

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554OFFICE OF
MANAGING DIRECTOR

June 6, 2005

Jamie Chatari
Accounting Manager
Phonoscope
6105 Westline Drive
Houston, Texas 77036-3515Re: Request to Waive Late Payment Penalty
for Fiscal Year 2004 Regulatory Fee
Fee Control No. 00000RROG-05-046
Bill No. 0420000393

Dear Ms. Chatari:

This is in response to your request on behalf of Phonoscope for waiver of the late payment penalty associated with its fiscal year (FY) 2004 regulatory fee. Our records reflect that on August 30, 2004 we received \$2,078.10 from Phonoscope for payment of its FY 2004 regulatory fee, but that we have not received your late payment penalty of \$518.52.

In support of your request, you explain that on August 27, 2005, when you accessed the FCC website to check the due date for regulatory fee payment, you found that the due date was August 19, 2004, 30 days earlier than the due date in any year since 1997. You state further that you then located the Public Notice that advised that the due date was August 19, 2004, that the Commission decided to notify directly only some filers, and that other filers were instructed to check the website. You recite in detail the tasks Phonoscope undertook in August in planning the launch of its software to support its conversion to digital cable services. You state that you filed your report and payment within 24 hours of your discovery of the due date that had already passed. You assert that notification to check the website could only be found by checking the website, that the Federal Register merely noted that the FCC would be announcing the due date, and that the due date was never published. You request that, in light of these circumstances, the penalty be removed.

In FY 2003, the Commission determined that it would use its website rather than surface mail to disseminate regulatory fee public notices to inform its regulatees when regulatory fees were due. *See Assessment and Collection of Regulatory Fees for Fiscal Year 2003*, Report and Order, 68 Fed. Reg. 48,446, 18 FCC Rcd 15,985 (FY 2003 Fee Order) ¶¶17-19; Notice of Proposed Rulemaking, 68 Fed. Reg. 17,577, 18 FCC Rcd 6085 (2003) (FY 2003 NPRM) ¶¶13-16. Again in FY 2004, the Commission both proposed in its Notice of Proposed Rulemaking, and determined in its Report and Order, that it would continue to provide all the necessary regulatory fee payment procedure information, including the due date, on its website and no longer would disseminate public notices through surface mail. *See Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, Notice of Proposed Rulemaking, 69 Fed. Reg. 19,779, 19 FCC Rcd 5795 (2004) (FY 2004 NPRM) ¶7; *Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, Report and

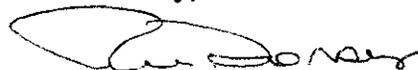
Order, 69 Fed. Reg. 41,027, 19 FCC Rcd 11,662 (2004) (*FY 2004 Fee Order*) ¶¶33-34. As substantiated by the preceding Federal Register citations, both the *FY 2003* and *FY 2004 NPRMs* and the *FY 2003 and 2004 Fee Orders* were published in the Federal Register. As such, the Commission took great care to inform its licensees of its decision to use only its website to announce the actual due date. In keeping with that determination, the Commission announced the due dates, amounts of the fees, and payment methods on its website, www.fcc.gov, for its FY 2004 regulatory fees. Specifically, beginning as early as July 2, 2004, the Commission timely released and posted several Public Notices and news releases on its website that informed licensees of the August 19, 2004 deadline; see Public Notice, *FY 2004 Regulatory Fees Due No Later Than August 19, 2004*, (July 2, 2004); FCC News, *Official FY 2004 Regulatory Fee Payment Window Opens Tomorrow – Fees Due No Later than August 19* (Aug. 9, 2004)(reminding of deadline and stating that Commission would begin aggressive effort to collect fees, including 25 percent penalty, beginning August 20, 2004); Public Notice, *Deadline for Filing FY 2004 Regulatory Fees*, DA 04-2549 (Aug. 18, 2004).

As a Commission licensee, Phonoscope is charged with the responsibility to familiarize itself with the Commission's rules and requirements. Therefore, Phonoscope's lack of familiarity with the Commission's rules and policies governing regulatory fee payments does not mitigate or excuse Phonoscope's failure to pay its FY 2004 regulatory fee in a timely manner. The Commission has repeatedly 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." *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). Furthermore, the Communications Act of 1934, as amended, requires the Commission to assess a late charge penalty of 25 percent on any regulatory fee not paid in a timely manner. 47 U.S.C. §159(c).

We find that Phonoscope did not meet its obligation to file its regulatory fee to be received by the Commission no later than August 19, 2004, the final date of the regulatory fee filing window for FY 2004. We therefore deny your request for waiver of the penalty for late payment of the fiscal year 2004 regulatory fee.

Your late payment penalty in the amount of \$518.52 for FY 2004 is now due. The fee must be received, together with a copy of Bill No. 0420000393, within 30 days from the date of this letter. If you have any questions concerning this matter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark A. Reger
Chief Financial Officer

PHONOSCOPE

communications and cable television since 1953

September 28, 2004

FCC/MELLON

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Managing Director
 Federal Communications Commission
 445 12th St SW, Room 1A625
 Washington, DC 20554

Re: FRN #0004052817, Bill #0420000393 (copy enclosed)

Dear Managing Director:

We are writing in response to the bill referenced above which is for a late fee amounting to 25% of our regulatory fee payment for this year.

On August 27th I accessed the FCC website to check the due date for the regulatory fee payment. I was aware that the due date was not an exact date, however, during my earlier visits to the site I found that it was always after September 15th. In fact, since the earliest due date in the past 7 years was September 18, (in 1998), I felt I had allowed more than sufficient time to setup electronic filing and fee payment.

Upon entering the website, I found that the due date had been unexpectedly moved up to August 19th - 30 days earlier than the earliest due date since 1997 and 36 days earlier than in 2003. Wondering how we missed notification, I found the public notice that advised that not only was the due date moved up, but that the FCC had decided that only some filers would be notified. All other filers were instructed to check the website. However, the only place to find out that we would be responsible for self-notification via the website, unfortunately, the website.

By July of this year we had moved into high gear - busily planning our September 1st digital launch and the August 1st cable software conversion that would support the digital services. As you might imagine, everyone took on extra duties, attended training sessions, researched, planned, and executed the various tasks required by these two complicated projects. During the month of August, the software was setup and processing began amidst piles of crossover-data and intermittent cries for help to our software vendor. Additionally, we proceeded with phone calls and onsite visits to our customers, (most are apartment complex residents), to advise of the new digital services, channel line-up, and arrange for converter deliveries and initializations. We were literally deluged with calls from subscribers the entire month of August and well into September. Others in our organization were busy obtaining and setting up new receivers, super controllers and other new equipment required for the delivery of digital service.

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Amidst all of this activity, I set aside my usual activities of checking the various agency websites as I had already marked my calendar with various due dates – including the FCC Regulatory Fee, which I had tentatively placed as September 15th. It simply did not occur to me that the due date would suddenly be moved up to August, much less mid-August – a full 30 days earlier than the earliest due date since 1997. In fact, when we planned our launch, September 1st was chosen because it is mid-quarter and obligations for the end of August are minimal.

We know that the expansion of digital and Internet access are high priorities to the FCC and they are important to Phonoscope as well. While our launch may be small compared to some, it was very important to us and we put every effort into doing it right and with as little discomfort for our customers as possible. We are proud of the job we have done and believe strongly in the value of our contributions to our community.

We know that we filed our report late, however we did file it within 24 hours of our discovery this fact. We feel that a 25% penalty is a very severe punishment for an event that we could not possibly have foreseen. There was no advance warning that the due date might be as much as 30 days early, and the lack of notification was strictly an FCC decision. Additionally, the fact that notification to check the website could only be found by checking the website is something of a conundrum on its own. Even the Federal Register was not helpful, as it merely noted that the FCC would be announcing the due date; the actual due date was never published.

Based on the history of due dates, and the complexity involved with a digital launch, we do not believe we were negligent in not checking the FCC website until late August. We believe that, as the sole determiner of the due date, the greater responsibility for notification belongs to the FCC, especially in cases such as this where the due date is unexpectedly advanced by such a large degree. In essence, this situation occurred because our efforts to provide digital access to new areas happened to coincide with the only time in seven years that the FCC changed the due date from mid-to-late September to mid-August.

We are required to provide at least 30-days notice to our customers anytime we intend to make a change to our rates, due dates or prices. The responsibility for notification is ours, and we would never be able to require our customers to discover their responsibilities on their own. We do feel that all businesses or persons should receive some sort of notice when an agency makes significant changes that affect an industry or group. In fact, we know of no other instance in which a governmental agency did not notify the affected parties of newly assigned due dates.

Therefore, we respectfully request that the penalty be removed from our account, and we thank you in advance for your time and consideration.

Best Regards,



Jamie Chatari
Accounting Manager

Cc: Revenue & Receivable Oper.