

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

AUG 12 2015

OFFICE OF
MANAGING DIRECTOR

Jay Martin Philipponne, President
Priority Communications Ohio, LLC
12 West Long Avenue
Dubois, PA 15801

Licensee/Applicant: **Priority Communications Ohio, LLC**
Waiver and Refund Request: Late Payment Penalties, Interest, Penalties and Charges of Collection
Disposition: **Dismissed and Denied** (47 U.S.C. § 159(c)(1) and (2) and 47 C.F.R. §§ 1.1164, 1.1166)
Stations: WEIR, WCDK, WLH364 and WLE689
Fee: Fiscal Year (FY) 2012 Regulatory Fee Late Payment Penalties
Date Request Filed: Not filed; submitted May 28, 2015
Date Regulatory Fee Paid: Partial payment, Sep. 25, 2012
Date Regulatory Late Penalty Paid: Jun. 2, 2015, and Jun. 29, 2015.
Fee Control No.: RROG-14-00015986

Dear Mr. Philipponne:

This responds to Licensee's *Request*¹ for waiver of the penalties and charges for late payment of the Fiscal Year (FY) 2012 regulatory fees on the above Stations. As we discuss below, we both dismiss and deny the *Request* because Licensee failed to (a) comply with Commission procedures for filing the petition, including paying the delinquent regulatory fee, and (b) establish the existence of bank error or extraordinary circumstances.

Background

On August 13, 2012, the Commission announced September 13, 2012, as the deadline for paying the FY 2012 annual regulatory fees.² Under the law, 47 U.S.C. §159(c)(1), if the full amount is not received at the Commission's lockbox bank by the due date, a late payment penalty of 25% of the amount not paid accrues automatically. On September 25, 2012, the Commission received Licensee's payment; however, the amount did not include the total of the required FY 2012 regulatory fee plus the 25% late payment penalty on each station. Thereafter,

¹ Letter from Jay Martin Philipponne, President, Priority Communications Ohio, LLC, 12 West Long Avenue, Dubois, PA 15801 to FCC, To Whom it May Concern (May 28, 2015)(*Request*).

² See FY 2012 Regulatory Fees Due No Later Than September 13, 2012, Eastern Time (ET), Public Notice, DA 12-1295, 27 FCC Rcd 9210 (2012).

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as the debt remained unpaid, on April 3, 2015, the Commission sent Licensee Demand Letters³ providing notification Licensee was delinquent in paying amounts equal to the statutory penalties of collection that accrued when Licensee's payment was late. Additionally, the Demand Letters instructed that Licensee had 30 days either to make full payment or provide satisfactory evidence the debt was not due. The Demand Letters included notice that if Licensee failed to make full payment, additional charges permitted by 31 U.S.C. § 3717 would accrue.

On April 14, 2015, Licensee contacted the Commission's Help Desk acknowledging receipt of the Demand Letters and offering an explanation for its late payment.⁴ Specifically, Licensee asserted, "[a]s [Licensee] recall[s], [Licensee] went into the system prior to the 2012 deadline and thought [it] had paid all fees due. On September 23, [Licensee] received the company's American Express bill and saw the fees had not been charged to [Licensee's] AMEX account. [Licensee] promptly went into the system and paid the fees."⁵ Licensee then asked that the "late fees plus DCIA fees and administrative charges [be] waived."⁶ Finally, Licensee asked for "the process to request waiving the fees."⁷ In response, the Commission's staff explained that Licensee's "payment was received on 9/25/12 ... therefore [Licensee was] subject to a 25% late fee."⁸ Additionally, the staff member informed Licensee it could "request a waiver of the late fees by submitting [a] request to the Secretary's Office in writing per the attached Fact Sheet."⁹

Licensee did not pay the delinquent fees and accrued charges, rather on May 28, 2015, Licensee submitted its *Request* to the Commission staff asserting it was "shocked when [it] received [the Demand Letters]."¹⁰ Additionally, Licensee asserted it "filed the regulatory fees ... before the deadline"; however, "two weeks later ... [Licensee] noticed the payments were not processed. [Licensee] promptly paid the fees online again and confirmed payment was processed."¹¹ Licensee asserts, when it paid the FY 2013 and FY 2014 fees, the Commission's fee filer did not indicate a delinquency, and Licensee never received notice it was relighted. Licensee would have paid the fees promptly, if it had been aware of the delinquency. Finally, Licensee asserts, "[u]nder the circumstances ... these fees [should] be waived. [Licensee] is a very small company and payment does have an impact on the public interest as any money we make goes back into the operations to serve [Licensee's] communities."¹²

Finally, on June 2, and 29, 2015, Licensee paid the balance of the FY 2012 regulatory fees and the accrued charges; however, Licensee did not resubmit its *Request*.

³ Demand Letters from FCC, Washington, DC 20554 to Priority Communication Ohio LLC, 12 West Long Avenue, Dubois, PA 15801 (Apr. 3, 2015).

⁴ Email from Jay Philipponne [<mailto:sunny106@penn.com>] to ARINQUIRIES (Apr. 14, 2015).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ Email from ARINQUIRIES to Jay Philipponne (Apr. 15, 2015)

⁹ *Id.*

¹⁰ *Request.*

¹¹ *Id.*

¹² *Id.*

Standards

“Licensees 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.”¹³

Under 47 U.S.C. § 159 and the Commission’s implementing rules, we are required to “assess and collect regulatory fees”¹⁴ to recover the costs of the Commission’s regulatory activities,¹⁵ and when the required payment is received late or it is incomplete, and “not excused by bank error, [to assess] a 25 percent penalty of the amount of the fee ... which was not paid in a timely manner.”¹⁶ The party holding the license on the date the fee is due is responsible for payment.¹⁷ A timely fee payment is one received at the Commission’s lockbox bank by the due date.¹⁸

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. September 13, 2012, was the deadline for paying the FY 2012 annual regulatory fees.¹⁹ In 2011 and 2012, the Commission’s rulemaking²⁰ warned,

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

¹³ *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).

¹⁴ Assessment and Collection of Regulatory Fees for Fiscal Year 2011, *Report and Order*, 26 FCC Rcd 10812 (2011) (*2011 Regulatory Fee Order*).

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 Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Report and Order*, 9 FCC Rcd 5333, 5346, ¶ 36, n. 14 (1994).

¹⁸ 47 C.F.R. § 1.1164.

¹⁹ See FY 2012 Regulatory Fees Due No Later Than September 13, 2012, Eastern Time (ET), *Public Notice*, DA 12-1295, 27 FCC Rcd 9210 (2012).

²⁰ *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).

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 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.²¹ 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)²² and 1.1910.

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.²³ For example, under sections 1.1159 and 1.1166 of the Commission's rules, a petition to waive a regulatory fee "must be accompanied by the required fee and FCC Form."²⁴ If the request is accompanied by the fee, the request must be submitted to the Commission's lockbox bank.²⁵ 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.²⁶ "If no fee payment is submitted, the request should be filed with the Commission's Secretary."²⁷ 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. A petition for waiver, reduction and deferment must be filed no later than the date payment is due.²⁸

²¹ 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).

²² 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.

²³ 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.")

²⁴ 47 C.F.R. § 1.1166(c).

²⁵ 47 C.F.R. § 1.1166(a)(1).

²⁶ 47 C.F.R. § 1.1166(b).

²⁷ 47 C.F.R. § 1.1166(a)(2).

²⁸ 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, ¶ 34 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995) (*FY 1994 Report and Order*).

Discussion

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

As mentioned earlier, the Commission did not receive Licensee's partial payment of the FY 2012 regulatory fee until September 25, 2012, twelve days after the deadline and the accrual of a 25% late payment penalty. As such, when Licensee's 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. Second, Licensee failed to comply with the Commission's procedures to pay the fee and then seek a waiver and refund. Licensee submitted its *Request* on May 28, 2015, before it paid the balance of the regulatory fee and accrued charges, hence Licensee was a delinquent debtor³⁰ and subject to administrative sanctions of dismissal as set forth at 47 C.F.R. §§ 1.1164(e) and 1.1910.³¹ Under that circumstance Licensee's course of action was to pay the amount due and seek a refund or face dismissal of the *Request*. Instead, Licensee's waited until June 2 and 26, 2015, to pay the delinquent regulatory fees and accrued interest, penalties and costs of collection. Those belayed efforts do not excuse Licensee from complying with the Commission's rules and it did not reinstate the earlier filed defective submission.³² Hence, as required by the law,³³ Licensee's *Request* is dismissed. Even so, as a matter of administrative economy, we look to the merits of the *Request*, and for the reasons discussed next, we deny.

Even if Licensee had made a proper filing, the *Request* fails to present any mitigating circumstances or grounds for relief. 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,³⁴ and when the required payment is received late or it is incomplete, and it is "not excused by bank error,"³⁵ then to assess a penalty equal to "25 percent of the amount of the fee which was not paid in a timely manner."³⁶ Thereafter, as required by the

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 31 U.S.C. § 3717(e); 31 C.F.R. § 901.9; 47 C.F.R. § 1.1940.

³¹ 47 C.F.R. § 1.1164(e) ("Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment. The application may be resubmitted only if accompanied by the required regulatory fee and by any assessed penalty payment"); § 1.1910.

³² *Id.*

³³ *Id.*

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

³⁵ 47 C.F.R. § 1.1164.

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

law,³⁷ from the date of delinquency, we assess interest, penalties, and administrative charges for collection.

The deadline for paying regulatory fees was September 13, 2012.³⁸ Licensee asserts it attempted payment by credit card “before the deadline,” and “two weeks later, while reviewing the credit card statement” it learned the transaction was not processed. Licensee’s vague assertion in its email that it “thought [it] had paid the fees,” which was revised later in its *Request* to a more confident allegation that it “filed the regulatory fees in question before the due date” nonetheless fails to present evidence that Licensee initiated a payment transaction e.g., that it “filed the regulatory fees” or to substantiate a valid reason beyond Licensee’s control why the transaction was not processed. Even assuming Licensee initiated steps to make payment, the events described were within Licensee’s control, and nothing asserted in the *Request* presents mitigating circumstances or legal grounds for relief. Furthermore, to the extent Licensee’s *Request* seeks a waiver of the Commission’s rule, we deny relief. Licensee fails in its burden to demonstrate a waiver is warranted,³⁹ 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.⁴⁰ Hence, for this additional reason, we deny the *Request*.

The penalty for late payment applies even to situations where the deadline is missed by a short period of time.⁴¹ Neither the statute nor the Commission’s regulations contemplates a waiver of or reduction in the late payment penalty based on the amount of time after the deadline within which the regulatee satisfies its payment obligations. The penalty required by 47 U.S.C. § 159(c)(1) is not limited to situations where the failure to pay was knowing or willful. If it is to be waived, it is “only in the most extraordinary circumstances,”⁴² which Licensee does not describe.

³⁷ 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 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.”).

³⁸ See *FY 2012 Regulatory Fees Due No Later Than September 13, 2012, Eastern Time (ET), Public Notice*, DA 12-1295, 27 FCC Rcd 9210 (2012).

³⁹ 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).

⁴⁰ *Northeast Cellular*, 897 F.2d at 1166.

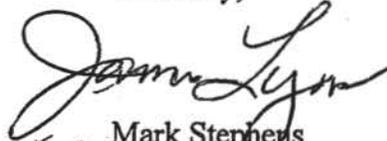
⁴¹ See *XO Communications, LLC* (OMD, Nov. 10, 2010).

⁴² *McLeodUSA Telecommunications Services, Inc., Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589 (2004) (denying the request for waiver of 25 percent penalty).

Indeed, the problem was the result of Licensee's untimely action. Thus, we deny Licensee's *Request*.

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

Sincerely,


For: Mark Stephens
Chief Financial Officer