

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

JUL 24 2008

OFFICE OF
MANAGING DIRECTOR

John Wells King, Esq.
Garvey Schubert Barer
Flour Mill Building
1000 Potomac Street, N.W.
Fifth Floor
Washington, D.C. 20007-3501

Re: BL Broadcasting, Inc.
Request for Waiver of Late Penalty for FY
2005 Regulatory Fees
Fee Control No. 0603148340827006

Dear Mr. King:

This is in response to your request dated August 11, 2006 (*Petition*), filed on behalf of BL Broadcasting, Inc. (BLB), licensee of Stations KLIZ, KLIZ-FM, KUAL-FM, KVBR, and WJY-FM, all of Brainerd, Minnesota, and Stations KKWS(FM) and KWAD, both of Wadena, Minnesota, and Stations KBLB(FM) and KNSP, of Nisswa, Minnesota, and Staples, Minnesota, respectively (the Stations), that the Office of Managing Director (OMD) reconsider its decision denying BLB a waiver of the penalties for late payment of the fiscal year (FY) 2005 regulatory fees.¹ Our records reflect that you have not paid the \$312.50, \$231.25, \$281.25, \$137.50, \$192.50, \$312.50, \$118.75, \$312.50, and \$112.50 penalties for Stations KLIZ, KLIZ-FM, KUAL-FM, KVBR, WJY-FM, KKWS(FM), KWAD, KBLB(FM), and KNSP, respectively. For the reasons stated herein, we deny your request.

In BLB's underlying request for waiver of the penalties (*Request*), BLB asserted that it "timely tendered its Form 159 Remittance by letter of transmittal dated August 22, 2005, for payment by credit card."² BLB stated that "[i]t was sent to the Commission's lockbox bank fee filing facility at Mellon Bank by UPS overnight, and received and signed for on August 23, 2006[.]"³ In support, BLB submitted two UPS documents entitled "Track by Tracking Number" and "Shipment Receipt" indicating that a package was sent by UPS from your office to Mellon Bank on August 23, 2005.⁴

¹ See Letter from Mark Stephens, Acting Chief Financial Officer, OMD, FCC, to John Wells King, Esq. (July 26, 2006) (*Decision*).

² *Request* at 1.

³ *Id.*

⁴ See Letter from John Wells King, Esq. to Marvin Washington, Acting Chief, OMD, FCC, Attachments (Feb. 21, 2006).

In the *Decision*, OMD pointed out that 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,⁵ and that 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.⁶ The *Decision* stated that although BLB asserted that timely payment was made, Mellon Bank's records reflect that the UPS package associated with the tracking number that BLB claimed contained its FCC Form 159 and credit card payment for the FY 2005 regulatory fees for the Stations in fact contained Form 159s and check payments for three unrelated entities in amounts that do not correspond to the FY 2005 fees associated with the Stations.⁷ The *Decision* found that the Commission did not receive an FCC Form 159 or full payment of the FY 2005 regulatory fees for the Stations by September 7, 2005, the filing deadline. Because the request did not indicate or substantiate that BLB submitted the FY 2005 regulatory fees for the Stations by the deadline for filing regulatory fees, the *Decision* denied BLB's request for waiver of the late penalties.⁸

In your *Petition*, you recite that BLB "is one of four commonly-owned licensees the annual regulatory fees for which have been paid concurrently as a group for many years."⁹ You state that "[i]n 2005, one of the four filings, for BG Broadcasting, Inc., was logged at Mellon Bank as timely received, and the payment was processed."¹⁰ You say that "[t]he other three were not logged, and payment was not processed."¹¹ You say that the legal assistant with your law firm "who effected the filings for the licensee and its affiliates . . . states that there were fee filings in the UPS package other than the [filings for the] four [commonly-owned licensees, as well as] . . . fee filings other than those which the . . . [*Decision*] identifies."¹² The legal assistant states that "[t]he UPS waybill

⁵ *Decision* at 2; see 47 U.S.C. §159(c)(1).

⁶ See 47 C.F.R. §1.1164.

⁷ See *Decision* at 2, n.7 ("[t]he package contained FCC Form 159s and check payments associated with Conner Family Broadcasting, Inc. (licensee of Stations WRMS-FM and WLG803), Radio Plus of Fond du Lac (licensee of Stations WFDL-FM and WMF992), and Radio Plus, Inc. (licensee of Stations WFDL, WMDC, KK4433, and WPUU989). The checks were in the amount of \$460.00, \$1,560.00, and \$1,245.00.").

⁸ *Decision* at 2.

⁹ *Petition* at 1 (the other licensees are BG Broadcasting, Inc., BDI Broadcasting, Inc., and Paul Bunyan Broadcasting Co.).

¹⁰ *Id.* at 1-2.

¹¹ *Id.* at 2.

¹² *Id.* at 2 (citing *Declaration of Yvette Graves* (executed Aug. 11, 2006) (*Declaration*)).

form has limited space to insert client numbers, . . . [h]owever, . . . on the waybill . . . , I inserted the . . . client numbers . . . for BDI Broadcasting, Inc.[,] . . . Conner Family Broadcasting, Inc.[, and] Gore-Overgaard Broadcasting[.]”¹³ You “[n]ote that one of the filings that the . . . [Decision] says was in the envelope, for Conner Family Broadcasting, Inc., was listed among the client numbers on the UPS waybill.”¹⁴ You “[n]ote also that the . . . [Decision] makes no mention . . . that the filing for Gore-Overgaard Broadcasting was in the UPS envelope . . . [or] that the filing for . . . BG Broadcasting, Inc. was in the envelope, yet its annual regulatory fee was logged and processed.”¹⁵ You contend that “inconsistencies in the tracking records for these filings preclude those records from being regarded as dispositive of the question whether a filing was in fact made.”¹⁶ You assert that “[t]he licensee for many years has filed its annual regulatory fee at the same time as the annual regulatory fees owed by its affiliates.”¹⁷ You state that your law firm’s legal assistant “has handled the filings since 2003” and has many years of experience with FCC filings.¹⁸ You conclude that the late filing was due to factors beyond the licensee’s control.

You have not provided sufficient grounds for reconsideration. Statements by your firm’s legal assistant that there were other fee filings in the UPS package containing the BG Broadcasting FY 2005 regulatory fees, including the FY 2005 regulatory fees for BLB, do not establish that the UPS package did in fact contain FY 2005 regulatory fees and FCC Form 159s for BLB, much less establish that the regulatory fees and Form 159s for BLB were received by the Commission by the September 7, 2005, filing deadline. Similarly, notations made by the legal assistant on the UPS package’s waybill do not establish that BLB’s fees and Form 159s were in the UPS package and were timely received by the Commission. Further, the fact that the legal assistant has years of experience in filing regulatory fees with the Commission in a timely manner does not support the conclusion that the instant regulatory fees and Form 159s were filed on time. We therefore find that OMD’s *Decision* denying BLB’s waiver request was correct and that you have provided no additional justification for a reversal of that decision. We therefore deny your request for reconsideration and waiver of the penalties for late payment of the FY 2005 regulatory fees.

¹³ *Id.* at 2 (quoting *Declaration* at 1); see also *Declaration* at 1 (“the client number for BDI . . . was my record that I had put all of Mr. Buron’s regulatory fee payments in the envelope . . . [, including BL Broadcasting, Inc., BG Broadcasting, Inc. . . . [, and] Paul Bunyan Broadcasting Co., Inc.”).

¹⁴ *Id.* at 2-3.

¹⁵ *Id.* at 3.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

John Wells King, Esq.

4.

Payment of the \$312.50, \$231.25, \$281.25, \$137.50, \$192.50, \$312.50, \$118.75, \$312.50, and \$112.50 penalties for Stations KLIZ, KLIZ-FM, KUAL-FM, KVBR, WJJY-FM, KKWS(FM), KWAD, KBLB(FM), and KNSP, respectively, is now due. The penalty amounts 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 418-1995.

Sincerely,



 Mark Stephens
Chief Financial Officer

Enclosure

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington DC 20554

2006 AUG 18 P 8:06

In The Matter Of)
)
Request of)
)
BL BROADCASTING, INC.)
)
For Waiver of Penalty For)
2005 Annual Regulatory Fees)

Fee Control Nos. 0603148340827001¹,
0603148340827003, 0603148340827004,
0603148340827005, 0603148340827006,
0603148340827007, 0603148340827008,
0603148340827009, 0603148340827010

7703
0603148340827006

TO: Mark Stephens
Acting Chief Financial Officer
Office of the Managing Director

PETITION FOR RECONSIDERATION

BL Broadcasting, Inc. ("BL"), by its attorneys, hereby petitions the Acting Chief Financial Officer to reconsider his letter ruling² denying waiver of late charge penalties assessed BL for its 2005 annual regulatory fees in the captioned Fee Control Numbers.

BL is one of four commonly-owned licensees the annual regulatory fees for which have been paid concurrently as a group for many years.³ In 2005, one of the four filings,

¹ This Fee Control Number appears to be duplicated in the July 26, 2006, letter of the Acting Chief Financial Officer to affiliated entity BDI Broadcasting, Inc.

² The letter is undated, but two other letters issued by the Acting Chief Financial Officer, directed to two related entities, were stamp-dated July 26, 2006. All three letters were received the same day. Therefore, the assumed date of the letter is July 26, 2006.

³ The licensees, all owned by Louis H. Buron, Jr., and their broadcast stations, are:

| | |
|-------------------------|--------------------------------|
| BG Broadcasting, Inc. | BL Broadcasting, Inc. (cont'd) |
| KKZY(FM), Bemidji MN | KUAL-FM, Brainerd MN |
| KLLZ-FM, Walker MN | KVBR, Brainerd MN |
| BDI Broadcasting, Inc. | KBLB(FM), Nisswa MN |
| KULO-FM, Alexandria MN | KKWS(FM), Wadena MN |
| KIKV-FM, Sauk Centre MN | KWAD, Wadena MN |
| BL Broadcasting, Inc. | KNSP, Staples MN |
| WJY-FM, Brainerd MN | Paul Bunyan Broadcasting Co. |
| KLIZ, Brainerd MN | KBUN, Bemidji MN |
| KLIZ-FM, Brainerd MN | KBHP(FM), Bemidji MN |

for BG Broadcasting, Inc., was logged at Mellon Bank as timely received, and the payment was processed. The other three were not logged, and payment was not processed.

It is manifestly evident, from materials the licensee previously has submitted, and from the additional information provided herewith, that the failure of timely payment to have been made was due to some circumstance unknown to the licensee, and beyond its control. The Commission cannot rule out the likelihood of error in processing by its staff or by Mellon Bank.

The staff letter denying the licensee's request for waiver observes, at note 8, that the UPS tracking number associated with the licensee's filing was linked to check payments for three unrelated entities. This is accurate as far as it goes, but it is not the whole story, and the inconsistencies in recordkeeping which it reveals are disturbing.

Attached hereto is the declaration of Yvette Graves, legal assistant in the law firm of Garvey Schubert Barer, who effected the filings for the licensee and its affiliates. Ms. Graves states that there were fee filings in the UPS package other than the four for Mr. Buron. Moreover, the UPS package contained fee filings other than those which the staff ruling identifies. According to Ms. Graves:

The UPS waybill form has limited space to insert client numbers, and I cannot get all the client numbers in the space provided. However, on the waybill that I filled out on Monday, August 22, 2005, I inserted the following client numbers:

21075-00101 BDI Broadcasting, Inc.
20675-00101 Conner Family Broadcasting, Inc.
20757 Gore-Overgaard Broadcasting

The client number for BDI Broadcasting, one of the four filings for Mr. Buron, was Ms. Graves' record that she had put all of his filings in the UPS envelope. Note that

one of the filings that the staff letter says was in the envelope, for Conner Family Broadcasting, Inc., was listed among the client numbers on the UPS waybill. Note also that the staff letter makes no mention of the fact that the filing for Gore-Overgaard Broadcasting was in the UPS envelope. Nor does the staff letter indicate that the filing for Mr. Buron's BG Broadcasting, Inc., was in the envelope, yet its annual regulatory fee was logged and processed.

These observations allow only one conclusion: inconsistencies in the tracking records for these filings preclude those records from being regarded as dispositive of the question whether a filing was in fact made. The Commission must look to all facts and circumstances. The facts and circumstances establish that there was error in processing somewhere along the way, whether by the Commission staff or by Mellon Bank; in any event, the licensee fulfilled its duty timely to file its annual regulatory fees.

The licensee for many years has filed its annual regulatory fee at the same time as the annual regulatory fees owed by its affiliates. They have been handled as concurrent filings. Ms. Graves has handled the filings since 2003. She came to Garvey Schubert Barer with nine years' experience in FCC filings and is intimately familiar with the procedures and requirements for FCC fee filings to Mellon Bank. Ms. Graves estimates she has been responsible for several thousand FCC filings in her career.

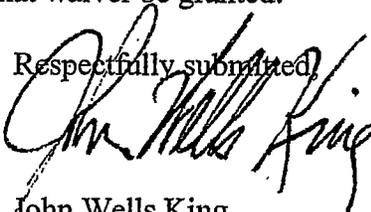
To reiterate, as Ms. Graves points out, all four Forms 159 were received by fax from Mr. Buron on Friday, August 19, 2005, as indicated by the fax headers on the forms. All four filings were prepared for filing on Monday, August 22, 2005. Counsel reviewed the filings and signed the transmittal letters. Ms. Graves prepared the filings for transmittal and inserted them into a single UPS package. Of the four filings:

- the filing for BDI Broadcasting, the client file number of which was on the waybill, was not logged or processed.
- the filing for BG Broadcasting, the client file number of which could not be fit on the waybill, was logged and processed.

While this result is puzzling and indeed perplexing, it clearly establishes that the resulting failure to file on time is due to handling and processing beyond the licensee's control. It is due to some other cause, either by the Commission staff or by Mellon Bank.

For these reasons, it is respectfully requested that denial of the waiver of the penalty for late filing be reconsidered, and that waiver be granted.

Respectfully submitted,



John Wells King

GARVEY SCHUBERT BARER
1000 Potomac Street NW, Fifth Floor
Washington DC 20007

August 11, 2006

DECLARATION OF YVETTE GRAVES

I, Yvette Graves, do hereby declare and state the following to be true of my personal knowledge:

I have been employed as a legal assistant in the Washington DC office of the law firm of Garvey Schubert Barer since 2003. Prior to joining the firm, I was employed by other law firms specializing in communications law for nine years. I am intimately familiar with the procedures and requirements for FCC fee filings to Mellon Bank in Pittsburgh. I estimate I have been responsible for several thousand FCC fee filings in my career.

I personally prepared the 2005 annual regulatory fee filings for BDI Broadcasting, Inc.; BG Broadcasting, Inc.; BL Broadcasting, Inc.; and Paul Bunyan Broadcasting Co. Inc. These companies are all owned by Louis H. Buron, Jr. In prior years, Mr. Buron paid the annual regulatory fees by check, but in 2005, he paid by credit card.

Mr. Buron faxed the Forms 159 to Garvey Schubert Barer the afternoon of August 19, 2005, as the fax header on the forms indicates (see attached). That was a Friday. On Monday, August 22, 2005, I prepared transmittal letters for the four fee filings and presented them to John Wells King for his review and signature. After Mr. King signed the transmittal letters, I prepared the filings for sending to Mellon Bank in Pittsburgh via UPS. I made copies of each of the filings for our files, and I made a stamp-and-return copy of each of the transmittal letters, with a postage-prepaid return envelope.

I inserted the four fee filings into a UPS courier envelope. The envelope can hold many filings. There were other fee filings in the envelope besides Mr. Buron's. The UPS waybill form has limited space to insert client numbers, and I cannot get all the client numbers in the space provided. However, on the waybill that I filled out on Monday, August 22, 2005, I inserted the following client numbers:

21075-00101 BDI Broadcasting, Inc.
20675-00101 Conner Family Broadcasting, Inc.
20757 Gore-Overgaard Broadcasting

The client number for BDI Broadcasting, Inc., was my record that I had put all of Mr. Buron's regulatory fee payments in the envelope, which also included:

21076-00101 BL Broadcasting, Inc.
21077-00101 BG Broadcasting, Inc.
20849-00101 Paul Bunyan Broadcasting Co., Inc.

The UPS tracking record for the envelope shows that it was delivered to Mellon Bank on Tuesday, August 23, 2005, at 9:29 a.m., signed by Zeransky.

I received the stamp and return copies of all of the filings in the package which were all paid by check. I received the stamp and return copy of the credit card filing for BG Broadcasting, Inc. I did not receive a stamp and return copy of the credit card filings for BDI Broadcasting, Inc.—whose client number was on the UPS waybill—or for BL Broadcasting, Inc., or Paul Bunyan Broadcasting Co., Inc., which were also in the package.

In summary, Mr. Buron's four regulatory fee filings arrived in our offices together. All four filings were prepared together. Mr. King reviewed and signed the four filings all at the same time. I personally prepared all four filings as part of a single package to Mellon Bank. Only one of the four appears to have been processed.

I declare under penalty of perjury that the foregoing to be true and correct of my personal knowledge.

Executed on August 11, 2006.


Yvette Graves