

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

JUN 05 2000

no action necessary

96-285

OFFICE OF
MANAGING DIRECTOR

David L. Sieradzki
Hogan & Hartson, L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109

RE: Western Wireless
Request for Refund of Application Fee
Fee Control No. 9901258120005001

Dear Mr. Sieradzki:

This is in response to your request for refund of the fee filed in connection with the January 22, 1999 Complaint of Western Wireless Corporation v. Consolidated Telephone Cooperative. You contend that after substantial discussion with the Common Carrier Bureau staff, and in view of the Supreme Court's decision in AT&T Corporation v. Iowa Utilities Board, this filing was withdrawn on January 27, 1999 and a revised complaint was filed, with its own filing fee, on January 29, 1999. Under these circumstances, you assert that a refund of the January 22, 1999 filing fee is warranted.

We have fully considered all of your contentions. The fee requirement was established by the Schedule of Fees contained in the Omnibus Budget Act of 1989, Pub. L. No. 101-239, 103 Stat. 2106. *See Conference Report To Accompany H.R. No. 386, 101st Cong., 1st Sess. 20-28 (1989); reprinted in the Congressional Record of Nov. 21, 1989 at page H9333 (Conference Report).* Congress determined that the fees "represent a fair approximation of how the Commission's costs should be distributed." *Conference Report* at 433. The Commission also has stated that:

there will be individual situations in which the actual cost may be more or less [than the required application fee]. It is not our intention to make individualized determinations of the 'appropriate fee.' Rather, except in unusual cases in which the public interest requires otherwise, we will levy the fee as determined by Congress.

Establishment of a Fee Collection Program To Implement the Omnibus Budget Act of 1989, 3 FCC Rcd 5987 (1988).

We deny your request for refund of the filing fee. The Commission's rules do not provide for refund of a filing fee upon withdrawal of the underlying complaint. Further, the Commission clearly incurred processing costs associated with the complaint and, moreover, has stated that its "processing costs were but one factor that resulted in the legislated fees." *See Establishment of a Fee Collection Program To Implement the Provisions of the Consolidated Omnibus Budget Act of 1985, 2 FCC Rcd 947, 949*

(1987). In addition, the Commission has explicitly stated that a refund will not be granted once a filing has cleared the fee review process, except in certain

circumstances enumerated in Section 1.1113 of the Commission's rules. 47 C.F.R. § 1.1113. In the case of Western Wireless, however, Section 1.1113 is inapplicable because Western Wireless voluntarily withdrew its complaint. Therefore, your request is denied.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Reger". The signature is fluid and cursive, with a large initial "M" and a long, sweeping underline.

Mark Reger
Chief Financial Officer