *Request*.

Under the Commission's rules at 47 C.F.R. §§ 1.1160(a) and 1.1166, a refund may be made only under specific circumstances, *e.g.*, "[w]hen no regulatory fee is required or an excessive fee has been paid" or "[w]hen a waiver is granted in accordance with § 1.1166."³⁹ Under § 1.1166, fees may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest.⁴⁰ Licensee fails to establish grounds for a refund or waiver.⁴¹

Licensee's fee for a commercial television station is based upon the size of the Nielsen DMA,⁴² the fact and procedure for which Licensee neither disputes nor challenges as being erroneous. Rather, the essence of Licensee's *Request* is that a reduction of the determined fee amount is appropriate because the station's over-the-air broadcast signal reaches a reduced portion of the population of the designated DMA and it asserts (without benefit of a Commission determination) that it is a satellite station of a television station of a different classification. Licensee adds that its cable carriage and Telemundo network affiliation are of marginal value in determining whether the fee paid is excessive. In Licensee's view, the Commission's discussion in paragraph 21 of 1994 *MO&O* should control.⁴³ Licensee's approach is wrong.

The Nielsen DMA reflects actual viewing patterns including cable and satellite delivery and network affiliation.⁴⁴ Moreover, as we discuss next, Licensee's reliance on the 1994 *MO&O* is misplaced because Licensee fails to demonstrate that the circumstances described as the grounds for relief in 1994 *MO&O* are valid now, that the characteristics enumerated in the 1994 *MO&O* apply to Licensee, and that Licensee's payment is excessive.

First, Licensee asserts that the "Commission [determined it] would entertain regulatory fee reduction requests from [certain] television broadcast station licensee ... [and t]he Commission has *not* modified [the 1995 and 1996] rulings,"⁴⁵ so, based on the discussion in paragraph 21 of the 1994 *MO&O*, in Licensee's view, the Commission "did not require that all of the[] ... characteristics be present to warrant a fee reduction[, rather] reductions are appropriate on an equitable basis for relatively small stations outlying ... of large markets, where

³⁹ 47 C.F.R. § 1.1160(a)(1) & (3).

⁴⁰ 47 C.F.R. § 1.1166; *cf.* 47 C.F.R. § 1.3.

⁴¹ Consistent with 47 C.F.R. § 1.1160(a)(1), we considered Licensee's entire submission.

⁴² 47 U.S.C. § 534(h)(1)(C); 47 C.F.R. § 76.55(e)(2); Assessment and Collection of Regulatory Fees for Fiscal Year 2000, *Report and Order*, 15 FCC Rcd 14478, 14492, ¶ 34 (2000); *see* FY 2001 Mass Media Regulatory Fees, *Public Notice* (Aug. 7, 2001); FY 2002 Media Services Regulatory Fees, *Public Notice* (Aug. 7, 2002), What You Owe-Media Services Licensees For FY 2013, *Regulatory Fees Fact Sheet* (Sep. 5, 2013), What You Owe-Media Services Licensees For FY 2014, *Regulatory Fees Fact Sheet* (Sep. 5, 2014) ("Fees for commercial television stations are based upon the size of the Nielsen Designated Market Area ..."), What You Owe-Media Services Licensees For FY 2015, *Regulatory Fees Fact Sheet* (Sep. 11, 2015) ("Fees for commercial television stations are based upon the size of the Nielsen Designated Market Area ...").

⁴³ *Request* at 2.

⁴⁴ Amendment to the Commission's Rules Concerning Market Modification, 30 FCC Rcd 10406 ¶ 6, n. 19, *supra*; Designated Market Areas: Report to Congress, 31 FCC Rcd at 5465-66 ¶ 6, *supra*.

⁴⁵ *Id.* at 1.

the smaller stations are not on a par with stations ... within that same market's principal city or cities."⁴⁶ Next, Licensee acknowledges the Managing Director may "consider reducing the assigned fees" where "a licensee demonstrates that it does not serve its assigned market."⁴⁷

Even as the discussion in the 1994 *MO&O* forming the basis for a reduction of the fee are enumerated necessary characteristics, characteristics existing in 1995 have changed. At that time, applicants considered for relief "were generally UHF stations ... lack[ing] network affiliations ... located outside of the principle city's metropolitan area and do not provide a Grade B signal to a substantial portion of the market's metropolitan areas. Often these stations are not carried by cable systems serving the principal metropolitan areas"⁴⁸ To show whether a station "serve[s] the principal metropolitan areas within their assigned markets and serve[s]" a particular number of "television households ... [the applicant should present information] derived from the Arbitron market data in the Television and Cable Fact Book."⁴⁹

Over time, however, circumstances existing in 1995 changed. For example, major changes since then modify the characteristics. Hence, an applicant for relief now must consider and address those relevant changes or invite denial of the relief. Licensee's *Request* fails to align its situation to the characteristics.

First, the Commission relies on A.C. Nielsen ratings to determine which market a station serves,⁵⁰ and thereafter "[f]ees for television stations are based on market size as determined by Nielsen."⁵¹ As to fee determinations, in 1996, the Commission said it would consider cases in which an applicant demonstrated it does not serve its assigned market, however, in 2000, the Commission noted that it "is unaware of the existence of any reliable published source that can identify which television stations are serving small markets at the fringe of larger DMA's."⁵² Thus, Licensee must shoulder the heavy burden of establishing that its circumstances fall within these defined limits and that the Nielsen ratings are wrong. The Nielsen rating standard is codified at 47 C.F.R. § 76.55(e)(2), which provides, "[e]ffective January 1, 2000, a commercial broadcast television station's market, unless amended pursuant to § 76.59, shall be defined as its Designated Market Area (DMA) as determined by Nielsen Media Research and published in its

⁴⁶ *Id.* at 2.

⁴⁷ *Id.* at 2-3.

⁴⁸ 1994 *MO&O*, 10 FCC Rcd at 12763, ¶ 21.

⁴⁹ *Id.* at 12763, ¶ 22.

⁵⁰ Assessment and Collection of Regulatory Fees for Fiscal Year 1996, *Report and Order*, 11 FCC Rcd 18774, 18786, ¶ 32 (1996) ("We ... rely on Nielsen's DMA market rankings ... Nielsen data is generally accepted throughout the industry and will be updated and published annually ... We will consider the equities concerning the fees of licensees that change markets on a case-by-case basis, upon request, and, where a licensee demonstrates that it does not serve its assigned market, we will consider reducing the assigned fees to a more equitable level, based upon the area actually served by the licensee."); Assessment and Collection of Regulatory Fees for Fiscal Year 2000, *Report and Order*, 15 FCC Rcd 14478, 14492, ¶ 34 (2000) (Commission rejected commenter's "argu[ment] that small television stations located near large designated market areas (DMA) are assessed disproportionately high fees because the A.C. Nielsen ratings include them in the DMA but they do not serve households in the DMA. Fees for television stations are based on market size as determined by Nielsen. This is the only consistent source the Commission has for determining which market a station serves.").

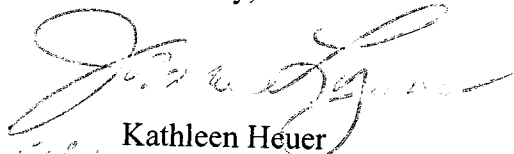
⁵¹ Assessment and Collection of Regulatory Fees for Fiscal Year 2000, *Report and Order*, 15 FCC Rcd at 14492, ¶ 34, *supra*.

⁵² *Id.* at 14493.

1.1161, 1.1164(e)⁶¹ and 1.1910. To be clear, this renews our demand that Licensee pay immediately the full amount of all delinquent debts owed the Commission.

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

Sincerely,



Kathleen Heuer
Chief Financial Officer

⁶¹ 47 C.F.R. §§ 1.1161(c) ((1) "failure to pay may result in the Commission withholding action on any application or request filed ... (2) If, after final determination that the fee is due or that the applicant is delinquent in the payment of fees and the payment is not made in a timely manner, the staff will withhold action on the application or filing [and i]f payment ... in not made ... the application will be dismissed."), 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."), 1.1910.

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAR 27 2017

OFFICE OF
MANAGING DIRECTOR

Dennis P. Corbett, Esquire
Telecommunications Law Professionals PLLC
1025 Connecticut Avenue, N.W., Suite 1011
Washington, DC 20036

Licensee/Applicant: Ramar Communications, Inc.
Request for Reduction and Refund: Regulatory Fees
Disposition: Dismissed and Denied (47 U.S.C. §§
159; 47 C.F.R. §§ 1.1157(c)(1), 1.1160, 1.1161,
1.1164, 1.1166, 1.1167, 1.1910)
Fee: Fiscal Year (FY) 2016 Regulatory Fee
Station(s): KUPT-TV
Date of Payment: Sep. 23, 2016
Date Request Submitted: Sep. 26, 2016
Fee Control No.: RROG 16-00016245

Dear Counsel:

This responds to Ramar Communications, Inc. (Licensee's) Request (*Request*)¹ for a reduction in, and partial refund of, the Fiscal Year (FY) 2016 regulatory fees paid on September 23, 2016. Specifically, Licensee seeks "a reduction of KUPT's regulatory fee for the 2016 fiscal year from \$30,525, the fee assessed ... for TV stations in Markets 26-50, to \$5,000, the fee for stations in Remaining Markets (*i.e.*, those below the top 100). [Licensee] also seeks a waiver to the extent deemed necessary ... to grant the requested reduction,"² and because Licensee paid the higher fee, it seeks refund of the \$25,525 difference. As we discuss below, we dismiss because Licensee is delinquent in paying debts owed to the Commission and, in the alternative, we deny because Licensee failed to establish a basis for a reduction of the regulatory fee. Finally, this is a demand that Licensee pay immediately the delinquent regulatory fees.

Background

Licensee paid its FY 2016 regulatory fee, and now, it asks the Commission to reduce the fee and refund the difference. Specifically, Licensee seeks "a reduction of KUPT's regulatory fee for the 2016 fiscal year from \$30,525, the fee assessed ... for TV stations in Markets 26-50, to

¹ Letter from Dennis P. Corbett, Lerman Senter PLLC, 2001 L Street, N.W., Suite 400, Washington, DC 20036 to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, Attn: Office of the Managing Director, Regulatory Fee Waiver/Reduction Request, 445 12th St., S.W., Rm TW-B204, Washington, DC 20554 (Sep. 26, 2016) (*Request*) with Exhibit 1, Payment record; Exhibit 2, Engineering Statement Coverage of DMA prepared for Ramar Communications, Inc., KUPT(DT) Hobbs, NM (*Engineering Statement*); Exhibit 3, Extract page New Mexico-Hobbs; Exhibit 4, FCC 2016 Regulatory Fee Information Site KOB, FCC 2016 Regulatory Fee Information Site KOB.

² *Id.* at 1.