

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

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OFFICE OF
MANAGING DIRECTOR

Mark B. Denbo, Esq.
Smithwick & Belendiuk, P.C.
5028 Wisconsin Avenue, NW, Suite 301
Washington, DC 20016

Petitioner/Licensee/Applicants: **Millard S. Younts, Receiver**

Petition for Reconsideration of Dismissal of Waiver and Petition for Deferral of Payment: **Financial Hardship**

Disposition: **Dismissed and Denied** (47 U.S.C. §§ 159(c)(2), 405(a); 47 C.F.R. §§ 1.106, 1.1164, 1.1167, and 1.1910)

Station: WEFC-WDRL-TV

Fees: Fiscal Year (FY) 2013 Regulatory Fees

Date of Decision: Nov. 20, 2014

Date Petition Filed: Dec. 22, 2014

Date Regulatory Fees Paid: Not Paid

Fee Control No.: RROG-14-00015864

Dear Counsel:

This responds to Petitioner's Petition for Reconsideration¹ (*Petition*) of the Commission's dismissal (*Dismissal*)² of his September 27, 2013, Request³ to waive the Fiscal Year (FY) 2013

¹ Millard S. Younts, Receiver, Waiver and Petition for Deferral: Financial Hardship, Fiscal Year 2013, Petition for Reconsideration (Dec. 22, 2014) (*Petition*) with Declaration of Millard S. Younts, dated Dec. 19, 2014 (*Younts 2014 Declaration*), and Exhibit 1, Financial Documents: (a) email from Millard S. Younts, Receiver for MNE Broadcasting, LLC to The Honorable Judge David A. Faber, U.S. District Court Judge, Southern District of West Virginia (SD WV) (Nov. 15, 2010); (b) email from Millard S. Younts, Receiver for MNE Broadcasting, LLC to The Honorable Judge David A. Faber, U.S. District Court Judge, SD WV (Apr. 15, 2011); (c) email from Millard S. Younts, Receiver for MNE Broadcasting, LLC to The Honorable Judge David A. Faber, U.S. District Court Judge, SD WV (Dec. 19, 2011); (d) MNE Broadcasting, LLC, Millard S. Younts-Receiver, Jan. 2014 -Apr. 2014, Administrative Office Expense-Fees; (e) Closing Statement - Morning Star Broadcasting, LLC Receivership, WEFC-WDRL-TV, Danville, VA, Period: Jul. 1, 2010 - May 1, 2014; (f) MNE Broadcasting, LLC, Millard S. Younts-Receiver, Jan. 2014 - Apr. 2014, Administrative Office Expense-Fees (duplicate); (g) MNE Broadcasting, LLC, Millard S. Younts-Receiver, Jan. 2013 - Dec. 2013, Administrative Office Expense-Fees; (h) MNE Broadcasting, LLC, Millard S. Younts-Receiver, Jan. 2012 - Dec. 2012, Administrative Office Expense-Fees; (i) MNE Broadcasting, LLC, Millard S. Younts-Receiver, Jan. 2011 - Dec. 2011, Administrative Office Expense-Fees; (j) MNE Broadcasting, LLC, Millard S. Younts-Receiver, Jul. 2010 - Dec. 2010, Administrative Office Expense-Fees; (k) Final Statement, Office Hours-Office Expense, Millard S. Younts, Receiver for MNE Broadcasting, LLC, Period: Jul. 1, 2010 - May 1, 2014; (l) Final Disbursements, WEFC-TV-MNE Closing Accounts, BB&T Check List, Account: Millard S. Younts, Receiver, MNE Broadcasting, LLC, Account Number: [redacted]; (May 14, 2014);(m) MNE Broadcasting, LLC- Receivership, WDRL-WEFC-TV, Danville, Virginia, Travel-Administration, Documentation Expense-Receipts, May 1, 2014 (no attached receipts); (n) Travel and Office Expense Receipts 2014 (no attached receipts); (o) FCC Letter of Inquiry Escrow Documents, Escrow Agreement, US Bank Escrow

regulatory fees. As we discuss below, under 47 U.S.C. §§ 159(c)(2) and 405(a), and 47 C.F.R. §§ 1.106 (p), 1.1164(e), 1.1167(b), and 1.1910,⁴ we dismiss and deny the *Petition* because Petitioner is delinquent in paying the FY 2012 and FY 2013 regulatory fees and he fails to establish a basis for reconsideration.

Background The Petition

Petitioner seeks reconsideration by asserting he relied on a prior year's grant of a waiver request, thus he was "caught totally off-guard" by our *Dismissal*.⁵

Petitioner asserts he "reasonably relied on the 2011 CFO [decision granting a request for waiver of the FY 2010 regulatory fee],"⁶ which was based on a request that "did not contain any accounting data, profit and loss statements, balance sheets, cash flow projections."⁷ Hence, Petitioner closed on a transaction assigning the station to "a well-qualified buyer"⁸ without making "any arrangements regarding the payment of the 2013 regulatory fee because it did not appear that such arrangements would be necessary."⁹ Furthermore, Petitioner was "not provided any notice that the OMD would insist on the provision of significant financial data to support the

Documents; (p) US Bank Invoice Number [redacted], Dated 10/01/2013; (q) Interim Escrow Agent Instructions, Sep. 26, 2013; (r) US Bank Market Value Summary Account Number: [redacted], Apr. 1, 2014 to Apr. 30, 2014; (s) US Bank Trade Receipt Escrow Account, Apr. 24, 2014; (t) Investment Disclosure and Authorization Letter, Sep. 16, 2013; (u) MNE Broadcasting, LLC-Receivership, WDRL-WEFC-TV, Danville, Virginia, Administration Expense Fees, Documentation-Receipts, Period: Jul. 1, 2010-May 1, 2014, May 1, 2014, with 16 invoices.

² Letter from Mark Stephens, Chief Financial Officer, FCC, Washington, DC 20554 to Gary S. Smithwick, Esq., Smithwick & Belendiuk, PC, 5028 Wisconsin Ave., NW, Suite 301, Washington, DC 20016 (Nov. 20, 2014) (*Dismissal*).

³ Millard S. Younts, Receiver, Annual Regulatory Fees-FY 2012, WEFC-TV [former WDRL-TV], Danville, VA (Facility ID No. 15507) Bill No. R12T015507, *Petition for Waiver of FY 2013 Annual Regulatory Fee* (Sep. 27, 2013) (to distinguish the Sep. 27, 2013, pleading, captioned a "petition" from the instant *Petition for Reconsideration*, we refer to the first filing as *Request*) with Attachment 1, Amended Judgment Order, dated Jun. 18, 2010 (Attachment 1) and Attachment 2, Declaration of Millard S. Younts, dated Sep. 27, 2013 (Attachment 2).

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 U.S.C. § 405(a) ("No such application [petition for reconsideration] shall excuse any person from complying with or obeying any order, decision, report, or action of the Commission, or operate in any manner to stay or postpone the enforcement thereof, without special order of 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."); 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. ... Failure to submit the fee by the date required will result in the assessment of a 25 percent penalty. ... 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 Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for Fiscal Year 1994, *Report and Order*, 9 FCC Rcd 5333, 5346, ¶ 35 (1994), *recon. granted in part*, 10 FCC Rcd 12759 (1995) (*FY 1994 R&O*) ("The filing of a petition for reconsideration will not toll th[e] 30-day period.").

⁵ *Petition* at 4.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 5.

request for a waiver,”¹⁰ as such the “Commission is required to explain its change in policy requiring ... [o]therwise, [the] action is arbitrary and capricious.”¹¹ Petitioner now offers financial documentation, dated either before the date of the *Request* or the date of our *Dismissal*, showing, in part, a buyer paid \$1,000,000.00 for the station, Petitioner incurred various expenditures, including legal fees,¹² filing fees, administration expenses,¹³ Petitioner set up an escrow account for one payment, and Petitioner paid the net proceeds of \$570,000 to the party prevailing in the lawsuit underlying basis for the receivership appointment.¹⁴

The Request

Petitioner submitted his *Request* on September 27, 2013, acknowledging he was seven days late and that the statutory penalty accrued.¹⁵ Furthermore, Petitioner acknowledged that 47 C.F.R. § “1.1166(a)(c) requires petitions for waiver of a regulatory fee to be accompanied by the required fee and FCC Form 159, unless good cause is shown. Petitions for waiver must be accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.”¹⁶ Nonetheless, Petitioner did not move for leave to file out of time or to waive the Commission’s rules that mandate the 25 percent late payment penalty and the accrual of interest, penalties, and costs of collection,¹⁷ or, as we discuss below, meet the standards set forth at section 1.1166. Furthermore, Petitioner failed to disclose to us that he was ~~delinquent in paying the FY 2012 regulatory fee.~~

Turning to the substance of his *Request*, Petitioner asserted that on June 18, 2010, he was appointed receiver¹⁸ to take control of the certain assets “to preserve, manage, sell, and otherwise liquidate the assets, including the FCC licenses used to operate WDRL-TV, to permit execution of the default judgment entered by the court.”¹⁹ The attachment to the *Request* showed that on September 8, 2009, the United States District Court, Southern District of West Virginia entered a \$1,111,059.14 judgment, plus post-judgment interest, attorney fees, and costs, against Melvin

¹⁰ *Id.*

¹¹ *Id.*

¹² Petitioner’s Exhibit 1 includes an un-itemized \$159,662.24 invoice for the legal fees.

¹³ Petitioner’s Exhibit 1 includes documents showing inconsistent expenses for receivership administration. For example, Petitioner reported receiving \$221,750.73 (\$40,000.00 prepaid) for administration that included \$81,333.24 in travel expenses and \$74,400.00 in administration on the exhibit, “Closing Statement-Morning Star Broadcasting, MNE Broadcasting LLC Receivership, WEFC-WDRL-TV, Danville, Virginia, Period: Jul. 1, 2010 - May 1, 2014.” In contrast to \$81,333.24 he reported as travel expenses under the category “Final Disbursements,” Petitioner received an unexplained higher amount of \$121,750.13 identified as “Expense: Administration-Travel.” Petitioner also provided a “Final Statement, Office Hours-Office Expense, Millard S. Younts, Receiver for MNE Broadcasting, LLC, Period: Jul. 1, 2010-May 1, 2014.” Petitioner reported his hourly rate of compensations as \$100.00 and his office time in two periods, July, 2010- October, 2013 (39 months) (first period) and November, 2013 – April, 2014 (6 months) (second period). From that, Petitioner’s “Final Statement” shows that in the first period he worked one hour a day or 18.46 hours a month, and in the second period, one hour a week,

¹⁴ *Petition*, Exhibit 1.

¹⁵ *Request* at 2 (“Commission regulatory fees were due by September 20, 2013. A regulatory fee of \$13,730.00 was assessed for the Station. With a 25% penalty, the sum of \$17,162.50 would be due for the Station.”).

¹⁶ *Request* at 2.

¹⁷ *Id.* at 1-2. Petitioner failed to ask for a waiver of the interest, penalties and charges of collection as set forth at 31 U.S.C. § 3717.

¹⁸ *Request* at 1.

¹⁹ *Request*, Attachment 1, p. 1.

Eleazer, *et al.*, including MNE Broadcasting, LLC, defendants in a civil action filed by Charter Communications VI, LLC, d/b/a Charter Communications, *et al.*,²⁰ one of whom was the holder of the station license. In the *Request*, Petitioner asserted, the station “is currently silent,” and that “receiver has entered into an agreement to assign the license;”²¹ however, “there is no source of funds from which [Petitioner] can pay the fee at this time.”²² Finally, Petitioner asserted, “the Commission has on prior occasions waived the payment of the regulatory fees for this station.”²³

Petitioner did not include specific financial documentation, instead he declared his receivership status and that he does not have “funds with which to pay the FY 2013 regulatory fee ... funds will not be available unless and until [the station] is sold to a third party.” The *Request* did not include an accounting of assets, asset valuation, expenses, complete details of all past and future sales, the disposition of sale proceeds, and the balance remaining after closing of each sale. Moreover, Petitioner failed to include adequate financial documentation to support his assertion that he lacked funds to pay the regulatory fee or to determine whether Petitioner met his burden to establish financial hardship sufficient to waive payment of the regulatory fee and accrued charges. Necessary documentation should have included a range of materials, for example, a fair market appraisal of all of defendants’ assets, including the station license and all associated property and equipment, a complete accounting of “the assets of MNE Broadcasting, LLC” from the date of appointment to the present,²⁴ financial documentation of both the ~~Petitioner and MNE Broadcasting, LLC at all relevant periods, copies of court required financial~~ accountings, the disposition of any assets sold, transferred, or disposed of after the date of judgment, the proposed disposition of assets after the sale, and any offer by the purchaser to pay fees and the delinquent debts.

The Dismissal

Our *Dismissal* explained that Petitioner filed his *Request* after the fee was due, and that Petitioner was “delinquent in paying the regulatory fees for both FY 2012 ... and FY 2013.”²⁵ Moreover, we observed that Petitioner acknowledged²⁶ he was delinquent in paying the FY 2013 regulatory fee.²⁷ We also explained that Petitioner was delinquent for not paying the FY 2012 fee, and that he had not filed a timely complete petition to defer payment before the deadline, September 13, 2012.²⁸ Furthermore, his delinquency status triggered consequences, *e.g.*, the statutory penalty under 47 U.S.C. § 159(c), interest, penalties and charges of collection under 31 U.S.C. § 3717, and, important to the *Request*, dismissal. As set forth at 47 U.S.C. § 159(c) and

²⁰ *Id.*, Attachment 1, p. 1.

²¹ *Request* at 2.

²² *Id.*

²³ *Id.* at 3.

²⁴ Attachment 1.

²⁵ *Dismissal* at 3.

²⁶ *Request* at 1 and 2. Petitioner also acknowledged, “Petitions for waiver must be accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.” *Request* at 3.

²⁷ *Request* at 2. Assessment and Collection of Regulatory Fees for Fiscal Year 2012, *Report and Order*, 27 FCC Rcd 8390, 8400, ¶¶ 31-32 (2012).

²⁸ Reminder That FY 2012 Regulatory Fees Are Due No Later Than September 13, 2012, Eastern Time (ET), *Public Notice* (DA 12-1423) (Aug. 31, 2012).

47 C.F.R. §§ 1.1164(c)²⁹ & (e)³⁰ and 1.1166, we assessed late payment penalties and charges,³¹ and we dismissed the *Request*.³² That resolved the matter; however, as a courtesy, we explained alternative reasons for dismissal and denial.³³

We summarized the Commission's long-standing rules that require a regulatee seeking waiver, reduction, or deferral to establish both prongs in our standard -- good cause and that the public interest will be served thereby.³⁴ Specifically, good cause means extraordinary and compelling circumstances that outweigh the public interest in recouping the Commission's regulatory costs.³⁵ Where the applicant raises "financial hardship,"³⁶ the applicant must "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."³⁷ This means an applicant should include financial documents, such as 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.³⁸

We explained to Petitioner that he failed to include any financial documentation.³⁹ Indeed, Petitioner showed only that he was appointed receiver "to take immediate control of the assets ... to preserve, manage, sell, and otherwise liquidate the assets ... to permit execution of

²⁹ 47 C.F.R. § 1.1164(c) ("If a regulatory fee is not paid in a timely manner, the regulatee will be notified of its deficiency. This notice will automatically assess a 25 percent penalty, subject the delinquent payor's pending applications to dismissal, and may require a delinquent payor to show cause why its existing instruments of authorization should not be subject to rescission.").

³⁰ 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.").

³¹ See 31 U.S.C. § 3717.

³² *Dismissal* at 3. Assessment And Collection of Regulatory Fees For Fiscal Year 2011, Report and Order, 26 FCC Rcd 10812, 10826, ¶¶ 36-37 (2011) (*FY 2011 R&O*) ("Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including those set forth in section 1.1910 of the Commission's Rules and in the Debt Collection Improvement Act of 1996 ("DCIA"). * * * We will withhold action on any applications or other requests for benefits filed by anyone who is delinquent in any non-tax debts owed to the Commission (including regulatory fees) and will ultimately dismiss those applications or other requests if payment of the delinquent debt or other satisfactory arrangement for payment is not made. [Footnotes deleted]").

³³ *Dismissal* at 3-5.

³⁴ *Id.*; 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166. See also *FY 1994 R&O*, 9 FCC Rcd 5344.

³⁵ *FY 1994 R&O*, 9 FCC Rcd at 5344 ¶ 29; Phoenix Broadcasting, Inc. Stations KSWD and KPFN Seward, Alaska, *Memorandum Opinion and Order*, 18 FCC Rcd. 26464, 26466, ¶¶ 5-6 (2003) (*Phoenix Broadcasting, Inc.*) ("Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely 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.").

³⁶ 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*).

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Dismissal* at 4.

the default judgment.”⁴⁰ We noted⁴¹ that this limited information failed to establish financial hardship, and that without the required relevant financial documentation,⁴² Petitioner failed to meet our standard set forth at 47 C.F.R. § 1.1166. This was a separate additional reason for dismissal.

Further, we explained to Petitioner that he failed to (a) provide evidence of his financial capability as a receiver to pay the fee, which is a necessary component in a claim of financial hardship, or, in the alternative, (b) explain the legal authority excusing Petitioner from complying with the court order requiring him to “preserve” and to “manage” the assets, which would include paying the FCC regulatory fee.⁴³ Furthermore, Petitioner failed his duty to clarify his position with the Commission⁴⁴ and to maintain the accuracy and completeness of his application.⁴⁵ We explained that Petitioner’s failure to provide this documentation of financial hardship was an additional reason to dismiss.⁴⁶

We explained that merely asserting receivership status does not relieve an applicant from establishing proper grounds to seek a waiver.⁴⁷ Receivership status is a factor;⁴⁸ however, the imperative elements remain, the applicant must present “extraordinary and compelling circumstances showing that a waiver ... would override the public interest” in collecting the fee.⁴⁹ Specifically, we explained, even where an applicant asserts receivership as the basis for relief, we will analyze the facts of the case to determine whether the applicant established good cause that is defined as extraordinary⁵⁰ and compelling circumstances,⁵¹ and that waiver is justified. We explained that Petitioner failed to include financial information and to establish that the receivership was based on financial hardship.⁵² Moreover, Petitioner’s facts led to our conclusion that a reduction in the fee would benefit the defendants in the lawsuit by paying debts

⁴⁰ Request, Attachment 1.

⁴¹ Dismissal at 4.

⁴² 47 C.F.R. § 1.1166(c).

⁴³ Dismissal at 4-5.

⁴⁴ *Bartholdi Cable Co. Inc. v FCC*, 114 F3d 274, 280 (DC Cir. 1997)(The Commission “‘need not sift pleadings and documents’ to identify arguments that are not ‘stated with clarity’ by a petitioner. It is the petitioner that has the burden of clarifying its petition before the agency.”).

⁴⁵ 47 C.F.R. § 1.65 (“Each applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application ... whenever the information furnished ... is no longer substantially accurate and complete in all significant respects, the applicant shall as promptly as possible and in any event within 30 days, unless good cause is shown, amend or request the amendment of the application so as to furnish such additional or corrected information as may be appropriate.”).

⁴⁶ Dismissal at 4; 47 C.F.R. § 1.1166(c).

⁴⁷ Dismissal at 5.

⁴⁸ See *FY 1994 MO&O*, 10 FCC Rcd 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.”).

⁴⁹ *FY 1994 MO&O*, 10 FCC Rcd at 12761, ¶ 12; Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Notice of Proposed Rulemaking*, 18 FCC Rcd 6085, 6090, ¶ 11 (2003).

⁵⁰ 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”).

⁵¹ *Id.* (compelling-“something so great that irreparable harm or injustice would result if not met”).

⁵² Dismissal at 5.

owed to the plaintiffs, not the public interest.⁵³ As we explained, these matters provided an additional ground to deny the *Request*.

Finally, we admonished Petitioner of the consequences of not paying the debts,⁵⁴ e.g., accrual of charges, application of debt collection procedures,⁵⁵ debt reporting,⁵⁶ and transfer of debt to Treasury,⁵⁷ which may result in non-centralized or centralized administrative offset.⁵⁸ We notified Petitioner he was red lighted⁵⁹ until he paid the debt or made other satisfactory arrangements.⁶⁰

Standards Waivers

In establishing the regulatory fee program mandated by Congress,⁶¹ the Commission set out the relevant schedules of the annual fees and the established procedures for, among other matters, payment, waivers, reductions, and deferral, payment, refunds, error claims, and, penalties.⁶²

Specific to payment and penalties, “[a]ny late filed regulatory fee payment will be subject to the penalties set forth in section 1.1164,”⁶³ which provides in relevant part, “[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 ... not paid in a timely manner,”⁶⁴ “[i]f a regulatory fee is not paid in a timely manner, the regulatee will be ... assess[ed] a 25 percent penalty [and] the delinquent payor’s pending applications [will be subject] to dismissal,”⁶⁵ and “[a]ny pending or subsequently filed application ... will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee.”⁶⁶ Furthermore, 47 U.S.C. § 159(c) provides unambiguous enforcement sanctions, i.e., automatic assessment of a 25 percent penalty, a mandate that the Commission “may dismiss any application or other filing for failure to pay in a

⁵³ *Id.*

⁵⁴ *Id.* at 5-6.

⁵⁵ See 31 C.F.R. § 3717.

⁵⁶ 31 U.S.C. § 3711(e), this debt and Petitioner’s payment history will be reported to credit reporting information bureaus.

⁵⁷ 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).

⁵⁸ 31 U.S.C. § 3716, 31 C.F.R. § 285.5, and 47 C.F.R. § 1.1912.

⁵⁹ 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.”).

⁶⁰ 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.”).

⁶¹ See 47 C.F.R. § 1.1151.

⁶² See 47 C.F.R. Part 1, Subpart G.

⁶³ 47 C.F.R. § 1.1157(c)(1).

⁶⁴ 47 C.F.R. § 1.1164.

⁶⁵ 47 C.F.R. § 1.1164(c).

⁶⁶ 47 C.F.R. § 1.1164(e).

timely manner any fee or penalty under this section,” and direction that “[i]n addition to or in lieu of the penalties and dismissals ... the Commission may revoke any instrument of authorization held by an entity that has failed to make payment of a regulatory fee”⁶⁷

As to the waiver provision at 47 U.S.C. § 159(d), 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.⁶⁸ An applicant must show compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission’s regulatory costs.⁶⁹ In an appropriate situation, fee relief may be based on a “sufficient showing of financial hardship;”⁷⁰ 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.”⁷¹ 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.⁷²

As set forth in 47 C.F.R. § 1.65, “[e]ach applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application ... whenever the information furnished in the pending application is no longer substantially accurate and complete in all significant respects, the applicant shall promptly as possible and in any event within 30 days ... amend the application ... so as to furnish such additional or corrected information”

“The term, application, includes in addition to petitions and applications elsewhere defined in the Commission’s rules, any request, as for assistance, relief, declaratory ruling, or decision, by the Commission or on delegated authority.”⁷³ As part of our established procedures, “[a]n application (including a petition for reconsideration or any application for review of a fee determination) ... will be examined to determine if the applicant has paid the appropriate application fee, appropriate regulatory fees, is delinquent in its debts owed the Commission, or is debarred from receiving Federal benefits (*see, e.g.*, 31 CFR 285.13; 47 CFR part 1, subpart P).”⁷⁴ Furthermore, “[a]pplications by any entity found not to have paid the proper application or

⁶⁷ 47 U.S.C. § 159(c).

⁶⁸ 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.”). *FY 1994 R&O*, 9 FCC Rcd 5344, ¶ 29.

⁶⁹ *Id.*

⁷⁰ *FY 1994 MO&O*, 12761-62, ¶ 13.

⁷¹ *Id.*

⁷² *Id.*

⁷³ 47 C.F.R. § 1.1901(d).

⁷⁴ 47 C.F.R. § 1.1910(a)(1).

regulatory fee will be handled pursuant to the rules set forth in 47 CFR part 1, subpart G.”⁷⁵ Additionally, “[a]ction will be withheld on applications, including on a petition for reconsideration or any application for review of a fee determination, or requests for authorization by any entity found to be delinquent in its debt to the Commission (see §1.1901(i))⁷⁶ ... If a delinquency has not been paid or the debtor has not made other satisfactory arrangements within 30 days of the date of the notice provided pursuant to paragraph (b)(2) of this section, the application or request for authorization will be dismissed.”⁷⁷ Consistent with 47 U.S.C. § 159(c)(2) and 47 C.F.R. §§ 1.1164, 1.1166, and 1.1910, when an applicant for relief is delinquent in paying the regulatory fee, the Commission will dismiss⁷⁸ the request for relief and impose the statutory penalty.⁷⁹

Petition for Reconsideration

Under 47 C.F.R. § 1.106(d), a petition for reconsideration must “state with particularity the respects in which petitioner believes the action taken by ... the designated authority should be changed,”⁸⁰ and the petition must identify a material error, omission or reason warranting reconsideration.⁸¹ Furthermore, under subsection 1.106(p), we may dismiss or deny a “Petition[] for reconsideration of a Commission action that plainly do[es] not warrant consideration by the Commission Examples include, but are not limited to, petitions that: (1) Fail to identify any ~~material error, omission, or reason warranting reconsideration ...~~ (4) Fail to state with particularity the respects in which petitioner believes the action taken should be changed as required by paragraph (d) of this section”

Furthermore, the filing of a petition for reconsideration does not “excuse any person from complying with or obeying any order, decision, report, or action of the Commission, or operate in any manner to stay or postpone the enforcement thereof, without special order of the Commission”⁸² and it “will not relieve licensees from the requirement that full and proper

⁷⁵ 47 C.F.R. § 1.1910(b)(1).

⁷⁶ 47 C.F.R. § 1.1910(b)(2).

⁷⁷ 47 C.F.R. § 1.1910(b)(3).

⁷⁸ 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.”).

⁷⁹ 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.”).

⁸⁰ 47 C.F.R. § 1.106(d)(1).

⁸¹ 47 C.F.R. § 1.106(d)(2).

⁸² 47 U.S.C. § 405(a).

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."⁸³

Discussion

First, we dismiss the *Petition* because Petitioner is delinquent in paying his debts, *i.e.*, the FY 2012 and FY 2013 regulatory fees and charges, and Petitioner failed to comply with the orders in the *Dismissal* to pay the FY 2013 delinquent fees and accrued charges. As set forth at 47 U.S.C. § 405(a) and 47 C.F.R. § 1.1167(b)(2), a *Petition* does not relieve the Petitioner "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."⁸⁴ This ends the matter; however, as a courtesy, we address Petitioner's points below, and thereby explain other reasons for denying the *Petition*.

In summary, Petitioner asserts we should reconsider our *Dismissal* because our *Dismissal* "caught [him] totally off-guard."⁸⁵ Allegations that we failed to provide notice that we might deny the *Request* or that we might "insist on the provision of significant financial data to support the request for a waiver" do not identify errors. Furthermore, Petitioner's assertion that we must explain our reasons for departing from our decision stated in a 2011 letter granting the FY 2010 request⁸⁶ fails to recognize the comprehensive explanation of our reasons for dismissal and denial. Moreover, Petitioner does not demonstrate that any part was wrong. As we discuss below, these assertions are meritless and do not form grounds for reconsideration.

Initially, nothing in the *Petition* alters or even challenges critical facts that Petitioner filed his *Request* late, and that he was delinquent in paying the regulatory fees due for FY 2012 and FY 2013, the accrued mandatory statutory penalties for each year, and the accrued charges. Indeed, in his *Request*, Petitioner acknowledged both delinquency and lateness for the FY 2013 regulatory fee,⁸⁷ even as he ignored the fact that he had not paid the fee for FY 2012. Moreover, Petitioner does not challenge⁸⁸ our determination that 47 U.S.C. § 159(c)(2), 47 C.F.R. §§ 1.1164(c) & (e)⁸⁹ mandate dismissal.

⁸³ 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 *FY 1994 R&O*, 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.").

⁸⁴ *Id.*

⁸⁵ *Petition* at 4.

⁸⁶ *Id.* at 5.

⁸⁷ *Request* at 2.

⁸⁸ Under 47 C.F.R. § 1.106(p) a petitioner must "state with particularity the respects in which petitioner believes the action taken should be changed."

⁸⁹ *Dismissal* at 3.

Next, Petitioner does not “state with particularity the respects in which petitioner believes the action taken by ... the designated authority should be changed”⁹⁰ or identify a material error, omission or reason warranting reconsideration.⁹¹ He misses the mark by submitting only general assertions that reconsideration is warranted because we granted a similar request in 2010,⁹² we failed to notify Petitioner that “OMD might deny the 2013 Petition”⁹³ or that Petitioner had to furnish “financial data to support the request for a waiver,”⁹⁴ or that Petitioner “did not make any arrangements” to pay the regulatory fee, although he “could have made [such an] arrangement.”⁹⁵

Petitioner is expected to know the Commission’s rules and procedures⁹⁶ for filing a timely and proper application for a waiver and a petition to defer payment, and the consequences of being a delinquent debtor.⁹⁷ Our rules and annual regulatory fee orders provide the particular notice Petitioner now asserts was lacking. Furthermore, having acknowledged⁹⁸ both that his submission was late and that he was a delinquent debtor with a specific amount due,⁹⁹ Petitioner cannot now claim ignorance of his situation or the consequences. Plainly, on September 27, 2013, Petitioner knew or should have known that under 47 U.S.C. § 159(c)(2) and 47 C.F.R. §§ 1.1164 and 1.1910, the Commission would dismiss the submission and demand immediate payment of the delinquent debts.¹⁰⁰ Hence, Petitioner’s protestations that he was unaware his *Request* might be dismissed, and that he should have received advance notice of the ~~consequences of his errors are not believable. Similarly, Petitioner’s assertion that he was~~ unaware that he had to furnish financial documentation lacks credibility, especially in the light of his acknowledgment of our rule in his *Request*, i.e., “[p]etitions for waiver must be accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship (emphasis added).”¹⁰¹

Petitioner’s late filing, his delinquency in failing to pay fees for two years, his failure to include supporting financial documentation, coupled with the presumption that Petitioner is expected to know the applicable law¹⁰² rebut Petitioner’s assertion that he “reasonably expected that OMD would treat the 2013 Petition in the same way as it had treated the 2010 and 2011 Petitions.”¹⁰³ Moreover, a prior year’s decision, even assuming the similar controlling facts, is

⁹⁰ 47 C.F.R. § 1.106(d)(1).

⁹¹ 47 C.F.R. § 1.106(d)(2).

⁹² *Petition* at 3.

⁹³ *Id.* at 4.

⁹⁴ *Id.* at 5.

⁹⁵ *Id.* at 5, n. 3.

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

⁹⁷ Assessment and Collection of Regulatory fees for Fiscal Year 2012, *Report and Order*, 27 FCC Rcd 8390, 8400, ¶¶31-40 (2012).

⁹⁸ *Request* at 2.

⁹⁹ *Id.* (“Commission regulatory fees were due by September 20, 2013. A regulatory fee of \$13,733.00 was assessed ... With a 25% penalty, the sum of \$17,162.50 would be due ...”).

¹⁰⁰ *FY 2011 R&O*, 26 FCC Rcd at 10826, ¶¶ 36-37 (“We will withhold action on any applications ... filed by anyone who is delinquent in any non-tax debts owed to the Commission (including regulatory fees) and will ultimately dismiss those applications ... if payment of the delinquent debt or other satisfactory arrangement for payment is not made.”).

¹⁰¹ *Request* at 3; 47 C.F.R. § 1.1166(c).

¹⁰² 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166.

¹⁰³ *Petition* at 4-5.

not precedence. Indeed, 47 U.S.C. § 159(d) and our rule at 47 C.F.R. § 1.1166 provide that a fee “*may be waived ... deferred in specific instances ... where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest [emphasis added].*” A prior decision is not precedent;¹⁰⁴ each request is considered on a case-by-case basis.¹⁰⁵

The facts do not favor Petitioner. He was late and delinquent, and his submission was incomplete. Indeed, he acknowledged that his *Request* was late and the amount he owed, yet he did not offer an explanation, ask the Commission to file out of time, or even petition for appropriate waivers. In such matters, an applicant must establish *good cause* for a waiver, *i.e.*, special circumstances warrant a deviation from the general rule and that such deviation would better serve the public interest than strict adherence to the general rule.¹⁰⁶ He did not. Petitioner failed to establish the existence of “extraordinary circumstances ... which would justify a waiver of the late charge penalty.”¹⁰⁷ Finally, Petitioner ignored and failed to request relief from the consequences of our enforcement provisions at 47 U.S.C. § 159(c)¹⁰⁸ and 47 C.F.R. §§ 1.1157, and 1.1164, which also prevented action on the *Request*.

Furthermore, the *Request* was incomplete. We explained to Petitioner that he failed to document how paying the fee will adversely affect his ability to serve the public.¹⁰⁹ Although Petitioner mentioned a pending sale of the station, he failed to provide relevant details of the sale and disposition of the proceeds. Now, Petitioner asserts reconsideration is warranted because the Commission should have notified him prior to the sale and transfer of the station, so that Petitioner “could have made ... arrangement[s] with respect to the payment of the regulatory fee.”¹¹⁰ This approach is wrong for two reasons. First, Petitioner failed to notify the Commission¹¹¹ of the details of the sale and assignment that are material changes affecting the accuracy and completeness of his *Request* and second, Petitioner, not the Commission, is responsible for his failure to escrow an amount to pay the fees and penalties. Petitioner’s belated attempt to remedy omissions in his *Request* with records from the receivership proceeding is improper. This resolves the *Petition* and we need not repeat from our *Dismissal* our comprehensive explanation of the Commission’s established standards and the reasons for dismissing and denying the *Request*.

¹⁰⁴ 47 C.F.R. § 0.445(e).

¹⁰⁵ 47 C.F.R. § 1.1166.

¹⁰⁶ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (DC Cir. 1969); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1166 (DC Cir 1990); 47 C.F.R. § 1.3.

¹⁰⁷ *McLeodUSA Telecommunications Services, Inc., Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6590 (2004).

¹⁰⁸ 47 U.S.C. § 159(c) provides for a 25 percent late payment penalty, dismissal of applications, and revocation of licenses.

¹⁰⁹ *Phoenix Broadcasting, Inc.* 18 FCC Rcd at 26466 ¶ 5-6 (“Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely 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.”).

¹¹⁰ *Petition* at 5, n. 3.

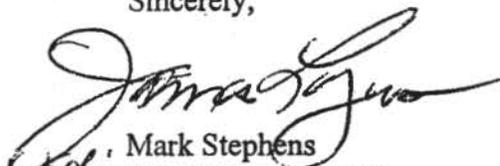
¹¹¹ 47 C.F.R. § 1.65 (“Each applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application ... whenever the information furnished in the pending application is no longer substantially accurate and complete in all significant respects, the applicant shall promptly as possible and in any event within 30 days ... amend the application ... so as to furnish such additional or corrected information ...”).

Although we provided proper notification in our *Dismissal*, we refresh our notice that 31 U.S.C. § 3717(e) and 47 C.F.R. § 1.1940 require us to assess (a) collection charges, (b) interest at the Treasury rate when the debt is more than 30 days delinquent, and (c) a penalty of 6% after 90 days. These charges will continue until Petitioner pays the debt in full or executes an approved written installment payment plan. Furthermore, under 31 U.S.C. § 3711(g), without further notice, we will transfer delinquent debt to Treasury, which will initiate collection action through private collection activities, and Treasury will assess additional charges. In addition, we may refer the debt to the Department of Justice, which may result in litigation and additional costs. Finally, 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 Petitioner's payment history will be reported to credit reporting information bureaus.

Until Petitioner makes full payment of the fees, late payment penalties,¹¹² and charges of collection under 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940,¹¹³ we will withhold action on and thereafter dismiss any pending application.¹¹⁴

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

Sincerely,


for: Mark Stephens
Chief Financial Officer

¹¹² 47 U.S.C. § 159(c).

¹¹³ 31 U.S.C. § 3717; 47 C.F.R. § 1.1940 ("the Commission shall charge interest, penalties, and administrative costs on debts owed to the United States pursuant to 31 U.S.C. 3717 ... These charges shall continue to accrue until the debt is paid in full or otherwise resolved through compromise, termination, or waiver of the charges.").

¹¹⁴ 47 C.F.R. § 1.1910(a)(2) & (3) ("Action will be withheld on applications, including on a petition for reconsideration or any application for review of a fee determination, or requests for authorization by any entity found to be delinquent in its debt to the Commission ... If a delinquency has not been paid or the debtor has not made other satisfactory arrangements within 30 days of the date of the notice provided pursuant to paragraph (b)(2) of this section, the application or request for authorization will be dismissed.").