

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

SEP 10 2014

OFFICE OF
MANAGING DIRECTOR

James Gallagher
Tiger Eye Broadcasting Corp.
3400 Lakeside Drive, Suite 500
Miramar, FL 33025

Licensee/Applicant: Tiger Eye Broadcasting Corp.
Account Review & Waiver Request
Disposition: **Dismissed** (47 U.S.C. § 159(c)(2); 47 C.F.R. §§ 1.1167, 1.1166, 1.1910.)
Licensee of Stations: WWBH, WKXE, WBMG, KRPG, WMOE, KCDR, KRUB, DKCDE,¹ DWGHA, and DKHHH²
FRN: 0006351738
Debt Amount: \$10,124.60
Basis of Debts: Fiscal Years (FY) 2012 and FY 2013 Regulatory Fees³
Fee Control No.: RROG-13-00015377

Dear Mr. Gallagher:

This responds to Licensee's multi-part *Request*⁴ that seeks first a review of invoices and a waiver of fees pertaining to call signs DW49CG, DWGHA, DKHHH, and DKCDE because the licenses were "returned to the Commission," thus they "no longer exist," and second, in the alternative, a 12-month deferral of payment or an installment payment plan to pay the acknowledged delinquent debts for call signs WMOE, WWBH, WKXE, WBMG, KCDR, and KRUB. In part, we dismiss the *Request*, make an administrative record correction, and separately respond to Licensee's request for an installment payment plan.

¹ Licensee is responsible for the FY 2012 regulatory fees for call sign DKCDE that remained active until January 12, 2012.

² Licensee is responsible for paying the FY 2012 and FY 2013 regulatory fees for call signs DWGHA and DKHHH, because they were not surrendered until February 25, and 26, 2013, respectively.

³ See FY 2012 Regulatory Fees Due No Later Than September 13, 2012, *Public Notice*, DA 12-1295 (Aug. 13, 2012). Licensee is delinquent \$5,512.10 (including the accrued statutory penalty, interest and penalties, and charges for collection) for non-payment of the FY 2012 Regulatory Fee; 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). Licensee is delinquent \$4,612.50 (including the accrued statutory penalty and charges for collection) for non-payment of FY 2013 Regulatory Fees. The total is \$10,124.60.

⁴ Email from James Gallagher (jgallagher33@msn.com) ARINQUIRIES (arinquiries@fcc.gov) (Sep. 18, 2013)(*Request*). Licensee's submission by email does not comply with the Commission's rules (47 C.F.R. § 1.1166(a)(2)).

The Commission's records reflect that Licensee is delinquent in paying the Fiscal Year (FY) 2012 and FY 2013 regulatory fees, the late payment penalties, and accrued interest, penalties, and charges for collection. On September 18, 2013, Licensee submitted an email that first requested the Commission to review the accounts on four call signs and to waive the fees because the "station[s] no longer exist," second requested, in the alternative, a 12-month payment deferment or an installment payment plan for seven delinquent debts, and finally, requested that Licensee's status be returned to green light status, *i.e.*, a waiver of the Commission's rule at 47 C.F.R. § 1.1910, which withholds action on and dismisses applications filed by delinquent debtors.

Licensee failed to pay the FY 2012 fees by the September 13, 2012,⁵ deadline, thus it is a delinquent debtor. Moreover, Licensee did not *file* at the proper Commission location⁶ a timely, complete, and proper petition to defer payment,⁷ thus it is delinquent in paying the FY 2013⁸ regulatory fees. As a result, Licensee was delinquent in paying the fees, penalties, and accrued charges,⁹ thus under 47 U.S.C. § 159(c)(2) and 47 C.F.R. §§ 1.1164(c)¹⁰ 1.1166(c),¹¹ and 1.1910(b)(2)¹² we dismiss that portion of the *Request* that seeks a waiver of any of the fees or other relief, including a waiver of the Commission's red light sanction. Moreover, Licensee failed to comply with the Commission's procedures at 47 C.F.R. § 1.1166(c) to request deferral of paying the fees, and we therefore dismiss the portion of the *Request* seeking additional time to pay the delinquent fees.

In addition to the broad scope waiver and deferral, Licensee requested that we "review" certain invoices to correct the asserted errors in the Commission's records. This is a challenge to the debt. As such, we review that portion of the *Request* apply the standard at 47 C.F.R. § 1.1167. We dismiss that portion of the *Request* because Licensee failed to comply with the standard in the rule, which requires that "[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

⁵ See FY 2012 Regulatory Fees due No Later Than September 13, 2012, *Public Notice*, DA 12-1295 (Aug. 13, 2012).

⁶ 47 C.F.R. § 1.1166(a)(2).

⁷ 47 C.F.R. § 1.1166.

⁸ 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).

⁹ Under 47 U.S.C. § 159(c), we are required to assess a 25% late payment penalty, and under 31 U.S.C. § 3717, we must assess interest, penalties, and charges of collection. Charges under section 3717 continue to accrue until the full amount of the debt is paid.

¹⁰ 47 C.F.R. 1.1164(c) and (e) provide, in part, "If a regulatory fee is not paid in a timely manner the regulatee will be notified of its deficiency. This notice will ... subject the delinquent payor's pending applications to dismissal Any pending or subsequently filed application submitted ... will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment."

¹¹ 47 C.F.R. 1.1166(c) ("Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.").

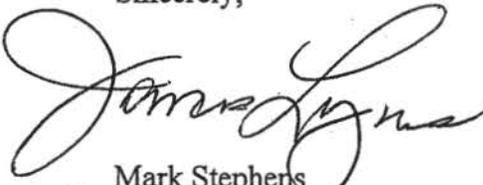
¹² 47 C.F.R. § 1.1910(b)(2) ("Action will be withheld on applications, including on a petition for reconsideration or any application for review of a fee determination, or request for authorization by any entity found to be delinquent in its debt to the Commission ...").

subpart).” Licensee failed to provide either the required proof that the amounts or a satisfactory explanation of valid legal grounds that excuse Licensee from payment. Nonetheless, we reviewed our records for accuracy. Our records show Licensee held licenses on the first day of the fiscal year, *i.e.*, October 1, thus it was responsible for paying the respective FY 2012 and FY 2013 regulatory fees. Nothing alters the fact that Licensee owed but failed to pay the FY 2012 and FY 2013 regulatory fees. The Commission has reissued the invoice pertaining to call sign DW49CG. This ends the matters related to review, waiver, and deferment.

Because Licensee is delinquent in paying a debt owed the United States, this provides notification that under 31 U.S.C. § 3711(g), without further notice, and usually within 180 days or less of delinquency, we will transfer the delinquent debt to Treasury, which will initiate collection action through private collection activities and assess additional charges. In addition, we may refer the debt to the Department of Justice, which may result in litigation and additional costs. Moreover, under 31 U.S.C. § 3716, 31 C.F.R. § 285.5, and 47 C.F.R. § 1.1912, some or all of the debt may be collected by non-centralized or centralized administrative offset. Also, under 31 U.S.C. § 3711(e), this debt and Licensee’s payment history will be reported to credit reporting information bureaus. Because we have furnished notice here, Licensee may not receive another notification of this process. Finally, Licensee will be red lighted¹³ until it pays all delinquent debts or it makes other satisfactory arrangements,¹⁴ which includes Licensee’s request for an installment payment plan that is separately addressed

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

Sincerely,



Mark Stephens
FUR: Chief Financial Officer

¹³ See 47 C.F.R. § 1.1910(b)(2) (“Action will be withheld on applications, including on a petition for reconsideration or any application for review of a fee determination, or request for authorization by any entity found to be delinquent in its debt to the Commission ...”); 47 C.F.R. § 1.1164(e) (“Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment.”).

¹⁴ See 47 C.F.R. § 1.1914 (“If a debtor is financially unable to pay a debt in one lump sum, the Commission, in its sole discretion, may accept payment in regular installments.”).

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

AUG 27 2014

OFFICE OF
MANAGING DIRECTOR

Howard Warshaw, Vice President
Universal Broadcasting of New York, Inc.
1086 Teaneck Road, Suite 4F
Teaneck, NJ 07666

Licensee/Applicant: **Universal Broadcasting of
New York, Inc.**

Waiver Request: Reduction of (FY) 2013 Reg Fees

Disposition: **Dismissed and Denied** (47 U.S.C. §
159(c)(2), 47 C.F.R. §§ 1.1164(e), 1.1166, 1.1910)

Station: WTBE, WVNJ

FRN: 0008304032

Fee: Fiscal Year (FY) 2013 Regulatory Fee

Date Request Filed: Jun. 25, 2014

Date Regulatory Fees Paid: Not Paid

Fee Control No.: RROG-13-00015639

Dear Mr. Warshaw:

This responds to Licensee's *Request*¹ submitted under 47 C.F.R. § 1.1166 for a reduction of the required statutory Fiscal Year (FY) 2013 regulatory fee. Because Licensee is delinquent in paying the fee that was due on September 20, 2013,² we dismiss the request to reduce the fee and, in the alternative, we deny the requested reduction because Licensee failed to provide documentation supporting financial hardship, and Licensee failed to demonstrate both good cause and that a reduction of the fee would promote the public interest. Even so, we acknowledge Licensee's request to pay the fee and accrued charges in installments, and in separate correspondence, we provide our decision.

On June 25, 2014, Licensee submitted its *Request* to reduce the amount of the regulatory fee asserting financial difficulties based on its assertion that "our revenues are decreasing each year ... and [Licensee] absolutely cannot afford the fees. ... [Licensee] must deal with variety of issues during recession and down economy in order in order to survive ... you could help us to continue by lowering the fees."³

¹Email from Howard Warshaw, VP, Universal Broadcasting of New York, Inc. (trodriques@wvnj.com) 1086 Teaneck Rd., Suite 4F, Teaneck, NJ 07666 to ARINQUIRIES (arinquiries@fcc.gov) (Jun. 25, 2014) (*Request*).

²See FY 2013 Regulatory Fee Due No Later Than September 20, 2013, 11:59 PM Eastern Time (ET), *Public Notice*, DA 13-1796 (Sep. 4, 2013). Licensee is delinquent for non-payment of FY 2013 Regulatory Fees.

³*Request*.

Because Licensee is delinquent in paying the regulatory fee, under 47 U.S.C. § 159(c)(2) and 47 C.F.R. §§ 1.1164, 1.1166, and 1.1910(a)(2) & (3), we dismiss.⁴ However, as a courtesy, we explain that Licensee failed to show good cause sufficient for the Commission to find that a reduction in the fee or a waiver will serve the public interest.⁵ Thus, Licensee did not carry its burden⁶ of meeting the standard, and the Commission will not speculate to fill gaps in Licensee's information.⁷

In establishing a regulatory fee program, the Commission recognized that in certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee, and it may be waived, reduced or deferred, but only upon a showing of good cause and a finding that the public interest will be served thereby.⁸ The Commission has narrowly interpreted its waiver authority to require a showing of compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.⁹ In an appropriate situation, fee relief may be granted based on a "sufficient showing of financial hardship."¹⁰ In such matters, however, "[m]ere allegations or documentation of financial loss, standing alone," do not suffice and "it [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public."¹¹ Thus, in order to establish a basis for waiver predicated on financial need, the regulatee must provide financial documents including, *e.g.*, a licensee's balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. On this information, the Commission considers on a case-by-case basis whether the licensee met the standard to show the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.¹² Licensee failed to present this

⁴ 47 U.S.C. § 159(c)(2) ("The Commission may dismiss any application or other filing for failure to pay in a timely manner any fee or penalty under this section."); 47 C.F.R. §§ 1.1164(e) ("Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment."); 1.1166(c) ("Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.")

⁵ 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, 5344, ¶ 29 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995).

⁶ *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

⁷ *Bartholdi Cable Co., Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997) ("petitioner ... has the 'burden of clarifying its position' before the agency."); *see also* 47 C.F.R. § 1.16 (An applicant is responsible for the continuing accuracy and completeness of information furnished.)

⁸ 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* 9 FCC Rcd 5344, ¶ 29.

⁹ *Id.*

¹⁰ 10 FCC Rcd at 12761-62, ¶ 13.

¹¹ *Id.*

¹² *Id.*

necessary information,¹³ thus even if the debt had been paid before submitting the request we would deny.

Your *Request* for an installment payment plan is being addressed under separate cover.

If Licensee has any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



For: Mark Stephens
Chief Financial Officer

¹³ 47 C.F.R. § 1.1166; see *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971) ("burden is on the applicant seeking waiver of ... rules to plead specific facts and circumstances which would make the general rule inapplicable"); see also *Bartholdi Cable Co., Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997) ("petitioner ... has the 'burden of clarifying its position' before the agency."); 47 C.F.R. § 1.16 (An applicant is responsible for the continuing accuracy and completeness of information furnished.); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("FCC may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest.").

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

JUL 16 2014

OFFICE OF
MANAGING DIRECTOR

Mayde Yang, Senior Accountant
Video Guidance
8000 Norman Center Drive #250
Bloomington, MN 55437

Licensee/Applicant: **Video Guidance**
Waiver and Refund Request: Late Payment Penalty
Disposition: **Denied** (47 C.F.R. §§ 1.1157(c)(1),
1.1164)
Station: N/A
Date Request Filed: Oct. 17, 2013
Date Regulatory Fee Paid: Aug. 22, 2013
Date Late Penalty Paid: Aug. 22, 2013
Fee Control No.: RROG-13-00015447

Dear Ms. Yang:

This responds to Licensee's *Request*¹ for waiver and refund of the penalties for late payment of the Fiscal Year (FY) 2011 and FY 2012 regulatory fees. For the reasons stated herein, we must deny the *Request*.

Under 47 U.S.C. § 159 and the Commission's implementing rules, we are required to "assess and collect regulatory fees" to recover the costs of the Commission's regulatory activities,² and when the required payment is received late or it is incomplete, to assess a penalty equal to "25 percent of the amount of the fee which was not paid in a timely manner."³ Specifically, "[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee ... which was not paid in a timely manner."⁴

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

¹ Letter from Mayde Yang, Video Guidance, 8000 Norman Center Drive #250, Bloomington, MN 55437 to Marlene H. Dortch, Secretary, FCC, Attn: Office of Managing Director, Regulatory Fee Waiver/Reduction Request, 445 12th Street, SW, Room TW-B204, Washington, DC 20554 (dated Oct. 3, 2013)(filed Oct. 17, 2013)(*Request*).

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

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

⁴ 47 C.F.R. § 1.1164.

required by 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940. For FY 2011, the deadline for paying regulatory fees was September 16, 2011,⁵ and for FY 2012, the deadline for paying regulatory fees was September 13, 2012.⁶ Unfortunately, we did not receive Licensee's regulatory fee payments for FY 2011 and FY 2012 until August 22, 2013. After making payment, Licensee asked for a waiver and refund of the statutory penalty and charges.

Licensee requests that we waive and refund the late payment charges on the grounds that "FCC letters were sent to an old address."⁷

When we evaluate such matters, we consider whether the *Request* petitioning for a waiver of the statutory penalty and accrued interest, penalty, and charges of collection establishes the existence of bank error or presents legal grounds or clear mitigating circumstances to waive collection of the penalty. Licensee's *Request* does not.

First, the Commission does not send reminder notices by mail or email, so the absence of such notice is not an excuse. Indeed, beginning in 2009, the Commission provided ample notice that it would not be sending paper pre-bills to regulatees.⁸ Repeatedly, the Commission has held that "[l]icensees are expected to know and comply with the Commission's rules and regulations and will not be excused for violations thereof, absent clear mitigating circumstances."⁹ Moreover, Licensee is responsible for updating the FCC's Commission Registration System (CORES) with any changes or updates in contact representative names, addresses, phones numbers and tax payer identification information.¹⁰

Next, Licensee did not raise valid grounds for relief. The penalty required by 47 U.S.C. § 159(c)(1) and charges required by 31 U.S.C. § 3717 are not limited to situations where the failure to pay was knowing or willful. Indeed, neither the statute nor the Commission's regulations contemplates a waiver of or reduction in the late payment penalty based on matters such as an employee's inability to perform duties, the amount of time after the deadline within which the regulatee satisfies its payment obligations, or the absence of a reminder notice.

⁵ See FY 2011 Regulatory Fees Due No Later Than September 14, 2011, Eastern Time, *Public Notice*, DA 11-1420 (Aug. 17, 2011); FY 2011 Regulatory Fee Deadline Is Extended To 11:59 PM ET, September 16, 2011, *Public Notice*, DA 11-1559 (Sep. 15, 2011).

⁶ See FY 2012 Regulatory Fees due No Later Than September 13, 2012, *Public Notice*, DA 12-1295 (Aug. 13, 2012).

⁷ *Request*.

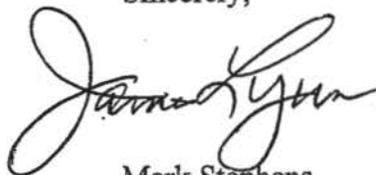
⁸ Assessment and Collection of Regulatory Fees for Fiscal Year 2009, *Notice of Proposed Rulemaking and Order*, 24 FCC Rcd 5966, 5972, ¶ 16 (2009); Assessment and Collection of Regulatory Fees for Fiscal Year 2009, *Report and Order*, 24 FCC Rcd 10301, 10307-09, ¶¶ 18-27 (2009); Fee Filer Mandatory for FY 2009 Regulatory Fees, *Public Notice*, 24 FCC Rcd 10893 (Aug. 21, 2009); Assessment and Collection of Regulatory Fees for Fiscal Year 2010, *Report and Order*, 25 FCC Rcd 9278, 9291, ¶ 37 (2010).

⁹ See *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), citing *Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970); see also *NextGen Telephone* (OMD, Apr. 22, 2010); *Istel, Inc.* (OMD, Apr. 22, 2010).

¹⁰ See 47 C.F.R. § 1.8002(b)(2).

If Licensee has any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in cursive script, appearing to read "James Lynn".

For: Mark Stephens
Chief Financial Officer

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

JUL 30 2014

OFFICE OF
MANAGING DIRECTOR

Elizabeth E. Spainhour, Esq.
Brooks Pierce
1600 Wells Fargo Capitol Center
150 Fayetteville Street
Raleigh, NC 27601

Licensee/Applicant/Debtor: **WMAK TV, LLC**
Waiver or Reduction of Fee: Pro-rata Refund
Disposition: **Denied** (47 C.F.R. §§ 1.3, 1.1160,
1.1162, 1.1166)
Station: WKNX-TV
FRN: 0022174155
Fee: Fiscal Year (FY) 2013 Regulatory Fees
Filed: Sep. 24, 2013
Fee Control No.: RROG-13-00015391
Date Regulatory Fee Paid: Sep. 20, 2013

Dear Counsel:

This responds to Licensee's *Request*¹ for waiver or reduction, and thereafter, a partial refund, of the required Fiscal Year (FY) 2013 regulatory fees paid for Station WKNX-TV. For the reasons stated below, we deny the *Request*.

On September 24, 2013, after paying the required FY 2013 regulatory fee, Licensee submitted its *Request* for a "limited waiver or reduction of the [fee] in an amount proportionately equal to the period before March 4, 2013, when [Licensee] acquired the ... license."² Specifically, Licensee asserts that between October 1, 2012, and March 3, 2013, a fee-exempt licensee held the license, thus the payable fee should reflect the pro-rated amount due after the fee-exempt licensee transferred the license, and the difference is an overpayment that Licensee believes that the Commission should refund.³ We disagree.

¹ Letter from Elizabeth E. Spainhour, Esq., Brooks Pierce, 1600 Wells Fargo Capitol Center, 150 Fayetteville St., Raleigh, NC 27601 to Marlene Dortch, Secretary, FCC, Attn: Office of the Managing Director, Regulatory Fee Waiver/Reduction Request, 445 12th St., S.W., Room TW-B204, Washington, DC 20554 (Sep. 24, 2013) (*Request*).

² *Id.*

³ *Id.*

First, under 47 C.F.R. § 1.1160, refunds are made in only specific instances, *i.e.*, (1) no regulatory fee is required, (2) in the case where the amount is an advance payment of regulatory fees, subject to 47 C.F.R. § 1.1152, the refund is based on unexpired full years, and the Commission adopted new rules that nullify a license or other authorization, or a new law or treaty renders a license or other authorization useless, or a licensee in the wireless radio service surrenders the license or other authorization to the Commission, or when the Commission declines to grant an application submitted with a regulatory fee payment, or (3) when a waiver is granted as set forth in 47 C.F.R. § 1.1166.⁴ Licensee presented nothing in its *Request* to establish evidence that any of these circumstances apply.

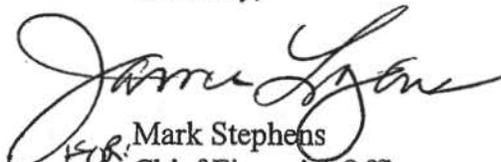
Second, even if Licensee established a basis for a refund, our rule states specifically, “[n]o pro-rata refund for an annual fee will be issued.”⁵ The rule applies, and Licensee failed to provide grounds for the Commission to grant a waiver allowing for the requested refund.⁶

Finally, the Commission long ago settled the matter, the holder of the license as of the date the fee is due is responsible for paying the fee.⁷ In this matter, at the time the fee was due, Licensee was the holder and not exempt under 47 C.F.R. § 1.1162, thus it was required to pay the full fee. Accordingly, we deny Licensee’s *Request*.

We note, as part of our records review for this matter, we were unable to find evidence that Licensee complied with 47 C.F.R § 1.1162(c)(2) to notify the Commission of the change in status⁸ or that it filed a timely ownership report.⁹

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

Sincerely,


FOR: Mark Stephens
Chief Financial Officer

⁴ 47 C.F.R. § 1.1160(a).

⁵ 47 C.F.R. § 1.1160(b).

⁶ 47 C.F.R. §§ 1.3, 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, 5344, ¶ 29 (1994).

⁷ 9 FCC Rcd at 5346, ¶ 36, n. 14, Assessment and Collection of Regulatory Fees for Fiscal Year 2010, *Report and Order*, 25 FCC Rcd 9278, 9296, ¶ 53 (2010), Assessment and Collection of Regulatory Fees for Fiscal Year 2000, *Report and Order*, 15 FCC Rcd 14478, 14496, ¶ 44 (2000), *see* Regulatory Fees Fact Sheet, *What You Owe-Media Services Licensees for FY 2013*, Sep. 5, 2013, 2013 WL 4773991 (F.C.C.).

⁸ 47 C.F.R. 1.1162 (c)(2)(2) (“for-profit purchasers or assignees of a license, station or facility previously licensed or operated by a non-profit entity not subject to regulatory fees must notify the Secretary of the Commission ... of such purchase or reassignment within 60 days of the effective date of the purchase or assignment.”).

⁹ *See* 47 C.F.R. § 73.3615.

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

JUL 16 2014

OFFICE OF
MANAGING DIRECTOR

Jim Miller, President
Zip Conferencing, Inc.
19 Chamberlain Road
Flemington, NJ 08822

Licensee/Applicant: **Zip Conferencing, Inc.**
Waiver Request: Late Payment Penalty
Disposition: **Dismissed** (47C.F.R. §§ 1.1157(c)(1),
1.1164)
Station: N/A
Fee: Fiscal Year (FY) 2013 Regulatory Fee Late
Fee
Date Request Filed: Oct. 30, 2013
Date Regulatory Fee Paid: Dec. 11, 2013
Date Late Penalty Fee Paid: Dec. 11, 2013
Fee Control No.: RROG-13-00015457

Dear Mr. Miller:

This responds to Licensee's *Request*¹ for waiver and refund of the penalties for late payment of FY 2013 regulatory fees.² For the reasons stated below, we dismiss the *Request*.

Under 47 U.S.C. § 159 and the Commission's implementing rules, we are required to "assess and collect regulatory fees" to recover the costs of the Commission's regulatory activities,³ and when the required payment is received late or it is incomplete, to assess a penalty equal to "25 percent of the amount of the fee which was not paid in a timely manner."⁴ Specifically, "[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee ... which was not paid in a timely manner."⁵

¹ Email from Jim Miller, Zip Conferencing, Inc. (digitaltrails@comcast.net) to ARINQUIRIES, (ARINQUIRIES@fcc.gov) (Oct. 30, 2013)(*Request*). We note that Licensee's request for waiver submitted by email to ARINQUIRIES does not comply with the Commission's rules (47 C.F.R. § 1.1166(a)(2)).

² At the time of the *Request*, Licensee was delinquent in paying the required fee in full (see 47 C.F.R. § 1.1940), thus the *Request* was subject to dismissal (47 C.F.R. §§ 1.1164(e), 1.1910); however, Licensee's subsequent payment of the remaining balance removed the impediment. Even so, Licensee did not request a refund, which is a necessary (47 C.F.R. § 1.1160(d)); however, our disposition renders that matter moot.

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

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

⁵ 47 C.F.R. § 1.1164.

Each year, the Commission establishes the final day on which payment must be received before it is considered late, *i.e.*, a deadline after which the Commission must assess charges that include the statutory late payment penalty required by 47 U.S.C. § 159(c)(1) and 47 C.F.R. § 1.1164, as well as interest, penalties, and charges of collection required by 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940. For FY 2013, the deadline for paying regulatory fees was September 20, 2013.⁶ Unfortunately, we did not receive and credit Licensee's payment until December 11, 2013.

Even so, Licensee requests that we waive the late payment charges on the grounds that the Commission's annual regulatory fee is "a complete mystery ... as [Licensee] do[es] not get any proactive notification[, rather Licensee] logged in occasionally to see if there are any bills ... and eventually [Licensee] find[s] one and pay[s] it. [Licensee] do[es not] think [it] should pay a penalty since [the Commission] never informed [Licensee] of this window [for paying the fee]."⁷

When we evaluate such matters, we look to whether the *Request* petitioning for a waiver of the statutory penalty and accrued interest, penalty, and charges of collection establishes the existence of bank error or presents legal grounds or clear mitigating circumstances to waive collection of the penalty. Licensee's *Request* does not.

First, the Commission does not send reminder notices by mail or email, so the absence of such notice is not an excuse. Indeed, beginning in 2009, the Commission provided ample notice that it would not be sending paper pre-bills to regulatees.⁸ Moreover, repeatedly, the Commission has held that "[l]icensees are expected to know and comply with the Commission's rules and regulations and they will not be excused for violations thereof, absent clear mitigating circumstances."⁹

Next, Licensee did not raise valid grounds for relief. The penalty required by 47 U.S.C. § 159(c)(1) and charges required by 31 U.S.C. § 3717 are not limited to situations where the failure to pay was knowing or willful. Indeed, neither the statute nor the Commission's regulations contemplates a waiver of or reduction in the late payment penalty based on matters such as an employee's inability to perform duties, the amount of time after the deadline within which the regulatee satisfies its payment obligations, or the absence of a reminder notice.

⁶ See FY 2013 Regulatory Fee Due No Later Than September 20, 2013, 11:59 PM Eastern Time (ET), *Public Notice*, DA 13-1796 (Sep. 4, 2013).

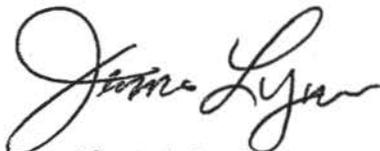
⁷ *Request*.

⁸ Assessment and Collection of Regulatory Fees for Fiscal Year 2009, *Notice of Proposed Rulemaking and Order*, 24 FCC Rcd 5966, 5972, ¶ 16 (2009); Assessment and Collection of Regulatory Fees for Fiscal Year 2009, *Report and Order*, 24 FCC Rcd 10301, 10307-09, ¶¶ 18-27 (2009); Fee Filer Mandatory for FY 2009 Regulatory Fees, *Public Notice*, 24 FCC Rcd 10893 (Aug. 21, 2009); Assessment and Collection of Regulatory Fees for Fiscal Year 2010, *Report and Order*, 25 FCC Rcd 9278, 9291, ¶ 37 (2010).

⁹ See *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), citing *Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970); see also *NextGen Telephone* (OMD, Apr. 22, 2010); *Istel, Inc.* (OMD, Apr. 22, 2010).

If Licensee has any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jeanne Lynn".

FOR: Mark Stephens
Chief Financial Officer