

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

April 16, 2015

Kathryne Dickerson, Esq.
Wiley Rein, LLP
1776 K Street, N.W.
Washington, DC 20006

Licensee/Applicant: **SATV10, LLC**
Waiver Request; Financial Hardship
Disposition: **Dismissed and Denied** (47 C.F.R. §
1.1166)
Station: KYVV-TV and auxiliary stations
Fee: Fiscal Year (FY) 2013 Regulatory Fees
Date Request Filed: Sep. 13, 2012
Fee Control No.: RROG 13-00015411
Regulatory Fees (FY 2013): \$23,550.00
Amount Due: See Fee Filer

Dear Counsel:

This responds to Licensee's *Request*¹ for waiver and deferment² of the required Fiscal Year (FY) 2013 regulatory fees, which Licensee has not yet paid. As we discuss below, because Licensee failed to submit a separate petition to defer and complete financial information, and to establish good cause and extraordinary and compelling circumstances, we dismiss and deny the *Request*, and we demand immediate payment.

¹ Letter from Kathryne Dickerson, Esq., Wiley Rein, LLP, 1776 K Street, N.W., Washington, DC 20006 to Marlene H. Dortch, Secretary, FCC, 445 12th St. S.W., Rm TW-B204, Washington, DC 20554 (Attn: Office of the Managing Director, Regulatory Fee Waiver/Reduction Request) (Sep. 20, 2013) (*Request-Confidentiality*) with SATV10, LLC, Licensee of Station KYVV-TV-Del Rio, TX (Facility ID: 55762), Request For Waiver and/or Deferment of FY 2013 Regulatory Fees (*Request*), with Declaration of Scott Zemnick; Exhibit A, FCC 2013 Regulatory Fee Information Site, Exhibit B, SATV 10, LLC, Profit & Loss, Jan-Dec 2012 (*P&L 2012*), Exhibit C, SATV 2012 Tax Return with 2012 Partnership Return IRS Form 8879-PE for Calendar Year 2012, Form 1065 (*2012 Tax Form*), Exhibit D, Balance Sheet as of Sep. 12, 2013 (*Balance Sheet 2013*), Exhibit E, Balance Sheet as of Dec. 31, 2012 (*Balance Sheet 2012*), Exhibit F, SATV Next 12 Months Spending Forecast (*Forecast*), and Exhibit G, SATV Employee/Independent Contractor Salaries (*Salaries*).

² *Request* at 1. Licensee "requests waiver and/or deferment of its regulatory fees." This brief statement does not comply with 47 C.F.R. § 1.1166(c), which provides, "[w]aiver requests that do not include the required fee ... will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship (emphasis added)."

Background

On September 20, 2013, the day the fee was due,³ Licensee filed its *Request* that we waive station KYVV-TV's annual regulatory fee (and grant deferral of payment) on the ground that Licensee suffers "severe on-going financial hardship," and the public interest is served "by allowing [Licensee] to allocate the amount that would otherwise be spent on regulatory fees toward the continued operation of the Station."⁴

Licensee asserts, on January 30, 2009, it filed a voluntary petition for reorganization under Chapter 11 in the United States Bankruptcy Court, Southern District of New York. Thereafter, on March 6, 2009, Licensee applied to assign the license to SATV10, LCC Debtor-in-Possession, and on November 15, 2010, applied to have the license assigned from SATV10, LCC Debtor-in-Possession to Licensee. The Commission approved each assignment.⁵

Licensee's position is that the fee is "unduly burdensome" because of severe financial hardship that existed "[s]ince emerging from bankruptcy in 2011." Licensee asserts it "has faced significant financial challenges"⁶ evidenced by attached financial documents reporting operating expenses exceeding gross income, current liabilities exceeding assets, operating expenses and capital expenditures,⁷ and the "heav[y]" debt "payable in 1 year or more."⁸ Licensee asserts that a waiver of the FY 2013 regulatory fees "is in the public" interest because it would allow Licensee "to allocate the amount that would otherwise be spent on regulatory fees toward the continued operation of the Station."⁹

Standards

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 upon a showing of good cause and a finding that the public interest will be served thereby.¹⁰ In particular, 47 C.F.R. § 1.1166 provides, "[t]he 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." The Commission has narrowly interpreted its waiver authority to require a showing of extraordinary and compelling circumstances that outweigh the public interest in recouping the Commission's regulatory costs.¹¹ In such cases, a "sufficient showing of financial hardship"¹²

³ See Effective Date of FY 2013 Regulatory Fees and Multi-Year Wireless Fees, *Public Notice*, DA 13-1797 (Aug. 23, 2013).

⁴ *Request* at 2.

⁵ *Id.* at 3.

⁶ *Id.* at 2.

⁷ *Id.* at 3.

⁸ *Id.* at 3.

⁹ *Id.* at 4.

¹⁰ 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166. 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 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995)(1994 *Report and Order*).

¹¹ 1994 *Report and Order*, 9 FCC Rcd at 5344 ¶ 29; Phoenix Broadcasting, Inc. Stations KSWD and KPFD Seward, Alaska, *Memorandum Opinion and Order*, 18 FCC Rcd. 26464, 26446, ¶¶ 5-6 (2003) ("Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely

requires more than “[m]ere allegations or documentation of financial loss, standing alone,” rather “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.”¹³ Thus, 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.¹⁴

Furthermore, as 47 C.F.R. § 1.1166(c) provides, “[w]aiver requests that do not include the required fee ... will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.”

When raised, an applicant’s verified evidence of bankruptcy is relevant,¹⁵ however, “in some circumstances a significant question may exist as to whether bankruptcy represents extraordinary and compelling circumstances justifying a waiver when balanced against the public interest in reimbursing the Commission for its costs as reflected in the statutory fee provisions.”¹⁶ Thus, an applicant must present “extraordinary and compelling circumstances showing that a waiver ... would override the public interest” in collecting the fee,¹⁷ and we analyze the facts of each case to determine whether the applicant has satisfied both prongs of the

impact the licensee’s ability to serve the public. ... [I]n the absence of a documented showing of insufficient funds to pay the regulatory fees, [applicant] has not made a compelling showing that overrides the public interest in the Commission’s recouping the costs of its regulatory activities.”)

¹² 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, 12761-62, ¶ 13 (1995) (*FY 1994 MO&O*).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *See Id.* at 12762, ¶ 14 (“[W]here a bankruptcy trustee, receiver, or debtor in possession is negotiating a possible transfer of a license, the regulatory fee could act as an impediment to the negotiations and the transfer of the station to a new licensee.”).

¹⁶ Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Notice of Proposed Rulemaking*, 18 FCC Rcd 6085, 6090, ¶ 11 (2003) (“Although fee waivers will generally be given in cases of financial hardship, we nevertheless note that even under our current policies, in some circumstances a significant question may exist as to whether bankruptcy represents extraordinary and compelling circumstances justifying a waiver when balanced against the public interest in reimbursing the Commission for its costs as reflected in the statutory fee provisions. ... We therefore emphasize that under the statutory waiver provisions, case-by-case review of fee waiver requests is necessary to determine the public interest, even in bankruptcy cases.”).

¹⁷ 47 U.S.C. § 159(d) (“The Commission may waive, reduce, or defer payment of a fee in any specific instance for good cause shown, where such action would promote the public interest.”); 47 C.F.R. § 1.1166 (“fee ... 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.”). *FY 1994 MO&O*, 10 FCC Rcd at 12761, ¶ 12.

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Commission's standard, financial hardship and extraordinary¹⁸ and compelling circumstances¹⁹ showing waiver is justified.²⁰

An applicant has the burden to establish bankruptcy is relevant to its petition with verified court records, such as, in a reorganization under Chapter 11 of the Bankruptcy Code, copies of the relevant filings, forms, and evidence the trustee or debtor-in-possession has complied with its required duties²¹ by including court filed financial reports.²² Also relevant is the purpose of a Chapter 11 proceeding, *i.e.*, to restructure the debtor's obligations and allow its business to continue successfully after confirmation.²³ The bankruptcy process that begins with filing a petition and an automatic stay and continues until confirmation of the plan, provides breathing room for a business to recoup, evaluate, and deal with creditors. During the process, the debtor operates the business as a debtor-in-possession or under the direction of a trustee, and pays current obligations. The debtor also develops a plan dealing with creditors, and it projects post-confirmation operations. Relevant to post-petition and post-confirmation operations are court-filed financial documents, including, *e.g.*, a statement of financial affairs, monthly operating reports, the plan,²⁴ and a disclosure statement with debtor's plan for the business going forward that has timely and accurate financial information with projections.²⁵ An accurate disclosure statement is the premise to the debtor's reorganization.²⁶ Thus, consistent with our standards, an applicant seeking a waiver post-petition and post-confirmation must include its relevant court-filed financial documentation leading to the approved plan and emergence from bankruptcy, such as the plan reflecting debtor-applicant's reasonable financial projections, including the annual regulatory fees.²⁷

Discussion

Licensee exited bankruptcy under the terms of a confirmed plan, and it appears from its submission that it is conducting business.²⁸ Although Licensee failed to include with the *Request* relevant court-filed financial documents, we note such records exist from the content of an

¹⁸ Black's Law Dictionary (9th ed. 2009)(extraordinary-"a highly unusual set of facts that are not commonly associated with a particular thing or event").

¹⁹ *Id.* (compelling-"something so great that irreparable harm or injustice would result if not met").

²⁰ Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Report and Order*, 18 FCC Rcd 15985, 15989-90, ¶¶ 11, 13, 14 (2003).

²¹ See 11 U.S.C. § 521.

²² 11 U.S.C. §§ 1106, 1107, 1166; Fed. R. Bnkr. P., Rule 1007.

²³ *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 203 (1983); *In re Lee Min Ho Chen*, 482 B.R. 473, 478 (D. Puerto Rico, Bkrtcy, 2012), *In re Gyro-Trac (USA), Inc.*, 441 B.R. 470, 479 (D.S.C. Bkrtcy, 2010).

²⁴ 11 U.S.C. § 1129.

²⁵ See *e.g.*, 11 U.S.C. §§ 1125, 1129; see also *In re Ferguson*, 474 B.R. 466, 476 (D. S.C. Bkrtcy, 2012) ("to satisfy the requirements of adequate information under [11 U.S.C.] § 1125, a disclosure statement must contain the necessary financial information, data, and projections").

²⁶ *Burnes v. Pemco Aeroplex, Inc.*, 291 F.3d 1282, 1286 (11th Cir. 2002) (Debtor's duty to disclose is continuing; bankruptcy courts rely on accuracy of disclosure statement, thus full and honest disclosure cannot be overstated.)

²⁷ See *In re Idearc, Inc.*, 423 B.R. 138, 167 (N.D. Tx. Bkrtcy, 2009) ("To establish the feasibility of a plan, the debtor must present proof through reasonable projections that there will be sufficient cash flow to fund the plan. Such projections cannot be speculative, conjectural or unrealistic.").

²⁸ See Expense Spreadsheet.

exhibit to the assignment application from SATV10, LLC Debtor-in Possession to Licensee.²⁹ Consistent with Licensee's burden to establish compelling and extraordinary circumstances warranting a waiver, Licensee should have included copies of the court-filed financial information. That information is relevant to our determinations in both the required (but unfiled) separate petition to defer payment and the *Request*. Below, we discuss problems with Licensee's submission, the relevance of the missing information, and consequences for failing to submit the documentation.

First, because Licensee did not pay the required annual regulatory fee, under 47 C.F.R. § 1.1166, it must file a separate "petition to defer payment due to financial hardship, supported by documentation of the financial hardship" showing "good cause" and that "deferral of the fee would promote the public interest."³⁰ Here, Licensee did not file a separate petition to defer payment; rather it made a superficial comment in the body of the *Request* that it "requests waiver and/or deferment." This comment does not establish both good cause and that the public interest is served by granting the deferral. For example, Licensee's discussion of the matter is limited to the brief comment that "[g]ranteeing the instant fee waiver request is in the public interest because it would allow the licensee to allocate the amount ... spent on regulatory fees toward continued operation of the Station."³¹ This declaration fails to establish deferral from payment is in the public interest. Licensee's effort fails to meet our standard, thus as set forth in 47 C.F.R. § 1.1166(c), "[w]aiver request that do not include the required fees ... will be dismissed unless accompanied by a petition to defer payment" This ends the matter; however, as a matter of administrative economy, we will address the alternative grounds resulting in denial.

Even construing the *Request* as a petition to defer payment, it fails to establish the elements of our standard; "good cause shown" and that the deferral would promote the public interest.

Licensee asserts financial hardship is evident from (a) "significant financial challenges" facing Licensee "[s]ince emerging from bankruptcy in 2011"³² and (b) financial information provided in the *P&L 2012, 2012 Tax Forms, Balance Sheets, Spending Forecast, and Salaries*.³³ Licensee refers to specific amounts from these documents to highlight negative income, a business income loss for taxes, assets less than liabilities, projected operating expenses and capital expenditures, and long-term debt.³⁴ The problem is, Licensee fails to establish how this information relates to and rebuts the presumed success that flows from a disclosure statement provided to the bankruptcy court that, in turn, confirmed a plan. A confirmed plan assumes Licensee will be able to succeed in its business after emerging from bankruptcy. Now, Licensee asserts without any explanation or supporting documentation that post-bankruptcy financial matters present the undefined hardship. Our due diligence in a review of this matter requires that we have from Licensee full financial information sufficient to allow our consideration of the

²⁹ FCC 314, Application for Consent to Assignment of Broadcast Station Construction Permit or License, File No.: BALCDT-20101115FKN (Nov. 15, 2010).

³⁰ 47 C.F.R. § 1.1166.

³¹ *Request* at 4.

³² *Id.* at 2.

³³ *Id.* at 2-3.

³⁴ *Id.*

projections in the disclosure statement along with the information proffered with the *Request*, and the reasons for any differences between the two positions.

Here, Licensee seeks deferral without establishing good cause or that the public interest is served by granting deferral. Instead, Licensee relies only on the *P&L 2012, 2012 Tax Forms, Balance Sheets, Spending Forecast, and Salaries*. That information is insufficient, especially because the *Request* does not include the relevant court-filed financial information leading to the plan³⁵ and Licensee's analysis of the pre-plan financial information as it relates to the *Request*-filed financial information. Furthermore, Licensee's financial information omits the partners' financial resources available to sustain the business operation.

This information is necessary for Licensee to explain satisfactorily (a) the relevant circumstances under which it is now unable to succeed under its plan to emerge successfully from bankruptcy, (b) the meaning of "significant financial challenges"³⁶ with "severe financial hardship"³⁷ that have existed "since emerging from bankruptcy in 2011," and (c) the differences between the terms of confirmed plan and post-bankruptcy operation. While in bankruptcy, debtor-Licensee had a continuing duty to maintain the accuracy of its court-filed financial information, to project accurately liabilities (including the regulatory fee) and post-bankruptcy financing, and to develop and present a plan that would allow Licensee to operate its business without seeking a waiver of certain annual expenses. Licensee fails to include the financial information presented to the bankruptcy court and to explain the circumstances under which it is now unable to succeed under the reorganization plan. Repeating certain reported entries from financial documents without including an analysis of that information in the context of the court-filed financial documents and the confirmed plan fails to establish grounds for a waiver.

Additionally, Licensee missed the mark by failing both to define the so-called acute financial challenges in post-bankruptcy operations, and to explain the extent to which, and reason why, Licensee failed to identify, define, and resolve such financial challenges, and to project annual expenses in the plan and disclosure statement.

Next, Licensee's submission fails to establish a "compelling case of financial hardship"³⁸ that would "override the public interest in reimbursing the Commission for its regulatory costs"³⁹ and where the "impact of the regulatory fee will affect [Licensee's] ability to serve the public."⁴⁰ Licensee asserts without any substantiating evidence that the public interest is served because a waiver would allow Licensee "to allocate the amount that would otherwise be spent on regulatory fees toward the continued operation of the Station."⁴¹ This general observation fails to establish (a) that Licensee lacks funds to pay the fee and to maintain service to the public and (b)

³⁵ 11 U.S.C. § 1129. *United States v. Whiting Pools, Inc.*, *supra*; *In re Lee Min Ho Chen*, *supra*; *In re Gyro-Trac (USA), Inc.*, *supra* (purpose of Chapter 11 is to permit debtor to succeed post bankruptcy); *In re Idearc, Inc.*, *supra* ("debtor must present proof through reasonable projections that there will be sufficient cash flow to fund the plan. Such projections cannot be speculative, conjectural or unrealistic.").

³⁶ *Request* at 2.

³⁷ *Id.*

³⁸ 1994 Report and Order, 9 FCC Rcd 5333, 5344, ¶ 29, 5346, ¶ 35.

³⁹ *Id.*

⁴⁰ FY 1994 MO&O, 10 FCC Rcd 12759, 12761, ¶ 12 (1995).

⁴¹ *Id.* at 4.

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that waiver of the fee promotes the public interest. Here, Licensee presents itself as having emerged from bankruptcy under a plan, but Licensee fails to disclose the content of both the court-filed financial documentation and the plan. In addition, Licensee presents post-bankruptcy financing as burdensome debt, but Licensee fails to show to what extent the limited financial information showing that debt and day-to-day obligations deviates from the court-filed financial documentation. Further, Licensee asserts that it could apply money paid to fees to station operations, but Licensee fails to establish that it cannot both pay the fee and maintain service. The public interest is not served by granting a deferral and waiver based on undisclosed information and unsupported assertions.

Each of these reasons provides a separate ground to deny *Request*. Licensee failed to carry its burden⁴² of demonstrating “extraordinary and compelling circumstances justifying a waiver when balanced against the public interest in reimbursing the Commission for its costs as reflected in the statutory fee provisions.”⁴³

Licensee also requests confidential treatment of the material submitted with its *Request*. Under 47 C.F.R. §0.459(d)(1), we do not routinely rule on requests for confidential treatment until we receive a request for access to the records; however, in the meantime, we treat the records confidentially. If we receive a request for access to the information submitted in conjunction with Licensee’s *Request*, at that time, we will notify Licensee and provide it the opportunity to respond.

Payment of Licensee’s FY 2013 regulatory fee is now due, and that amount must be received, together with a Form 159,⁴⁴ within 30 days of the date of this letter. If Licensee’s full payment of that amount is not received by that date, any unpaid portion of the debt will be

⁴² *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

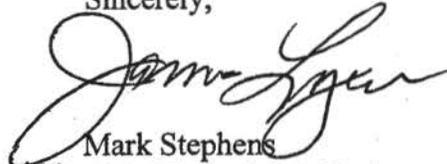
⁴³ Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Notice of Proposed Rulemaking*, 18 FCC Rcd 6085, 6090, ¶ 11 (2003) (“Although fee waivers will generally be given in cases of financial hardship ... even under our current policies ... a significant question may exist as to whether bankruptcy represents extraordinary and compelling circumstances justifying a waiver when balanced against the public interest in reimbursing the Commission for its costs as reflected in the statutory fee provisions. ... We ... emphasize that under the statutory waiver provisions, case-by-case review of fee waiver requests is necessary to determine the public interest, even in bankruptcy cases.”); *1994 Report and Order*, 9 FCC Rcd at 5344; *FY 1994 MO&O*, 10 FCC Rcd at 12761-62, ¶ 13; see *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. § 1.65 (An applicant is responsible for the continuing accuracy and completeness of information furnished.).

⁴⁴ See Fee Filer.

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delinquent, and such amount, we will assess the statutory penalty of 25% of the unpaid fee,⁴⁵ and assess interest and applicable additional penalties and charges required by 31 U.S.C. § 3717(e) that will accrue from the date of this letter. Furthermore, under the law,⁴⁶ the Commission will initiate collection proceedings. If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark Stephens

FOR: Chief Financial Officer

⁴⁵ 47 U.S.C. § 159(c)(1). See *1994 Report and Order*, 9 FCC Rcd at 5346, ¶ 35 (“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.”).

⁴⁶ See 47 C.F.R. § 1.1901, *et seq.*

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAR 27 2015

OFFICE OF
MANAGING DIRECTOR

Wolfgang Kurtz
Seward Media Partners, LLC
12358 Roundtable Drive
Seward, AK 99664

Licensee/Applicant: **Seward Media Partners, LLC**
Waiver Request: Financial Hardship
Disposition: **Dismissed and Denied** (47 U.S.C. § 159(c)(2); 47 C.F.R. §§ 1.1164, 1.1166(c) & (e), 1.1910)
Stations: DKSEW, KKNi, DK17HL, and DKO6OR-D
Fees: Fiscal Years (FY) 2010, FY 2011, FY 2012, FY 2013, and FY 2014 Regulatory Fees
Date Request Filed: Jan. 6, 2015
Date Regulatory Fees Paid: Not Paid
Date Regulatory Late Fees Paid: Not Paid
Fee Control No.: RROG-14-00015874
Amount Due: **See Fee Filer**

Dear Mr. Kurtz:

This responds to Licensee's *Request*¹ to abate its delinquent fees and penalties, remove the Commission's red light sanction imposed because of Licensee's delinquency status, and waive and defer the delinquent regulatory fees for Fiscal Years (FY) 2010, FY 2011, FY 2012, FY 2013, and FY 2014 for stations DKSEW², KKNi³, DK17HL⁴, and DK06OR-D.⁵ As discussed below, because Licensee is a delinquent debtor, we dismiss the *Request* and demand immediate payment of the delinquent charges. Furthermore, as a courtesy, we explain in the alternative that we deny the relief because Licensee failed to meet its burden under our standards.

¹ Letter from Wolfgang Kurtz, Seward Media Partners, LLC, to Marlene H. Dortch, Secretary, FCC, (Attn: Managing Director), Office the Secretary, 445 12th St., SW, Room TW-A325, Washington, DC 20554 (received Jan 12, 2015)(*Request*).

² Regulatory Fees for license DKSEW are valid for FY 2010, FY 2011, FY 2012, FY 2013, and FY 2014.

³ Regulatory Fees for license KKNi are valid for FY 2010 and FY 2011. License was transferred to Kenai Broadcasting, Inc. on 5/30/2012.

⁴ License DK17HL was cancelled on 6/24/13; all Regulatory Fees are valid up to and including FY 2013.

⁵ License DK06OR-D was cancelled on 6/24/2013. Regulatory Fees for FY 2013 are valid.

Background

On January 6, 2015, Licensee submitted its *Request* "for abatement of the outstanding fees and penalties ... to remove the red light status and permit re-licensing and transfer of KSEW(AM)." Additionally, Licensee "petitions the Commission to defer interim payment of outstanding fees and penalties" on the ground of financial hardship, but without supporting documentation and, importantly, without first paying the delinquent debts.⁶ Instead, of resolving the delinquency and providing verified appropriate financial documentation necessary to establish financial hardship, Licensee asserts only it was "involuntary dissolved;"⁷ however, "the principals maintain their mutual legal engagement and pursue any obligations under the application(s) and contracts(s) relating to DKSEW (AM)." Licensee asserts it is "financially distressed" and "it has no financials."⁸ Furthermore, Licensee asserts it "has not been 'in business' nor had a bank account nor accounts receivable," and the station "signal has been maintained due to donated tower space, power and other accommodations."⁹

Standards

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.¹⁰ 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.¹¹ In an appropriate situation, fee relief may be granted based on a "sufficient showing of financial hardship."¹² 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."¹³ 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

⁶ *Request*.

⁷ *Id.* at 1. Licensee did not furnish verified evidence of the basis for dissolution; rather it suggested that the Commission look to the State of Alaska internet webpage. The available information indicates that Licensee failed to comply with one or more state law requirements, and that Licensee failed to respond to official notification of the particular delinquency that would lead to involuntary dissolution. Under procedures set forth in Alaska Statute, 10.06.633, the dissolved corporation may apply for reinstatement.

⁸ *Id.* at 2.

⁹ *Id.*

¹⁰ 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. granted in part*, 10 FCC Rcd 12759 (1995).

¹¹ *Id.*

¹² 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, 12761-62, ¶ 13 (1995) (*FY 1994 MO&O*).

¹³ *Id.*

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.¹⁴

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,¹⁵ 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."¹⁶ 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."¹⁷

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.

Any unpaid portion of a regulatory fee is a delinquent debt, and under 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940, interest, penalties, and charges of collection on the unpaid balance accrue from the original date of delinquency. Moreover, the licensee becomes a delinquent debtor subject to the Commission's red light rule,¹⁸ and as required by 47 C.F.R. §§ 1.1164(e)¹⁹ and 1.1910, any application or request for relief filed may be dismissed.

Under 31 U.S.C. § 3711(g)(1), 31 C.F.R. § 285.12, and 47 C.F.R. § 1.1917, the Commission is required to transfer delinquent debt to the Secretary of the Treasury. On behalf of the Commission, the Secretary of the Treasury, Bureau of Fiscal Service will take appropriate action to collect or compromise the transferred debt, or to suspend or terminate collection action.²⁰ As such, when the debt is transferred, the Commission ceases collection action related to the debt.²¹

Under 31 C.F.R. § 903.2, agencies may suspend collection action when the agency cannot locate the debtor, the debtor's financial condition is expected to improve, or the debtor has requested a waiver or review of the debt.

¹⁴ *Id.*

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

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

¹⁷ 47 C.F.R. § 1.1164.

¹⁸ 47 C.F.R. § 1.1910.

¹⁹ 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 The application may be resubmitted only if accompanied by the required regulatory fee and by any assessed penalty payment."), 1.1910.

²⁰ 31 C.F.R. § 285.12(c).

²¹ 47 C.F.R. § 1.1917(b).

Discussion

Because Licensee is delinquent in paying regulatory fees due for several past years, under 47 U.S.C. § 159(c)(2) and 47 C.F.R. §§ 1.1164, 1.1166, and 1.1910(a)(2) & (3),²² we dismiss the *Request*. Further, if a licensee submits a request for a waiver based on financial hardship that does not include either the full fee or a timely petition to defer payment supported by documentation of the financial hardship, we will impose the statutory penalty²³ on the unpaid annual regulatory fee.

Our dismissal makes it unnecessary to address in detail our disposition of either Licensee's request for "abatement" of the delinquent debts or Licensee's request for a waiver and deferral of payment of the unpaid fees. Nonetheless, as a courtesy, we briefly explain why, in the alternative, we deny this requested relief. First, Licensee's request to abate or suspend collection fails to meet the standards set forth at 31 C.F.R. § 903.2. Next, Licensee's unsubstantiated assertion of financial hardship does not meet our standards²⁴ to establish good cause for the Commission to find that a waiver will serve the public interest.²⁵ Licensee's assertion of financial hardship is unsubstantiated,²⁶ and the Commission will not speculate to fill gaps in information that Licensee should have provided.²⁷ Thus, in the alternative, we deny Licensee's *Request*.

Refer to the Commission's fee filer website or contact the U.S. department of Treasury to determine a payoff, and immediately make full payment with a Form 159.²⁸ Charges continue to

²² 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.")

²³ 47 U.S.C. § 159; 47 C.F.R. § 1.1166; *Waivers, Reductions and Deferrals of Regulatory Fees, Regulatory Fees Fact Sheet* (Sep. 5, 2013) 2013 WL 4773993 (F.C.C.) ("The Commission will dismiss any petition for waiver of a regulatory fee that does not include a payment or the required petition for deferral and supporting documentation, and under 47 U.S.C. § 159(c) and 31 U.S.C. § 3717, the Commission is required to impose the 25% penalty and other relevant charges. A request for waiver, reduction or deferral must be received before the fee due date. * * * The Commission will dismiss a waiver request filed by a delinquent debtor or a petition that does not have the required financial documentation.")

²⁴ 47 C.F.R. § 1.1166; *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 *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.); *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.")

²⁵ 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 5333, 5344, ¶ 29.

²⁶ *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

²⁷ *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.)

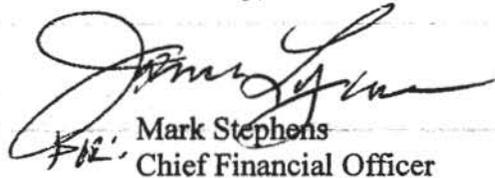
²⁸ The Form 159 with complete instructions is at <http://www.fcc.gov/fees/form159.html>.

accrue until we or the Treasury receives and credits the full amount; furthermore, under the law,²⁹ we will apply debt collection procedures.³⁰

Because Licensee is delinquent in 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. Furthermore, having furnished notice here, Licensee may not receive another notification of this process. Finally, Licensee will be red lighted³¹ until it pays the debt or makes other satisfactory arrangements.³²

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

Sincerely,


Mark Stephens
Chief Financial Officer

²⁹ See 47 C.F.R. § 1.1901, *et seq.*

³⁰ See 31 C.F.R. § 3717.

³¹ 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.").

³² 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

FEB 06 2015

OFFICE OF
MANAGING DIRECTOR

Benjamin H. Dickens, Jr.
Gerard J. Duffy
Blooston, Mordkofsky, Dickens,
Duffy & Prendergast, LLP
2120 L Street, NW, Suite 300
Washington, DC 20037

Licensee/Applicant/Regulatee: **Spencer Municipal
Utilities**
Exemption: Government Entity
Disposition: **Dismissed and Denied** (47 U.S.C. 159; 47
C.F.R. §§ 0.401, 1.7, 1.1159, 1.11162)
Fee: Regulatory Fee (ITSP)
Fee Control No. RROG-13-00015540

Dear Counsel:

This responds to Licensees *Petition*¹ for a declaratory ruling that under 47 C.F.R. § 1.1162(b), it is a government entity exempt from paying regulatory fees. As we discuss below, we dismiss and deny the *Petition*.

Background

On January 16, 2014, Licensee submitted to the Office of the Managing Director its *Petition* for “a declaratory ruling that it is a ‘government entity’ exempted by [47 C.F.R. § 1.1162(b)] from the requirement to pay regulatory fees.”

Licensee included copies of (a) an abstract of votes showing that in 1997 a special city election adopted a public measure giving the then-established Board of Trustees of the Spencer Municipal Utilities management and control of the broadband cable communications utility,² (b)

¹ Spencer Municipal Utilities, For a Declaratory Ruling that Petitioner is a Government Entity Exempt from the Requirement to Pay Regulatory Fees, TO: Office of the Managing Director, Petition For Declaratory Ruling That Petitioner Is A “Government Entity” Exempt From Requirement To Pay Regulatory Fees (Jan. 16, 2014) (*Petition*) with five exhibits, Exhibit A, Abstract of Votes, May 12, 1997 (*Abstract*), Exhibit B, Chapter 388 City Utilities, Sections 388.1 through 388.10 (*Chapter 388*), Exhibit C, Ordinance No. 479, July 7, 1997 (*Ordinance*), Exhibit D, Municipal Communications Utility Of The City of Spencer, Iowa, Notes to Financial Statements, December 31, 2012 and 2011 (*Notes*), and Exhibit E, SMU, Spencer Municipal Utilities, Internet webpage screens (*Webpages*).

² *Abstract*.

Chapter 388 of the Iowa State Code pertaining to city utilities,³ (c) an extract of the Ordinance of the Spencer City Code granting the “Utilities Board ... all of the powers and duties conferred by the State of Iowa upon a municipality ... regarding the establishment and operation of municipal ... utilities [provided for under] Chapter 388 of the Code of Iowa,”⁴ (d) an extract from the notes of a financial statement,⁵ and (e) eight internet screen pages from SMU, Spencer Municipal Utilities summarizing some of the history of the utility and the services it provides.⁶

Licensee described its history as a utility providing first electric and water utilities, and later, after a special election, broadband communications, including cable television, video, voice telephone, data, and other forms of cable communications.⁷ Licensee asserts Iowa state law provides that “city utilities are subparts of cities that are controlled by the duly appointed public officials of their utility boards which exercise sovereign direction and control over their respective programs.”⁸ Furthermore, Licensee asserts it complies fully with the relevant portions of the Iowa statutes, including its establishment and recurring operation. Specifically, Licensee is governed by mayoral-appointees who are confirmed by the city council, and who hold regularly scheduled public meetings. Licensee’s financial auditor described the business as operating “as an independent unit of the City of Spencer ... governed ... by a ... Board of Trustees.”⁹ Furthermore, the auditor noted that Licensee’s finances are “not considered to be a component unit of the City of Spencer” and that Licensee “is exempt from federal and state income taxes because it is a government entity organized under ... Chapter 388 of the Code of Iowa.”¹⁰ Licensee explains it was unaware of the provisions of 47 C.F.R. § 1.1162(b), hence it paid its annual regulatory fees “for the past decade or so.”¹¹ Even so, during August 2013, Licensee was informed that others were exempt, so it submitted informal email inquiries with a reference to its Internet website seeking an exemption. Acknowledging that the webpage information does not “address the question of whether [Licensee] is a government entity,”¹² Licensee asserts the exhibits to its *Petition* establish it to be a subpart of a city, and that we should “issue a declaratory ruling that [Licensee] is a ‘government entity’ within the meaning of [47 C.F.R. § 1.1162(b)], and that, as such it is not required, and has never been required, to pay ... regulatory fees.”¹³

³ Chapter 388.

⁴ Ordinance.

⁵ Notes.

⁶ Webpages.

⁷ *Petition* at 1-2.

⁸ *Id.* at 2.

⁹ *Id.* at 3.

¹⁰ *Id.* at 4.

¹¹ *Id.*

¹² *Id.* at 4-5.

¹³ *Id.* at 5.

Standards

Our rule at 47 C.F.R. §1.1162 provides general exemptions from regulatory fees. Related to Licensee's *Petition*, our rule provides,

[n]o regulatory fee established in §§1.1152 through 1.1156, unless otherwise qualified herein, shall be required for ... (b) Applicants, permittees, or licensees who qualify as government entities. For purposes of this exemption, a government entity is defined as any state, possession, city, county, town, village, municipal corporation, or similar political organization or subpart thereof controlled by publicly elected or duly appointed public officials exercising sovereign direction and control over their respective communities or programs.

As to the process, a licensee seeking an "exemption from a regulatory fee shall [file] with the Secretary, Federal Communications Commission, Attention: Managing Director, Washington, D.C. 20554"¹⁴ "Applications and other filings not submitted in accordance with the addresses or locations set forth below will be returned to the applicant without processing."¹⁵

Discussion

We look first to whether the matter is properly before us, and find that it is not. Licensee submitted to the Managing Director the *Petition* for declaratory ruling on the question whether it is exempt from paying annual regulatory fees within the meaning of 47 U.S.C. § 159 and 47 C.F.R. § 1.1162(b). We note that the proper form of the request is a filing under 47 C.F.R. § 1.1162, to request exemption, not a formal request for a declaratory ruling under 47 C.F.R. § 1.2. The form of the request aside, the problematic issue is that the *Petition* is not filed. Specifically, by submitting its *Petition* to the Managing Director, Licensee failed to comply with 47 C.F.R. § 1.1159(c), thus it was not filed,¹⁶ and under 47 C.F.R. § 0.401, we dismiss and return the submission without processing. Because our rule directs that disposition, the matter should end; however, as a matter of administrative economy, we look to the merits of the *Petition*, and for the reasons discussed next, we deny.

Licensee points to results of the election,¹⁷ the subsequent city ordinance,¹⁸ and Chapter 388 of the Iowa statutes¹⁹ as the ground for requesting exemption under 47 C.F.R. § 1.1162(b) from paying the annual regulatory fees. As noted, § 1.1162(b) provides an exemption for a government entity, which is defined as "any state, possession, city, county, town, village, municipal corporation, or similar political organization or subpart thereof controlled by publicly

¹⁴ 47 C.F.R. § 1.1159(c).

¹⁵ 47 C.F.R. § 0.401 ("The Commission maintains several offices and receipt locations. Applications and other filings not submitted in accordance with the addresses or locations set forth [in the Commission's rules] will be returned to the applicant without processing.").

¹⁶ 47 C.F.R. § 1.7 ("pleadings and other documents are considered to be filed with the Commission upon their receipt at the location designated by the Commission.").

¹⁷ *Abstract*.

¹⁸ *Ordinance*.

¹⁹ *Chapter 388*.

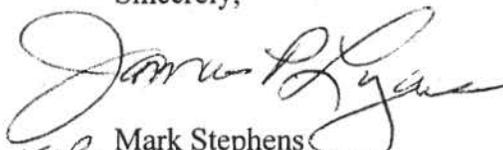
elected or duly appointed public officials exercising sovereign direction and control over their respective communities or programs.” The information in Licensee’s attachments does not resolve the issue. Our determination whether Licensee or any applicant for an exemption is within that definition begins with an analysis of the function the entity provides. As we discuss next, if the entity is engaged in a proprietary function, it does not qualify for an exemption.

Cities, towns, and municipal corporations are instituted for public purposes.²⁰ As such, a municipal corporation can exercise dual functions, governmental and proprietary.²¹ A governmental function (in relation to our rule, sovereign direction and control) is the performance of a public service for the general welfare of the inhabitants or the community, in which the municipal corporation has no private interest and for which it derives no special benefit or advantage. Conversely, a municipality (or its subpart) acting beyond the scope of ordinary governmental functions, such that it is engaging in ministerial or private activities, or services for a profit, is treated as a private corporation.²² Hence, the Licensee’s exercise of its activities (broadband, cable, internet, telephone, *etc.*) outside the governmental function is proprietary in nature, and like an individual or privately owned corporation engaged in the same activity, the municipality is liable for its acts and the payment of regulatory fees.²³ Indeed, “[o]wning and operating a public utility is a corporate, not governmental function.”²⁴

Licensee’s submission and public information on its Internet website²⁵ show it is engaged in a proprietary function. Hence, the exemption does not apply, and we deny the *Petition*.

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

²⁰ See *Mayor and Recorder of City of Nashville v. Ray*, 86 U.S. 468, 475 (1873).

²¹ *Owen v. City of Independence*, 445 U.S. 622, 645 (1980); *Miller Grocery Co. v. City of Des Moines*, 192 N.W. 302 (S.C. Iowa 1923).

²² *AGI Associates, LLC v. City of Hickory*, 773 F.3d 576, 579 (4th Cir. 2014).

²³ *Owen v. City of Independence*, *supra*, 445 U.S. at 644.

²⁴ *IBP, Inc. v. City of Council Bluffs*, 511 N.W.2d 413, 417 (Iowa App. 1993).

²⁵ <http://www.smunet.net/>.

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAR 09 2015

OFFICE OF
MANAGING DIRECTOR

Charles G. Lunsford
Director, Revenue & Regulatory Affairs
Springboard Telecom, LLC, d/b/a Comporium
330 East Black Street
Post Office Box 470
Rock Hill, SC 29731-6470

Licensee/Applicant: **Springboard Telecom, LLC,
d/b/a Comporium**
Waiver and Refund Request: Late Payment Penalty
Disposition: **Denied** (47 C.F.R. §§ 1.1157(c)(1),
1.1164)
Fee: Fiscal Year (FY) 2014 Regulatory Fee Late
Fees
Station: N/A
Date Request Filed: Dec. 8, 2014
Date Regulatory Fee Paid: Oct. 22, 2014
Date Late Penalty Fee Paid: Oct. 22, 2014
Fee Control No.: RROG-14-00015847

Dear Mr. Lunsford:

This responds to Licensee's *Request*¹ for waiver and refund of the penalty for late payment of the Fiscal Year (FY) 2014 regulatory fee on the grounds its servicing bank erred in failing to process a payment. As we discuss below, we deny because Licensee's described circumstance is not bank error, rather the circumstance of the untimely payment of its regulatory fee was the direct result of Licensee's failure to correct filters it left in place with its bank, which prevented processing of the transaction.

¹ Letter from Charles Lunsford, Springboard Telecom, LLC, d/b/a Comporium, 330 East Black Street, PO Box 470, Rock Hill, SC 29731 to Marlene Dortch, Secretary, FCC, Attn: Office of the Managing Director, 445 12th St., S.W., Room TW-B204, Washington, DC 20554 (Nov. 26, 2014) (*rec'd* Dec. 8, 2014) (*Request*) with three attachments: (a) letter from Robin Lingle, Assistant Vice President, Bank of America, N.A., One Bank of America Center, 150 N. College St., NC1-028-13-05, Charlotte, NC 28255 to Springboard Telecom, LLC, PO Box 470, Rock Hill, SC 29731-6470 (Nov. 18, 2014) (*BAC Letter*), (b) Springboard – Pay.gov Payment Confirmation Remittance Advice.txt, From paygovadmin@mail.doc.twai.gov (Sep. 12, 2014), and (c) FCC, Financial Operations Administration, Client History (Oct. 29, 2014).

Background

On December 8, 2014, Licensee filed² its *Request* for a “refund [of] the late payment penalty of \$824.00 imposed ... due to bank error.” Licensee asserts it “attempted ... to make payment of [the required annual regulatory fee] on September 12, 2014. ... an issue with [Licensee’s] ACH fraud protection and lack of notification from [Licensee’s bank,] Bank of America prevented [Licensee] from being made aware that ... payment was returned [before] the payment deadline of September 23, 2014.” Furthermore, Licensee asserts, when it “initiated payment ... Bank of America assumed [Licensee] was originating the payment ... therefore the ACH filter [at Bank of America] did not need updating. [Thereafter] Bank of America failed to notify [Licensee] of the returned payment [within time for Licensee to correct the filter] prior to the fee payment deadline ...” *BAC Letter* states that Licensee “initiated a payment ... assumption was ACH filters/FCC company ID was not needed as [Licensee] were [sic] the ones initiating payment. ... Since the FCC trading partner id was not on our bank system as an authorized id, the payment was rejected by ACH.”³

Standards

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,⁴ 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.”⁵ 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.”⁶ Bank error, established with “an affidavit of an officer of the bank,”⁷ must involve circumstances entirely outside the regulatee’s ability to control that caused the untimely payment of regulatory fee.⁸

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.

² Licensee’s *Request* was filed on the date it was received at the Commission’s office. See 47 C.F.R. §§ 1.7, 0.401.

³ *BAC Letter*.

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

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

⁶ 47 C.F.R. § 1.1164.

⁷ 47 C.F.R. § 1.1164(b).

⁸ NTT America, Inc., *Memorandum Opinion and Order*, 21 FCC Red 8088, 8090, ¶ 6 (2006) (*NTT America*).

Discussion

For FY 2014, the deadline for paying regulatory fees was September 23, 2014.⁹ We did not receive Licensee's regulatory fee payment for FY 2014 until October 22, 2014. After making payment, Licensee asked for a waiver and refund of the statutory penalty and charges.

Under 47 U.S.C. § 159 (c)(1) and 47 C.F.R. § 1.1164, the Commission assesses a late payment penalty of 25 percent on any regulatory fee not paid in a timely manner, which is not excused by bank error. A timely payment is one received at the Commission's lockbox bank by the due date, and "bank error" is where "a fee payment fails due to error by the payor's bank, as evidenced by an affidavit of an officer of the bank."¹⁰

"Bank errors that cause untimely payment of regulatory fees involve circumstances entirely outside the regulatee's ability to control."¹¹ In contrast to the standard, Licensee asserts, "Bank of America assumed that [because Licensee] was originating payment ... the ACH filter did not need updating [by Licensee]."¹² Further, Licensee asserts, "Bank of America failed to notify [Licensee] of the returned payment which prevented a correction prior to the fee payment deadline"¹³ Moreover, Bank of America's statement that Licensee "initiated a payment[,hence Licensee's] assumption was ACH filters/FCC company id was not needed" and that the "FCC trading partner id was not on [Bank of America's] system as an authorized id"¹⁴ fails to establish that the circumstances causing the untimely payment were "entirely outside [Licensee's] ability to control."¹⁵ Indeed, as Licensee describes the situation, its untimely payment of the regulatory fee was the result of Licensee failing to change the filters in place at Bank of America; a matter entirely within Licensee's control, and the consequence of its own business decision.¹⁶ Finally, Licensee's *BAC Letter* is not an affidavit as our rule requires.¹⁷ Overall, Licensee's explanation does not establish extraordinary circumstances to justify a waiver of the late payment penalty.¹⁸ Thus, the *Request* is denied.

⁹ See 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).

¹⁰ 47 C.F.R. § 1.1164(b).

¹¹ *NTT America*, 21 FCC Rcd at 8090, ¶ 6.

¹² *Request*.

¹³ *Id.*

¹⁴ *BAC Letter*.

¹⁵ *NTT America*, 21 FCC Rcd at 8090, ¶ 6.

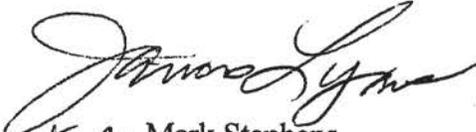
¹⁶ *Id.* at 8090, ¶ 5.

¹⁷ 47 C.F.R. § 1.1164(b).

¹⁸ *NTT America*, 21 FCC Rcd at 8089, ¶ 5.

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

Sincerely,



FOR: Mark Stephens
Chief Financial Officer

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAR 09 2015

OFFICE OF
MANAGING DIRECTOR

Jason Moss
Chief, Tax and Compliance
Telmate, LLC
655 Montgomery Street, Suite 1800
San Francisco, CA 94111

Licensee/Applicant: **Telmate, LLC**
Waiver Request: Late Payment Penalty
Disposition: **Denied** (47 C.F.R. §§ 1.1157(c)(1),
1.1160, 1.1164)
Fee: Fiscal Year (FY) 2014 Regulatory Fee Late
Fee
Station: N/A
Date Request Filed: Dec. 22, 2014
Date Regulatory Fee Paid: Nov. 21, 2014
Date Late Penalty Fee Paid: Nov. 21, 2014
Fee Control No.: RROG-14-00015888

Dear Mr. Moss:

This responds to Licensee's *Request*¹ for waiver² of the penalty for late payment of the Fiscal Year (FY) 2014 regulatory fee. As we discuss below, we deny because Licensee failed to demonstrate legal grounds or clear mitigating circumstances to waive collection of the penalty.

Background

On November 21, 2014, Licensee paid the FY 2014 regulatory fee and accrued charges, and on December 22, 2014, Licensee filed³ its *Request* that we waive and refund the late payment charges on the grounds that Licensee's "accounting and finance department had a complete overhead change during the summer of 2014 which included the hiring of a new chief financial officer as well as [the chief of the] tax and compliance department. [Before the new hiring and reorganization, Licensee did not have a] compliance calendar [and it had] poor document organization"⁴

¹ Letter from Jason Moss, Telmate, LLC, 655 Montgomery St., Ste 1800, San Francisco, CA 94111 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 (Dec. 15, 2014) (*filed* Dec. 22, 2014)(*Request*).

² We note that Licensee failed to comply with our rule at 47 C.F.R. § 1.1160, which requires a written request for a refund. Even so, our disposition renders that issue moot.

³ 47 C.F.R. § 1.7 ("pleadings and other documents are considered to be filed with the Commission upon their receipt at the location designated by the Commission."). Licensee's *Request* was *filed* on Dec. 22, 2014.

⁴ *Request*.

Standards

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,⁵ 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."⁶ 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."⁷

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. For FY 2014, the published deadline for paying regulatory fees was September 23, 2014.⁸ Licensee failed to complete payment by that date, thus the unpaid fee became delinquent and, as required by the law, we imposed charges. We received Licensee's FY 2014 regulatory fee payment on November 21, 2014, and thereafter the *Request*.

Discussion

Licensee's assertions describe, in general, poor internal office management and inadvertent error as the basis for failing to make a timely payment. The specific assertions do not describe "extraordinary circumstances"⁹ that, if proved, would be legal grounds or clear mitigating circumstance to waive collection of the penalty. This explanation fails to establish that the circumstances causing the untimely payment were "entirely outside [Licensee's] ability to control."¹⁰ Indeed, as Licensee describes the situation, its untimely payment of the regulatory fee was the result of Licensee failing to maintain a "compliance calendar" and appropriate "document organization;" matters entirely within Licensee's control, and the consequence of its own business decision.¹¹ 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."¹²

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

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

⁷ 47 C.F.R. § 1.1164.

⁸ See 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).

⁹ McLeodUSA Telecommunications Services, Inc., *Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589 (2004) (denying the request for waiver of 25 percent penalty).

¹⁰ NTT America, Inc., *Memorandum Opinion and Order*, 21 FCC Rcd 8088, 8090, ¶ 6 (2006).

¹¹ *Id.* at 8090, ¶ 5.

¹² 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).

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 the amount of time after the deadline within which the regulatee satisfies its payment obligations.

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

Sincerely,


For: Mark Stephens
Chief Financial Officer

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAR 26 2015

OFFICE OF
MANAGING DIRECTOR

Pamela Hesse
Former Controller/TNCI
2 Charlesgate West
Boston, MA 02215

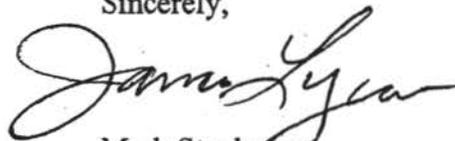
Licensee/Applicant: **Trans National
Communications International, Inc.**
Request for Cancellation
Disposition: **Dismissed** (47 C.F.R. § 1.1166)
Fee Control No.: RROG-14-00015820

Dear Ms. Hesse:

This responds to your request for cancellation of Fiscal Year (FY) 2013 and FY 2014 Regulatory Fees on the grounds that Licensee filed for protection under Chapter 11 of the US Bankruptcy Code, and thereafter its assets were sold to TNCI Operating Company LLC. Licensee acknowledges that it inadvertently failed to pay the annual regulatory fees for FY 2013 and FY 2014; however, it asserts it is no longer in business.

On March 16, 2015, the Commission received notification from Mr. D. Ethan Jeffery, Murphy & King, One Beacon Street, Boston, MA 02108, that his office represents the liquidating agent in the case, Trans National Communications International, Inc. (TNCI), Chapter 11 Case No. 11-19595-WCH. Mr. Jeffery informs us that the liquidating agent will handle the Commission's claim. Because his information moots your request for cancellation, it is dismissed.

Sincerely,



1501: Mark Stephens
Chief Financial Officer