

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAY 9 2006

Adams

OFFICE OF
MANAGING DIRECTOR

Ms. Bobbi Ferguson
Consultant for Embratel Americas, Inc.
Visiology, Inc.
16061 Carmel Bay Drive
Northport, Alabama 35475

Re: Embratel Americas, Inc.
FY 2005 Regulatory Fee
Fee Control No. 0511168835131001

Dear Ms. Ferguson:

This responds to your request dated December 12, 2005 (*Request*), that the penalty for late payment of the fiscal year (FY) 2005 regulatory fee for Embratel Americas, Inc. (Embratel) be rescinded. Our records reflect that Embratel paid its \$40,121.75 fiscal year (FY) 2005 regulatory fee in two payments: a \$15,363.44 payment on September 7, 2005, the due date, and a \$24,758.31 payment on November 11, 2005. Our records also reflect that the late penalty in the amount of \$6,189.57 associated with the \$24,758.31 payment has not been paid. As explained below, we deny your request.

You recite that “[t]he 2005 ITSP [*i.e.*, interstate telecommunications service provider] payment for Embratel Americas, Inc. . . . was wire transferred by Telmex USA, L.L.C. [Telmex] . . . on September 7, 2005.”¹ You assert that the corporate offices of [Embratel and Telmex] are located at 3350 S.W. 148th Avenue, Miramar, FL 33027 and were directly impacted by the hurricanes resulting in payment being remitted on the due date.”² In a subsequent email communication to Commission staff, you state that “Embratel paid the FCC ITSP invoice it had received on September 7 via bank wire in the amount of \$15,363.44 . . . [and t]his paid this invoice in full.”³ In a subsequent conversation with Commission staff on March 14, 2006, you state that Embratel did not receive a bill from the Commission for the total FY 2005 regulatory fee and that the company calculated the total fee to be \$40,121.75, of which it paid the balance of \$24,758.31 on November 11, 2005.

¹ *Request* at 1.

² *Id.*

³ Email from Bobbi Ferguson to Joanne Wall (Mar. 13, 2006).

The Communications Act of 1934, as amended, requires the Commission to assess a penalty of 25 percent on any regulatory fee not paid in a timely manner.⁴ The Commission's rules provide that a timely payment is one received at the Commission's lockbox bank by the due date.⁵ It is the obligation of the licensees responsible for regulatory fee payments to ensure that the Commission receives the fee payment no later than the final date on which regulatory fees are due for the year. Your request does not indicate or substantiate that Embratel met this obligation with respect to the \$24,758.31 partial payment of the regulatory fee submitted on November 11, 2005. Although Embratel may have relied upon receiving a bill from the Commission in paying the FY 2005 regulatory fee, this does not support a waiver of the late charge penalties. The Commission takes great care to inform its licensees of the due dates, amounts of the fees, and payment methods in public notices and fact sheets, which information it also posts on its web site, www.fcc.gov. For the FY 2005 regulatory fees, the Commission timely released several public notices and news releases informing licensees of the September 7, 2005 deadline for filing regulatory fees and explaining how to calculate the ITSP regulatory fee, and posted these items on its web site.⁶ 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."⁷

⁴ 47 U.S.C. §159(c)(1).

⁵ 47 C.F.R. §1.1164.

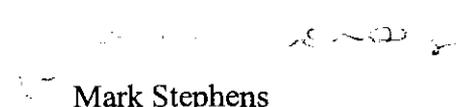
⁶ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2005, Report and Order*, 20 FCC Rcd 12259 (2005); Public Notice, *Payment Methods and Procedures for Fiscal Year 2005 Regulatory Fees*, DA 05-2087 (July 27, 2005) (announcing the September 7, 2005 filing deadline and stating that late payments will be assessed a 25 percent late payment penalty); Public Notice, *Fee Filer Now Available for 2005 Regulatory Fees*, DA 05-2088 (Aug. 1, 2005) (reminding of filing deadline); *Regulatory Fees Fact Sheet, What You Owe – Interstate Telecommunications Service Providers (ITSP) for FY 2005* (July 2005) (stating "that there is a penalty for not submitting the entire fee in a timely manner" and providing instructions for calculating and paying the FY 2005 regulatory fee, with specific instructions for those who did not receive a bill); Public Notice, *Commission Extends Regulatory Fee Filing Window for Those Regulatees Affected by Hurricane Katrina*, DA 05-2396 (Aug. 31, 2005) (reminding licensees and regulatees that "the Commission's rules concerning late payment or non-payment [of regulatory fees] will be enforced") (*August 2005 Public Notice*).

⁷ 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).

Further, with respect to your allegation that the hurricanes delayed Embratel's timely payment of the regulatory fee, we note that Embratel nevertheless made partial payment of \$15,363.44 by the September 7, 2005 due date, and even assuming Embratel is a licensee or regulatee located in the area affected by Hurricane Katrina within the meaning of the *August 2005 Public Notice* and thus subject to the September 28, 2005 extended payment deadline, the Commission received Embratel's remaining \$24,758.31 regulatory fee payment on November 11, 2005, more than six weeks late.⁸ We therefore find that Embratel did not meet its obligation to file its FY 2005 regulatory fee with respect to the \$24,758.31 balance to be received by the Commission in a timely manner. Accordingly, we deny your request for waiver of the penalty for late payment of the fiscal year 2005 regulatory fee.

Payment of Embratel's \$6,189.57 penalty for late payment of the FY 2005 regulatory fee associated with the \$24,758.31 partial payment is now due. The late charge penalty of \$6,189.57 should be submitted, together with a Form 159 (copy enclosed), within 30 days of the day of this letter. If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,


Mark Stephens
Acting Chief Financial Officer

Enclosure

⁸ See *August 2005 Public Notice* (the Commission extends the payment deadline for those licensees and regulatees in the area affected by Hurricane Katrina from 11:59 p.m. September 7, 2005, to 11:59 p.m. September 28, 2005, and states that for all others, *i.e.*, those not affected by the hurricane, the previous announced window remains in effect, and the Commission's rules concerning late payment or non-payment will be enforced; licensees and regulatees affected by the hurricane are required to include a certification that payment could not be made within the previous announced time because of the hurricane).

Visiology, Inc.

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VIA FACSIMILE

05 111 689 3513 1001

December 12, 2005

Judith Haley
Revenue and Receivables Operations Group
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

Re: Request to Rescind ITSP Late Fee
Embratel Americas, Inc. (FRN 0008029092)

Dear Ms. Haley:

Embratel Americas, Inc. requests that the late fee assessed on invoice *0620000054* for late payment of the ITSP fee due 9/7/05 be rescinded for the following reasons.

The 2005 ITSP payment for Embratel Americas, Inc. (FRN 0008029092) was wire transferred by Telmex USA, L.L.C. (FRN 0004315933) on September 7, 2005. The required fax notification was sent to Mellon Bank about two hours prior to the wire transfer being initiated. Enclosed are copies of the fax notification and ITSP invoice; wire transfer request; and Citibank confirmation that the transfer was executed on 9/7/05. In addition, the corporate offices of both companies are located at 3350 SW 148th Avenue, Miramar, FL 33027 and were directly impacted by the hurricanes resulting in payment being remitted on the due date.

Any questions regarding this matter should be directed to me at (205) 330-1723. Your assistance in this matter is greatly appreciated.

Yours truly,



Bobbi Ferguson
Consultant for
Embratel Americas, Inc.

Enclosures

16061 Carmel Bay Drive • Northport • Alabama 35475