

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

JAN 08 2016

OFFICE OF
MANAGING DIRECTOR

Kurt Tittelbach
Paxx Telecom LLC
7898 E. Acoma Drive, #209
Scottsdale, AZ 85260

Licensee/Applicant: **Paxx Telecom LLC**
Waiver Request: Late Payment Penalty
Disposition: **Dismissed and Denied** (47 U.S.C.
§159(c)(1); 47 C.F.R. §§ 1.1157(c)(1), 1.1164,
1.1166, 1.1940)
Fee: Fiscal Year (FY) 2011 Regulatory Fee and
Late Payment Charges
Date(s) Partial Regulatory Fees paid: Sep. 14, 2011
and Aug. 11, 2015
Date Regulatory Fee and Late Penalty Fees paid:
Nov. 6, 2015
Date Request Submitted: Aug. 17, 2015
Fee Control No.: RROG-14-00016022
Amount Due: See Fee Filer

Dear Mr. Tittelbach:

This responds to Licensee's *Request*¹ for waiver of the statutory penalty and charges of collection imposed because Licensee failed to pay the full amount of the Fiscal Year (FY) 2011 regulatory fees when due. We dismiss and deny because Licensee failed to comply with the Commission's procedures for filing a *Request* for waiver, Licensee remained a delinquent debtor until November 6, 2015, and Licensee failed to present mitigating circumstances or grounds for relief.

Background

Licensee is an Interstate Telephone Service Provider (ITSP), responsible for paying an annual regulatory fee based on revenue information reported to the FCC on Form 499 (Worksheet) that is calculated using the FCC Form 159-W, Interstate Telephone Service Provider Worksheet.² As is set forth in the Form 499 Worksheet instructions, filers, such as Licensee, must submit revisions to revenues when the information in the prior filing is not

¹ Letter from Kurt Tittelbach, General Manager, Paxx Telecom, LLC, 7898 E. Acoma Drive, #209, Scottsdale, AZ 85260 to FCC, 445 12th St., SW, Attn: Revenue and Receivables Operations Group, Room 1-A821 Washington, DC 20554, (dated Aug. 7, 2015) (Rec'd Aug. 17, 2015)(*Request*).

² See Assessment and Collection of Regulatory Fees for Fiscal Year 2011, *Report and Order*, 26 FCC Rcd 10812, 10816-818, ¶¶ 10-14, 10820, ¶ 20, 10826, ¶ 36 (2011).

accurate.³ The FY 2011 annual fee, which is based on a percentage of annual revenues generated,⁴ was due no later than September 14, 2011.⁵ On September 14, 2011, the Commission posted Licensee's \$417.00 payment; however, on October 21, 2011, Licensee submitted to the Universal Service Administrative Company a revised Form 499-A reporting substantially higher revenues in calendar year 2010 that increased the earlier calculated regulatory fee by \$2,660.00, so that Licensee's revised FY 2011 annual fee became \$3,077.00. Licensee, however, failed to make a timely payment of the revised fee.

Because Licensee failed to make the payment corresponding to the revised revenue report, Licensee was delinquent in paying the FY 2011 regulatory fee. Hence, on July 23, 2015, the Commission sent Licensee both a *Demand Letter* and a *Bill for Collection*.⁶ The *Demand Letter* notified Licensee the debt was owed to the United States and it was delinquent, the nature of the debt, and consequences for failing to pay. Further, the *Demand Letter* admonished Licensee, "under 47 CFR 1.1167, the full amount of a regulatory fee must be paid before filing a petition for reconsideration [and] under 47 CFR 1.1910, the FCC withholds action on applications from delinquent debtors ... additional charges may accrue, including a statutory penalty ... administrative charges for collection, and other interest and penalties[, and that] we will transfer the Delinquent Debt to Treasury" ⁷ The *Bill for Collection* explained the itemized elements of the delinquent regulatory fee and accrued charges of the statutory penalty, interest and penalties, and the administrative charge for collection. It admonished Licensee, "[u]nder 47 CFR 1.1910, [Licensee is] red lighted until the Total Amount Due and any new charges are paid in full."⁸ On August 11, 2015, Licensee returned the *Demand Letter* noting a change of address and the *Bill for Collection* with a payment of \$2,660.00, which failed to include amounts equal to the itemized statutory 25% late payment penalty,⁹ the accrued statutory interest and penalty, and charges of collection.¹⁰ As set forth at 47 C.F.R. §§ 1.1940(f), 1.1157(c)(1), and 1.1164(c), Licensee's partial payment was first applied to the penalties and other accrued charges and thereafter to the principal.¹¹ That payment failed to resolve Licensee's delinquency and red light¹² status, and the regulatory fee account remained delinquent.

³ See Wireline Competition Bureau Releases 2011 Annual Telecommunications Reporting Worksheet (FCC Form 499-A) And Accompanying Instructions, *Public Notice*, DA 11-400 (Released Mar. 1, 2011), 26 FCC Rcd 2272, 2287-88 (2011).

⁴ Assessment and Collection of Regulatory Fees for Fiscal Year 2010, *Report and Order*, 25 FCC Rcd 9278, 9289, ¶ 29 (2010).

⁵ See FY 2011 Regulatory Fees Due No Later Than September 14, 2011, Eastern Time (ET), *Public Notice*, DA 11-1420 (Aug. 17, 2011).

⁶ Demand Letter from FCC, Washington, DC to Paxx Telecom LLC, 14201 N Hayden Rd A3, Scottsdale, AZ 85260 (7/23/15) (*Demand Letter*), FCC Remittance Advice Bill for Collection to Paxx Telecom LLC, 14201 N Hayden Rd A3, Scottsdale, AZ 85260 (7/23/15) (*Bill for Collection*).

⁷ *Demand Letter*.

⁸ *Bill for Collection*.

⁹ 47 U.S.C. § 159(c)(1).

¹⁰ 31 U.S.C. § 3717.

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

¹² 47 C.F.R. § 1.1910.

On August 7, 2015, Licensee also submitted its *Request* to the Commission's staff seeking a waiver of the penalty and interest amounts. Licensee asserted, "We ... amended form 499-A without realizing this would cause additional fees due with form 159-W. If we had known that there are additional fees payable, [w]e would have paid them promptly at that time."¹³

On November 6, 2015, Licensee paid an additional \$1,631.00; however, Licensee did not file a new request for a waiver of the applicable Commission rule, request a refund,¹⁴ or otherwise revise its *Request*.¹⁵

Standards

Licenses are expected to know the Commission's rules and procedures¹⁶ for paying the annual regulatory fees, filing a timely and complete petition to defer payment, and filing a request for waiver. Also, Licensees are expected to know the consequences of failing to pay an annual regulatory fee in a timely manner.

In establishing the regulatory fee program mandated by Congress,¹⁷ the Commission set out the relevant schedules of the annual fees and the established the procedures for, among other matters, payment, waivers, reductions, and deferral, payment, refunds, error claims, and penalties.¹⁸

The Commission's rules at 47 C.F.R. §§ 0.401, 1.7, and 1.1166 establish both the proper location and procedures for filing waiver requests and petitioning for deferral and the consequence of dismissal for failing to comply with those rules. The Commission has designated specific offices to receive and process certain matters, thus a request for relief is *filed* only upon receipt at the location designated by the Commission.¹⁹ For example, under section 1.1166 of the Commission's rules, a petition to waive a regulatory fee "must be accompanied by the required fee and FCC Form."²⁰ If the applicant includes the fee, the request must be submitted to the Commission's lockbox bank.²¹ Waiver requests that do not include the required fees or form will be dismissed unless accompanied by a separate petition to defer payment due to financial

¹³ *Request*.

¹⁴ 47 C.F.R. § 1.1160.

¹⁵ 47 C.F.R. § 1.16 (An applicant is responsible for the continuing accuracy and completeness of information furnished.).

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

¹⁷ See 47 C.F.R. § 1.1151.

¹⁸ See 47 C.F.R. Part 1, Subpart G.

¹⁹ 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 ... will be returned to the applicant without processing."); 1.7 ("pleadings and other documents are considered to be filed with the Commission upon their receipt at the location designated by the Commission."); *Champion Communication Services, Inc., Order on Reconsideration*, 15 FCC Rcd 23782, 23783-84 (WTB 2000).

²⁰ 47 C.F.R. § 1.1166(c).

²¹ 47 C.F.R. § 1.1166(a)(1).

hardship, supported by documentation of the financial hardship.²² "If no fee payment is submitted, the request should be filed with the Commission's Secretary."²³ Filing is accomplished by mailing or otherwise delivering a hard copy of the documents to Office of the Secretary, Federal Communications Commission, Attention: Managing Director, Washington, D.C. 20554.

Under 47 U.S.C. § 159 and 47 C.F.R. §§1.1157 and 1.1164, we are required to "assess and collect regulatory fees" to recover the costs of the Commission's regulatory activities,²⁴ and "[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."²⁵

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. In 2011 and 2012, the Commission warned,²⁶

To be considered timely, regulatory fee payments must be received and stamped at the lockbox bank by the due date of regulatory fees. Section 9(c) of the Act requires us to impose a late payment penalty of 25 percent of the unpaid amount to be assessed on the first day following the deadline date for filing of these fees. Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including those set forth in section 1.1910 of the Commission's Rules and in the Debt Collection Improvement Act of 1996 ("DCIA"). We also assess administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the related debt pursuant to the DCIA and section 1.1940(d) of the Commission's Rules. These administrative processing charges will be assessed on any delinquent regulatory fee, in addition to the 25 percent late charge penalty. * * * 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

²² 47 C.F.R. § 1.1166(b); Assessment and Collection of Regulatory Fees For Fiscal Year 2011, *Report and Order*, 26 FCC Rcd 10812, 10819, ¶ 17 (2011) ("A regulatee's mere allegation of financial hardship thus does not automatically entitle it to a deferral of its obligation to pay regulatory fees; only a properly supported claim of financial hardship will entitle the regulatee to a deferral. Accordingly, if a request for deferral is not supported by documentation of financial hardship, it will be denied, and an associated petition for waiver or reduction will be dismissed. A regulatee cannot delay payment on the theory that its deferral request triggered an automatic six-month extension of its obligation to pay.").

²³ 47 C.F.R. § 1.1166(a)(2).

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

²⁵ 47 C.F.R. § 1.1164.

²⁶ 2011 *Regulatory Fee Order*, 26 FCC Rcd at 10826, ¶ 36; Assessment and Collection of Regulatory Fees for Fiscal Year 2012, *Report and Order*, 27 FCC Rcd 8390, 8400, ¶¶ 31-32 (2012).

delinquent debt or other satisfactory arrangement for payment is not made
[footnotes deleted].

After the deadline passes, the full amount of the regulatory fee includes the 25% late payment penalty and, if the debt remains unpaid, the balance owed includes the accrued charges of collection, interest, and penalties. If a regulatee tenders less than the full amount owed, it is a partial payment, which is applied to amount owed as set forth in 47 C.F.R. § 1.1940(f)--first to the penalties and accrued charges, and then to the principal amount owed.²⁷ Afterwards, any unpaid portion is a delinquent regulatory fee that incurs interest, penalties, and charges of collection under 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940. Moreover, until the full amount is paid or satisfactory arrangements are made, the licensee remains a delinquent debtor subject to the Commission's administrative sanctions of dismissal as set forth at 47 C.F.R. §§ 1.1164(e)²⁸ and 1.1910.

Discussion

We dismiss and deny Licensee's submission for the reasons discussed below.

As discussed above, the Commission did not receive Licensee's partial payment of the revised FY 2011 regulatory fee until August 11, 2015, well after the penalty and additional charges accrued. As such, when that payment was received, the Commission followed the procedure set forth at 47 C.F.R. § 1.1940(f) applying Licensee's payment first to the penalties and accrued charges, and then to the principal amount owed.²⁹ The balance remained a delinquent regulatory fee incurring interest, penalties, and charges of collection under 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940, and Licensee was subject to the Commission's red light administrative sanction. Thus, this circumstance and the manner in which Licensee submitted the *Request* present two impediments.

First, our records show Licensee submitted its *Request* to Commission staff rather than filing the petition for relief with the Office of the Secretary. The Commission's rules at 47 C.F.R. §§ 0.401, 1.7, 1.1159 and 1.1166 establish the proper location for filing waiver and refund requests and the consequence of dismissal for failing to comply with those rules. The Commission has designated specific offices to receive and process certain matters, thus a request for relief is *filed* only upon receipt at the location designated by the Commission.³⁰ For example, under sections 1.1159 and 1.1166 of the Commission's rules, a petition to waive a regulatory fee

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

²⁸ 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.

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

³⁰ 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.").

“must be accompanied by the required fee and FCC Form.”³¹ If the request is accompanied by the fee, the request must be submitted to the Commission’s lockbox bank.³² Waiver requests that do not include the required fees or form will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.³³ “If no fee payment is submitted, the request should be filed with the Commission’s Secretary.”³⁴ Filing is accomplished by mailing or otherwise delivering a hard copy of the documents to Office of the Secretary, Federal Communications Commission, Attention: Managing Director, Washington, D.C. 20554. Thus, because Licensee failed to follow our procedures, the *Request* was never filed. Moreover, Licensee failed to comply with the conditions set forth in the *Demand Letter*, hence Licensee is deemed to have waived consideration of the matter raised in the *Request*. On these grounds, we dismiss.

Second, Licensee failed to comply with the Commission’s procedures to pay the fee and then seek a waiver and refund. Licensee delayed until November 6, 2015, before making the payment; however, that late payment did not cure the filing defect or prevent the consequence from Licensee being a delinquent debtor. In this instance, the *Request* was not filed; moreover, under the Commission’s red light rule, we withhold action on and dismiss any application filed or pending.³⁵ This disposition ends the matter; however, as a courtesy, we will explain additional reasons for denying the *Request*, if, indeed, Licensee followed our procedures.

Even if Licensee had filed properly, the *Request* fails to present either mitigating circumstances or grounds for relief. A statutory penalty is imposed when the annual regulatory fee is incomplete or late. Specifically, when the required payment is received late or it is incomplete, and it is “not excused by bank error,”³⁶ the Commission is required to assess a penalty equal to “25 percent of the amount of the fee which was not paid in a timely manner,”³⁷ and thereafter, from the date of delinquency, we assess interest, penalties, and administrative charges for collection.³⁸

³¹ 47 C.F.R. § 1.1166(c).

³² 47 C.F.R. § 1.1166(a)(1).

³³ 47 C.F.R. § 1.1166(b).

³⁴ 47 C.F.R. § 1.1166(a)(2).

³⁵ 47 C.F.R. § 1.1910(b)(3).

³⁶ 47 C.F.R. § 1.1164.

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

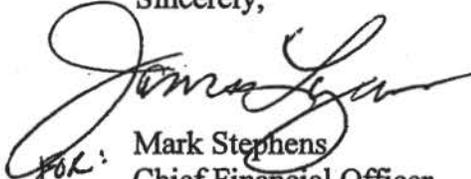
³⁸ 31 U.S.C. § 3717; 47 C.F.R. §§ 1.1164(f)(4), 1.1940; In The Matter Of Implementation Of Section 9 Of The Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Report and Order*, 9 FCC Rcd 5333, 5354 ¶ 65 (1994) (“Included in the recovery of any delinquent fee will be an assessment of interest on the debt due, a penalty for nonpayment, and the allowable cost incurred due to the federal government in the collection process.”); In The Matter Of Assessment And Collection Of Regulatory Fees For Fiscal Year 2010, *Report and Order*, 25 FCC Rcd 9278, 9297-98 ¶ 54 (2010) (“A late payment penalty of 25 percent of the unpaid amount of the required regulatory fee will be assessed on the first day following the deadline date for filing of these fees. Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including those set forth in section 1.1910 of the Commission’s Rules and in the Debt Collection Improvement Act of 1996 (“DCIA”). We also assess administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the related debt pursuant to the DCIA and section 1.1940(d) of the Commission’s rules. These administrative processing charges will be assessed on any delinquent regulatory fee, in addition to the 25 percent late charge penalty. In case of partial payments (underpayments) of regulatory fees, the licensee will be given credit for the amount paid, but if it is later determined that the fee paid is incorrect or not timely paid, then the

The undisputed facts and Licensee's assertions establish that thirty-eight days after calculating the smaller fee by multiplying the ITSP service fee against the total revenues, Licensee revised its Form 499-A to report calendar year 2010 total revenues seven times greater than the amount reported on March 31, 2011. Licensee's assertion that his principal³⁹ was unaware that the regulatory fee would change after revising reported revenues simply is not credible. Nonetheless, being unaware is not a mitigating circumstance or legal ground for relief. Furthermore, to the extent we construe Licensee's *Request* as seeking a waiver of the Commission's rule, we deny relief because Licensee failed to demonstrate a waiver is warranted,⁴⁰ *i.e.*, that special circumstances warrant a deviation from the general rule, here to collect the regulatory fee, and that the deviation will serve the public interest.⁴¹ Licensee failed to carry its burden⁴² of meeting the standard, and the Commission will not speculate to fill gaps in information that Licensee should have provided.⁴³

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

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

Sincerely,



Mark Stephens
Chief Financial Officer

25 percent late charge penalty (and other charges and/or sanctions, as appropriate) will be assessed on the portion that is not paid in a timely manner.”).

³⁹ Licensee asserts in its *Request* that it has one full time and one part-time employee, thus whether as a matter of employee error or failure to supervise, the form and fee filing process was completely within Licensee's control.

⁴⁰ 47 C.F.R. § 1.3; 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166. *See also* FY 1994 Report and Order, 9 FCC Rcd at 5344; *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*); *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

⁴¹ *Northeast Cellular*, 897 F.2d at 1166. *See* 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166 (“The fees ... may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest.”). *See also* Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Report and Order*, 9 FCC Rcd 5333, 5344, ¶ 29 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995).

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

⁴³ *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.).