

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

JUL 10 2015

OFFICE OF
MANAGING DIRECTOR

Ann J. Conn, Controller
United Service Source, Inc.
9145 Ellis Road
Melbourne, FL 32904

Licensee/Applicant: **United Service Source, Inc.**
Waiver and Refund Request: Late Payment Penalty,
Interest, Penalties and Charges of Collection
Disposition: **Denied** (47 U.S.C. § 159(c)(1) and 47
C.F.R. §§ 1.1157, 1.1164, and 1.1166)
Licenses: 183
Fee: Fiscal Year (FY) 2014 Regulatory Fee Late
Fee
Date Request Filed: (*dated* Nov. 25, 2014, *rec'd*
Dec. 10, 2014)
Date Regulatory Fee Paid: Dec. 1, 2014
Date Late Penalty Fee Paid: Dec. 1, 2014
Fee Control No.: RROG-14-00015850

Dear Ms. Conn:

This responds to Licensee's *Request*¹ for a waiver of the statutory penalty amount imposed when Licensee failed to pay the Fiscal Year (FY) 2014 regulatory fees by the deadline, and a refund of the amount paid late. As we discuss below, we deny because Licensee was the licensee of record on the date the fees were due, and Licensee failed to demonstrate legal grounds or clear mitigating circumstances to waive collection of the penalty and assessed charges of collection.

¹ Letter from Ann J. Conn, Controller, United Service Source, Inc., 9145 Ellis Road, Melbourne, FL 32904 to Marlene H. Dortch, Secretary, FCC, Attn: Office of the Managing Director, Regulatory Fee Waiver/Reduction Request, 445 12th St., S.W., Rm TW-B204, Washington, DC 20554 (*dated* Nov. 25, 2014; *rec'd* Dec. 8, 2014) (*Request*).

Background

On August 29, 2014, the Commission announced September 23, 2014, as the deadline for paying the FY 2014 annual regulatory fees.² By that date, the Commission had not received full payment for the regulatory fees due on the subject licenses. Indeed, Licensee's payment for the fees and assessed late payment charges was not received until December 1, 2014.

In its *Request*, Licensee asserts it failed to make timely payment because it "entered into a sale of antennas and rights [to its] FCC licenses with NBC Universal [and it] completed submitting amendments to the licenses in June 2014 and NBC was to submit the applications to transfer."³ Thereafter, as Licensee acknowledges, "NBC did not submit the applications to transfer until October 31, 2014 and therefore [Licensee] was the listed owner of these licenses at the fee assessment date."⁴ Licensee asks the Commission to waive and refund the "penalties and administrative fees" because it was unaware that Licensee remained the identified registered owner.⁵

Standards

Under 47 U.S.C. § 159 and the Commission's implementing rules, we are required to "assess and collect regulatory fees"⁶ to recover the costs of the Commission's regulatory activities,⁷ 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."⁸ The party holding the license on the date the fee is due is responsible for payment.⁹ A timely fee payment is one received at the Commission's lockbox bank by the due date.¹⁰

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, as well as interest, penalties, and charges of collection required by 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940.

² 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).

³ *Request*.

⁴ *Id.*

⁵ *Id.*

⁶ Assessment and Collection of Regulatory Fees for Fiscal Year 2011, *Report and Order*, 26 FCC Rcd 10812 (2011) (2011 Regulatory Fee Order).

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

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

⁹ 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).

¹⁰ 47 C.F.R. § 1.1164.

Discussion

September 23, 2014, was the deadline for paying the FY 2014 annual regulatory fees; however, it was not until December 1, 2014, that the Commission received Licensee's payment with late payment charges. Licensee acknowledges responsibility, but asserts that during the period leading up to the fee payment period, it was in the process of preparing to assign its licenses to NBC Telemundo Licensee LLC (NBC). Licensee asserts it completed its part of the application for assignment, but the assignee, NBC, did not file the application for transfer until after the fee payment deadline. Indeed, the Commission's records show on October 31, 2014, the parties filed the application for transfer of control or assignment, and on January 6, 2015, the Commission granted the application.¹¹ Consequently, Licensee was responsible for paying the fees before the deadline,¹² and when the deadline passed without payment, under 47 U.S.C. § 159(c)(1) and 47 C.F.R. §§ 1.1157 and 1.1164, the Commission assessed a 25% late payment penalty and charges of collection.

Licensee asserts it mistakenly believed its ownership interest was transferred before the fee filing due date. Any dispute over Licensee's belief as to when NBC would submit the application for assignment is a matter between the assignor, Licensee, and the assignee, NBC. In any event, the assignment application was not received before the fee due date, approval was not granted until January 6, 2015, and the assignment was not consummated until June 8, 2015.¹³ Licensee's assertions do not describe "extraordinary circumstances"¹⁴ that, if proved, would be legal grounds or clear mitigating circumstance to waive collection of the penalty. Moreover, Licensee's explanation 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, untimely payment of the regulatory fees resulted from Licensee's failure to resolve responsibility for and timing of several events, e.g., the date of filing the application for assignment, the date the Commission granted the application, and the date the parties filed their consummation notice. Taking these matters to their conclusion, any dispute arising from responsibility for a timely filing of the application for assignment is a matter between the assignor and the assignee, not the Commission. Even so, the filing of the application for assignment does not excuse Licensee from paying the fee. Nonetheless, the matters Licensee described were within its control, and the consequence of its own business decisions.¹⁶ 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."¹⁷ The penalty required by 47 U.S.C. § 159(c)(1) and charges

¹¹ See FCC File SES-ASG-20141114-00863.

¹² 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).

¹³ See File Number SES-ASG-20141114-00863, Attachment letter from Margaret L. Tobey, NBCUniversal, 300 New Jersey Ave., N.W., Ste. 700, Washington, DC 20001 to Marlene H. Dortch, Secretary FCC, Office of the Secretary, 445 12th St., SW, Rm TW-A325, Washington, DC 20554 (Jul. 1, 2015).//

¹⁴ McLeodUSA Telecommunications Services, Inc., *Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589 (2004) (denying the request for waiver of 25 percent penalty).

¹⁵ NTT America, Inc., *Memorandum Opinion and Order*, 21 FCC Rcd 8088, 8090, ¶ 6 (2006).

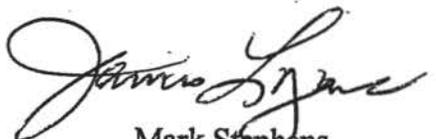
¹⁶ *Id.* at 8090, ¶ 5.

¹⁷ 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).

required by 31 U.S.C. § 3717 are not limited to situations where the failure to pay was knowing or willful.

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

Sincerely,


1507- Mark Stephens
Chief Financial Officer