

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

NOV 04 2014

OFFICE OF  
MANAGING DIRECTOR

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OFFICE OF  
MANAGING DIRECTOR

Licensee/Applicant: **Southern TV Corporation**  
Petition for Reconsideration (Re-tendered)  
Disposition: **Dismissed** (47 U.S.C. § 159(c)(2); 47  
C.F.R. §§ 1.7, 1.106(i) & (p)(7), 1.1164(e),  
1.1167(b)(2), 1.1910)  
Stations: WGSA-DT, W41CR, WGSA-CA,  
WGCW-LP, W25CQ, W32BJ, and WMU487  
Fee: Fiscal Year (FY) 2012 Regulatory Fees  
Dates of Decisions: Mar. 20, 2013, and May 14,  
2013  
Date Submitted: Jul. 31, 2013  
Fee Control No.: RROG 13-00015333

Dear Counsel:

This responds to Licensee's Petition for Reconsideration (Re-tendered) (*Petition II*) of the Managing Director's March 20, 2013, denial<sup>1</sup> (*Denial II*) of Licensee's request for waiver of the Fiscal Year (FY) 2012 regulatory fees due for the above-named stations. As we explain below, we dismiss *Petition II* because Licensee failed to follow the Commission's rules for filing, and Licensee submitted *Petition II* while it was delinquent in paying one or more regulatory fees.

Licensee submitted *Petition II* after we dismissed<sup>2</sup> (*Dismissal I*) of Licensee's Petition for Reconsideration<sup>3</sup> (*Petition I*) because Licensee filed it late and on the separate ground that Licensee was delinquent in paying the FY 2011 and FY 2012 regulatory fees. The underlying facts are unchanged, and Licensee continues to be delinquent in paying its fees. The relevant history of this matter set out in *Dismissal I* is

<sup>1</sup> Letter from Mark Stephens, Chief Financial Officer, FCC to Peter Tannenwald, Esq. and Davina S. Sashkin, Esq., Fletcher, Heald & Hildreth, 1300 North 17<sup>th</sup> St., 11<sup>th</sup> Fl, Arlington, VA 22209 (Mar. 20, 2013) (*Denial II*).

<sup>2</sup> Letter from Mark Stephens, Chief Financial Officer, FCC to Peter Tannenwald, Esq. and Davina S. Sashkin, Esq., Fletcher, Heald & Hildreth, 1300 North 17<sup>th</sup> St., 11<sup>th</sup> Fl, Arlington, VA 22209 (May 14, 2013) (*Dismissal I*). A copy of *Dismissal I* is included with *Petition II*, Attachment B.

<sup>3</sup> In re Waiver Request (Financial Hardship; 47 C.F.R. § 1.1166(c)) of Southern TV Corporation, Fiscal Year 2012 Regulatory Fees and Fiscal Year 2011 Regulatory Fees, Fee Control No. RROG 11-00014702, Fee Control No. RROG 11-00013840, Petition for Reconsideration (Apr. 22, 2013).

that Licensee submitted two requests<sup>4</sup> (*Request I* and *Request II*) to waive and defer payment of FY 2011 and FY 2012 regulatory fees for Licensee's six stations<sup>5</sup> on grounds of financial hardship. In response to the *Requests*, on February 21, 2013, we denied<sup>6</sup> (*Denial I*) *Request I*, and on March 20, 2013, we denied<sup>7</sup> (*Denial II*) *Request II*. In each *Denial*, we explained our reasons, demanded immediate payment of the specific amounts of the underlying regulatory fees,<sup>8</sup> and notified Licensee that if the payment was not received within 30 days of the date of each letter, we would assess the statutory penalty,<sup>9</sup> as well as interest and applicable additional penalties required by 31 U.S.C. § 3717, and, as provided under the law,<sup>10</sup> we would initiate collection proceedings.

Licensee failed to pay any amount; however, on April 22, 2013, 33 days after the date of *Denial II*, Licensee filed *Petition I*. Licensee asserted that under 47 C.F.R. § 1.106(f)<sup>11</sup> its submission was timely, and that *Denial I* and *Denial II* should be rescinded because the "managing Director impermissibly departed from prior precedent without reasoned explanation."<sup>12</sup> As mentioned earlier, we dismissed *Petition I* on two grounds: Licensee was delinquent in paying the required regulatory fees, and *Petition I* was filed more than 30 days after each *Denial*.

Despite Licensee's continued delinquency, on July 31, 2013, it submitted *Petition II* to the Office of the Managing Director. The submission as captioned is not provided for by the Commission's rules, and Licensee failed to cite authority for the so-called re-tender of a petition for reconsideration that has been dismissed. We nonetheless construe the submission as

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<sup>4</sup> Letter from Peter Tannenwald, Esq. and Davina S. Sashkin, Esq., Fletcher, Heald & Hildreth, 1300 North 17<sup>th</sup> Street, Arlington, VA 22209 to Federal Communications Commission, Office of the Managing Director, (Sept. 12, 2011) (*Request I*) (Request for Deferment and Waiver of FY 2010 [sic] Regulatory Fees, Southern TV Corporation, FRN: 003-7596-51); Letter from Peter Tannenwald, Esq. and Davina S. Sashkin, Esq., Fletcher, Heald & Hildreth, 1300 North 17<sup>th</sup> Street, Arlington, VA 22209 to Federal Communications Commission, Office of the Managing Director, (Sep. 14, 2011) (*Supplement I*) (Supplement to Request for Deferment and Waiver of FY 2010 [sic] Regulatory Fees Southern TV Corporation, FRN 003-7596-51) (Licensee attached copies of the Commission's decisions on requests to waive the payment of the FY 2009 and FY 2010 Regulatory Fees.), Letter from Peter Tannenwald, Esq. and Davina S. Sashkin, Esq., Fletcher, Heald & Hildreth, 1300 North 17<sup>th</sup> Street, Arlington, VA 22209 to Federal Communications Commission, Office of the Managing Director, (Sep. 13, 2012) (*Request II*). Included with *Request II* are a Declaration of Dan L. Johnson and certain financial documents referred to as "financial statements."

<sup>5</sup> WGSB-DT (Baxley, GA), WMU487 (Broadcast Auxiliary), W41CR (Hinesville-Richmond, GA), WGSB-CA (Savannah, GA), WGCW-LP (Savannah, GA), and W32BJ (Beaufort, Etc., GA).

<sup>6</sup> Letter from Mark Stephens, Chief Financial Officer, FCC to Peter Tannenwald, Esq. and Davina S. Sashkin, Esq., Fletcher, Heald & Hildreth, 1300 North 17<sup>th</sup> St., 11<sup>th</sup> Fl, Arlington, VA 22209 (Feb. 21, 2013) (*Denial I*).

<sup>7</sup> *Denial II*.

<sup>8</sup> *Denial I*, pp. 1, 7; *Denial II*, pp. 1, 7.

<sup>9</sup> 47 U.S.C. § 159(c)(1). 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, 5346, ¶ 35 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995) ("the petitioner will have 30 days to [pay the fee] in order to avoid the assessment of penalty charges and the invocation of any other available remedy. The filing of a petition for reconsideration will not toll this 30-day period.")

<sup>10</sup> See 47 C.F.R. § 1.1901, *et seq.*

<sup>11</sup> Section 1.106(f) provides, "The petition for reconsideration and any supplement thereto shall be filed within 30 days from the date of public notice of the final Commission action, as that date is defined in § 1.4(b) of these rules, and shall be served upon parties to the proceeding."

<sup>12</sup> *Petition I* at 1.

Licensee's attempt to submit to the Managing Director a petition for reconsideration,<sup>13</sup> thus we look first to determine whether Licensee complied with our procedural requirements. By submitting the matter to the Managing Director, Licensee failed to comply with 47 C.F.R. § 1.106(i) that requires "Petitions for reconsideration ... shall be submitted to the Secretary, Federal Communications Commission, Washington, DC 20554, by mail, by commercial courier, by hand, or by electronic submission through the Commission's Electronic Comment Filing System or other electronic filing system (such as ULS). 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."<sup>14</sup> We have no record showing the matter was submitted to the Secretary to conform to our requirement of "receipt at the location designated by the Commission." Accordingly, under 47 C.F.R. § 1.7, *Petition II* is not "filed with the Commission,"<sup>15</sup> thus the submission may be "denied or dismissed."<sup>16</sup> We dismiss, and need not discuss other procedural matters (*e.g.*, timeliness) or the substance of the document. We note, however, that because Licensee is delinquent in paying a regulatory fee, without full payment of the delinquent amounts, any subsequent effort by Licensee to conform the submission to our filing rule will not vitalize this matter.

As a courtesy, we review in this letter that *Denial I* and *Denial II* demanded immediate payment of regulatory fees that remain unpaid and delinquent. The fees plus the statutory penalties and accrued interest, penalties and charges of collection continue to accrue. In such matters, the Commission's rules are unambiguous. The filing of a petition for reconsideration "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."<sup>17</sup> Licensee does not dispute that our records show Licensee is delinquent in paying its FY 2011 and FY 2012 fees, plus the 25% late payment penalty and all accrued, but unpaid interest, penalties, and other charges required by 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940. Thus, even if Licensee had complied with 47 C.F.R. § 1.7 and 1.106(i), we would nonetheless dismiss under the plain reading of our rule that states "[a]ny application submitted by a party will be dismissed if that party is determined to be delinquent in

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<sup>13</sup> *Petition II* at 2, Licensee "is seeking ... reconsideration [of *Denial II*] with the instant Petition, which incorporates by reference and, in effect, re-tenders its Initial Petition."

<sup>14</sup> 47 C.F.R. § 1.106(i). See also 47 C.F.R. § 1.1159(b) ("Petitions for reconsideration ... submitted with no accompanying payment should be filed with the Secretary ....").

<sup>15</sup> 47 C.F.R. § 1.7.

<sup>16</sup> 47 C.F.R. § 1.106(p)(7).

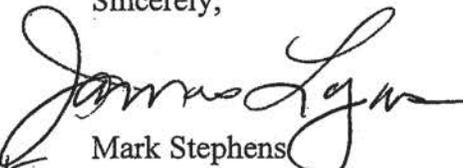
<sup>17</sup> 47 C.F.R. § 1.1167(b)(2) ("The filing of a petition for reconsideration or an application for review of a fee determination will not relieve licensees from the requirement that full and proper payment of the underlying fee payment be submitted, as required by the Commission's action, or delegated action, on a request for waiver, reduction or deferment. ... If the fee payment should fail while the Commission is considering the matter, the petition for reconsideration or application for review will be dismissed."); see 9 FCC Rcd at 5346, ¶ 35, *supra* ("The filing of a petition for reconsideration will not toll this 30-day period."). See 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. The application may be resubmitted only if accompanied by the required regulatory fee and by any assessed penalty payment."); § 1.1164 (f)(5) ("An application or filing by a regulatee that is delinquent in its debt to the Commission is also subject to dismissal under 47 CFR 1.1910.")

paying a standard regulatory fee or an installment payment.”<sup>18</sup> Thus, on this separate ground, we dismiss the unfiled submission.

Interest and other charges continue to accrue until paid. Furthermore, under 47 C.F.R. § 1.1910, Licensee remains subject to the Commission red light rule and the Commission will withhold action on any other application filed or pending. Thus, as long as the debts are not paid, or other satisfactory arrangements are not made, any application filed or pending may be dismissed. *See* 47 C.F.R. §§ 1.1108, 1.1109, 1.1116, and 1.1118. Any Commission action taken prior to the payment of delinquent non-tax debt owed to the Commission is contingent and subject to rescission. Failure to make payment on any delinquent debt is subject to collection of the debt, including interest thereon, any associated penalties, and the full cost of collection to the Federal government pursuant to the provisions of the Debt Collection Improvement Act, 31 U.S.C. § 3717. Moreover, the Commission may collect amounts due by administrative offset.<sup>19</sup>

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

Sincerely,



Mark Stephens  
For, Chief Financial Officer

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<sup>18</sup> 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. The application may be resubmitted only if accompanied by the required regulatory fee and by any assessed penalty payment.”); § 1.1164 (f)(5) (“An application or filing by a regulatee that is delinquent in its debt to the Commission is also subject to dismissal under 47 CFR 1.1910.”).

<sup>19</sup> 47 C.F.R. § 1.1912.