

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
CHAPARRAL BROADCASTING, INC.	)	Control Nos. 00000RROG-05-031, RROG-
	)	06-00007586, and RROG-08-00009906
Request for Waiver of Late Payment Penalty	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: October 7, 2009**

**Released: October 9, 2009**

By the Commission:

1. By this Memorandum Opinion and Order, we deny an application for review (AFR), filed February 13, 2007, by Chaparral Broadcasting, Inc. (Chaparral) seeking review of a ruling by the Chief Financial Officer, Office of Managing Director (OMD) denying reconsideration of a ruling denying Chaparral's request for a waiver and refund of a penalty for late payment of a rulemaking fee.<sup>1</sup> We find that imposition of the late payment penalty conforms to the Commission's rules and that Chaparral has shown no basis to waive the penalty.

**I. BACKGROUND**

2. Chaparral filed a minor change application for a construction permit to move Station KLZY(FM)<sup>2</sup> from Channel 223C at Powell, Wyoming to Channel 223C0 at Park City, Montana.<sup>3</sup> Chapparral filed its application electronically and simultaneously electronically submitted the requisite application fee for a minor change application.<sup>4</sup> Chaparral, however, omitted the required fee of \$2,230 for rulemaking to change the community of license or upgrade an existing allotment.<sup>5</sup> Accordingly, on December 10, 2004, Chaparral was assessed a 25 percent late payment penalty of \$557.50 pursuant to 47 C.F.R. § 1.1116(b).<sup>6</sup> On December 10, 2004 and January 4, 2005, Chaparral requested waiver of the late

<sup>1</sup> Letter from Mark A. Reger, former Chief Financial Officer to David Tillotson, Esq. (May 23, 2005), *recon. denied*, Letter from Mark A. Stephens, Chief Financial Officer to David Tillotson, Esq. (Jan. 31, 2007) (Reconsideration Order).

<sup>2</sup> Now KWMY(FM).

<sup>3</sup> See Letter from George H. Gwinn, Supervisory Engineer to Mr. David Tillotson (Dec. 10, 2004) (Gwinn Letter) at 1. See also File No. BPH-2004630ABW.

<sup>4</sup> See Reconsideration Order at 1. See also Petition for Reconsideration, filed June 5, 2005, *as supplemented* September 25, 2005 (Petition for Reconsideration) at 1.

<sup>5</sup> See Reconsideration Order at 3 n.12, 4. See also Gwinn Letter at 1.

<sup>6</sup> See Gwinn Letter at 1. Since Chaparral filed its application for review, the relevant rules have been renumbered. Former 47 C.F.R. § 1.1116 is now 47 C.F.R. § 1.1118 and former 47 C.F.R. § 1.1109 is now 47 C.F.R. § 1.1111. *In The Matter Of Amendment of Parts 0, 1, 2, 61, 64, 73, And 80 of The Commission's Rules, Concerning Commission Organization, Practice And Procedure, Frequency Allocations And Radio Treaty Matters; General Rules And Regulations, Tariffs, Miscellaneous Rules Relating To Common Carriers, Radio Broadcast Services, and Stations In The Maritime Services*, Erratum, DA 08-2125, 23 FCC Rcd 13572 (Off. Man. Dir. 2008). For clarity and convenience this order will refer to the relevant rules by their old numbers.

payment penalty on various grounds.<sup>7</sup> Chaparral submitted the rulemaking fee and the late payment penalty on January 28, 2005.<sup>8</sup>

3. Only one argument asserted by Chaparral remains at issue. In seeking reconsideration of OMD's refusal to waive the late payment penalty, Chaparral argued that, under the Commission's rules, Chaparral's application should have been dismissed with leave to refile without penalty. Chaparral noted that 47 C.F.R. § 1.1109(c) provides that "Applications and other filings that are not submitted in accordance with these instructions [for submitting fees] will be returned as unprocessable."<sup>9</sup> Chaparral further stated in seeking reconsideration that:

[Section 1.1109] further provides at subsection (d)(1) that, (i) in the event the Bureau processing the application "discovers" [that the required fee has not been paid] within 30 days after resubmission of an application returned for want of payment of the proper fees, "the application will be dismissed" and (ii) if the Bureau discovers after 30 days following resubmission that the requisite fees have not been paid, "the application will be retained and a [25 percent] late fee will be assessed."<sup>10</sup>

Chaparral thus interpreted section 1.1109(d) as authorizing the imposition of a late payment penalty only after an application had been dismissed under subsection (c) for nonpayment of fees, the application had subsequently been resubmitted again without the required fee, and the deficiency in the resubmitted application had been discovered more than 30 days after resubmission. Chaparral noted that its application had never been returned under subsection (c) and concluded that it therefore was not required to pay a penalty.

4. OMD found that Chaparral misread section 1.1109.<sup>11</sup> In this regard, OMD found that subsection (d) of the rule applies only where an application has been returned by the staff for additional information or corrections (to the application) and had no applicability to a determination that an applicant had failed to pay a required fee. OMD thus disagreed that a late payment penalty could be assessed only after an application had been dismissed for nonpayment of fees and then resubmitted without required fees.

5. In its AFR, Chaparral reiterates its argument that it was entitled to dismissal and resubmission of its application without penalty. Chaparral again argues that the staff should have dismissed its application under subsection (c) of the rule. Chaparral states:

[OMD] is correct that the staff did not request that Chaparral submit additional or corrected information, **as it was required to do under Section 1.1109[(c)]**. [OMD] is also correct that Section 1.1109(d), including subsection (ii) which provides the legal basis for assessing late payment penalties with respect to application filing fees, is not applicable to this case precisely because the staff did not return Chaparral's application

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<sup>7</sup> See Letter from David Tillotson to Mr. Andrew Fischel [sic], Managing Director (Dec. 10, 2004); Letter from David Tillotson to Mr. Andrew Fischel [sic], Managing Director (Jan. 4, 2005).

<sup>8</sup> See Reconsideration Order at 4.

<sup>9</sup> Petition for Reconsideration, Supplement at 1-2.

<sup>10</sup> *Id.*, Supplement at 1.

<sup>11</sup> Reconsideration Order at 3-4.

pursuant to Section 1.1109(c). But the only possible conclusion to be drawn from these facts is that under its own rule the Commission was barred from assessing a late penalty against Chaparral because the rule only provides for assessing late penalties with respect to applications which have first been returned for want of the correct filing fee pursuant to Section 1.1109(c).<sup>12</sup>

## II. DISCUSSION

6. We affirm OMD's rulings. As did OMD, we find that Chaparral misreads the relevant rule provisions<sup>13</sup> and that the late payment penalty was correctly assessed against Chaparral. In this regard, we discern some confusion on Chaparral's part over the provisions applicable to the imposition of a late payment penalty. Accordingly, to clarify the matter, we first summarize the relevant law.

7. The statutory basis for the Commission's rules regarding untimely payment derives from Section 8 of the Communications Act,<sup>14</sup> which governs the Commission's application filing fee program. Section 8(c)(1)<sup>15</sup> provides:

The Commission shall prescribe by regulation an additional application fee which shall be assessed as a penalty for late payment of application fees required by subsection (a) of the section. Such penalty shall be 25 percent of the amount of the application fee which was not paid in a timely manner.

Section 8(c)(2)<sup>16</sup> provides:

The Commission may dismiss any application or other filing for failure to pay in a timely manner any application fee or penalty.

8. In implementing these provisions, the Commission concluded that it would be desirable to establish a clear demarcation point as to when applications would be dismissed for insufficient fees and when the application would be retained in processing but the applicant assessed a late payment penalty.<sup>17</sup> Because the Commission anticipated that, as part of the routine processing of applications, the initial review of fee payments would typically occur within 30 days of filing, the Commission provided that

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<sup>12</sup> AFR at 2. [Emphasis in the original.] Section 1.1109(c) reads: Applications and other filings that are not submitted in accordance with these instructions will be returned as unprocessable.

<sup>13</sup> On February 19, 2008, OMD, published in the Federal Register a notice deleting, under delegated authority, the substance of 47 C.F.R. § 1.1109, as discussed in this memorandum opinion and order. See 73 Fed. Reg. 9017 (Feb. 19, 2008). As the notice characterizes the amendment as one of several "non-substantive changes to the Commission's rules," it appears that the amendment was made in error, since it is clearly a substantive change beyond the scope of OMD's delegated authority. See 47 C.F.R. § 0.231(b). Accordingly, this memorandum opinion and order applies the rule as it appeared at the time the application was filed. The text of the rule will be corrected by separate action.

<sup>14</sup> 47 U.S.C. § 158.

<sup>15</sup> 47 U.S.C. § 158(c)(1).

<sup>16</sup> 47 U.S.C. § 158(c)(2).

<sup>17</sup> See *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 2 FCC Rcd 947, 957 ¶ 61 (1987).

where insufficient payment was discovered during this time period, the application would be dismissed.<sup>18</sup> However, to avoid disruption, the Commission provided that if the staff discovered the fee insufficiency after 30 days, the application would be retained in processing and the applicant would be billed, including a 25 percent late payment penalty.<sup>19</sup> The Commission codified this policy as 47 C.F.R. § 1.1114,<sup>20</sup> the predecessor of current 47 C.F.R. 1.1116.<sup>21</sup>

9. The Gwinn Letter correctly relied upon section 1.1116(b) when it assessed the 25 percent late payment penalty against Chaparral, having discovered the fee underpayment more than 30 days after Chaparral filed its application.<sup>22</sup> The Reconsideration Order correctly upheld this finding.<sup>23</sup> Section 1.1109(d), which OMD correctly found governs applications returned to applicants for additional information or corrections, and upon which Chaparral relies, has no relevance here because Chaparral's application was not returned for additional information or corrections.<sup>24</sup> Section 1.1109(c),<sup>25</sup> upon which

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<sup>18</sup> See *id.*

<sup>19</sup> See *id.*

<sup>20</sup> See *id.* at 994-95.

<sup>21</sup> The section was redesignated by *Implementation of Section 9 of the Communications Act – Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year*, 59 Fed. Reg. 30984, 30998 (Jun. 16, 1994) and *Reorganization Establishing the International Bureau*, 60 Fed. Reg. 5322, 5326 (Jan. 27, 1995). The applicable portion of current section 1.1116 reads:

(a) Filings subject to fees and accompanied by defective fee submissions will be dismissed under §1.1109 (d) [*sic*, see note 27, *infra*] of this subpart where the defect is discovered by the Commission's staff within 30 calendar days from the receipt of the application or filing by the Commission.

.....

(b) Applications or filings accompanied by insufficient fees or no fees, or where such applications or filings are made by persons or organizations that are delinquent in fees owed to the Commission, that are inadvertently forwarded to Commission staff for substantive review will be billed for the amount due if the discrepancy is not discovered until after 30 calendar days from the receipt of the application or filing by the Commission. Applications or filings that are accompanied by insufficient fees or no fees will have a penalty charge equaling 25 percent of the amount due added to each bill. Any Commission action taken prior to timely payment of these charges is contingent and subject to rescission.

<sup>22</sup> See Gwinn Letter at 1. Chaparral does not dispute that the underpayment was discovered more than 30 days after the application was filed.

<sup>23</sup> Reconsideration Order at 4.

<sup>24</sup> See Reconsideration Order at 4. Subsection 1.1109(d) states in full (emphasis added):

(d) **Applications returned to applicants for additional information or corrections** will not require an additional fee when resubmitted, unless the additional information results in an increase of the original fee amount. Those applications not requiring an additional fee should be resubmitted directly to the Bureau/Office requesting the additional information. The original fee will be forfeited if the additional information or corrections are not resubmitted to the appropriate Bureau/Office by the prescribed deadline. A forfeited application fee will not be refunded. If an additional fee is required, the original fee will be returned and the application must be resubmitted with a new remittance in the amount of the required fee to the Commission's lockbox bank. Applicants should attach a copy of the Commission's request for additional or corrected information to their resubmission.

Chaparral also relies, does not provide a basis for dismissing Chaparral's application without imposing a late fee. As described above, the purpose of section 1.1116 was to distinguish between fee underpayments discovered within 30 days and underpayments discovered more than 30 days after filing. Chaparral's reading of section 1.1109(c), would nullify this distinction. Accordingly, we read section 1.1109(c) not to require applications to be returned where section 1.1116 provides for continued processing of the application and the imposition of a late fee. We therefore conclude that imposition of the penalty was consistent with the Commission's rules and that Chaparral has provided no grounds for waiver.

### III. ORDERING CLAUSE

10. ACCORDINGLY, IT IS ORDERED, That the Application for Review, filed February 13, 2007, by Chaparral Broadcasting, Inc. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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(1) If the Bureau/Office staff discovers within 30 days after the resubmission that the required fee was not submitted, the application will be dismissed.

(2) If after 30 days the Bureau/Office staff discovers the required fee has not been paid, the application will be retained and a 25 percent late fee will be assessed on the deficient amount even if the Commission has completed its action on the application. Any Commission actions taken prior to timely payment of these charges are contingent and subject to recession.

*See also Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5369 ¶ 103 (1994) (amending former section 1.1107(d), the predecessor of 1.1109(d), to provide, *inter alia*, for the assessment of a late payment penalty for resubmitted applications not accompanied by sufficient fees).

<sup>25</sup> We recognize that section 1.1116(a) incorrectly cross-references section 1.1109(d), rather than 1.1109(c) when it provides that filings accompanied by defective fee submissions will be dismissed under section 1.1109(d), where the defect is discovered within 30 days. The error occurred in renumbering the section. Earlier versions of the rule (*see, e.g.*, 47 C.F.R. § 1.1114 (1993)), correctly cross-reference the predecessor of section 1.1109(c), thereby reinforcing the point that that dismissal under section 1.1109(c) is appropriate only where the underpayment is discovered within 30 days. To avoid any confusion in the future, we direct OMD to make an editorial correction to this cross-reference pursuant to its delegated authority. *See* 47 C.F.R. § 0.231(b).

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

NOV 05 2009

OFFICE OF  
MANAGING DIRECTOR

Melissa D. Billham  
SPAWARAtlantic  
Post Office Box 190022  
North Charleston, S.C. 29419-9022

Attention: Code 537BO

Re: Intelsat North America LLC  
FY 2009 Regulatory Fee  
Fee Control No. RROG-09-00011887

Dear Ms. Billham:

This is in response to your request emailed on behalf of the National Science Foundation, Office of Polar Operations (NSF), for a partial refund of the \$127,175.00 fiscal year (FY) 2009 regulatory fee associated with Station KS35, the call sign for the Marisat F2 Satellite. Our records reflect that Intelsat Corp. paid the FY 2009 regulatory fee on behalf of Intelsat North America LLC (Intelsat), the licensee of Station KS35. For the reasons set forth below, we deny your request.

You state that SPAWAR Systems Center Atlantic (SSCLANT), a United States Navy Command, had a contractual relationship with Intelsat Corp. for utilization of the Marisat F2 Satellite.<sup>1</sup> You state that “[t]hese services are funded by the National Science foundation under a Memorandum of Agreement with SSCLANT for operational support and were in use at the Amundsen Scott South Polar Station, until recently.”<sup>2</sup> You say that although services were planned for all of FY 2009, the satellite “was deorbited at the end of October 2008 due to unacceptable risk resulting from the rapid health deterioration of the satellite.”<sup>3</sup> You state that Intelsat forwarded its annual bills from the Commission to

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<sup>1</sup> Email from Melissa Billham to Regina Dorsey and Monique Goodman (Aug. 25, 2009) (*August 25, 2009 email*).

<sup>2</sup> *August 25, 2009 email*.

<sup>3</sup> Email from Melissa Billham to Regina Dorsey and Monique Goodman (Aug. 25, 2009) (stating that “the effective end of service date for the Marisat-F2 Satellite . . . was 28OCT09”) (Aug. 26, 2009).

the NSF for reimbursement under its contract with the NSF.<sup>4</sup> You request that the “fees charged to Intelsat for this service be prorated for FY 2009 and charges assessed for October only.”<sup>5</sup> NSF is not an applicant, permittee, licensee or agent of Intelsat North America LLC (Intelsat) or Intersat Corporation.<sup>6</sup>

Section 1.1160(d) of the Commission’s rules, 47 C.F.R. §1.1160(d), provides that “[n]o refunds will be processed without a written request from the applicant, permittee, licensee or agent.” Because NSF is not an applicant, permittee, licensee, or agent of Intelsat, we dismiss your request for waiver of the FY 2009 regulatory fee. We note that even if NSF were an applicant, permittee, licensee, or agent of the licensee or Intelsat and authorized to file a request for waiver of FY 2009 regulatory fees on behalf of the station, the Commission’s rules provide that “[n]o pro-rata refund of an annual fee will be issued[.]”<sup>7</sup>

If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark Stephens  
Chief Financial Officer

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> See email from Melissa Billham to Joanne Wall (Oct. 20, 2009).

<sup>7</sup> See 47 C.F.R. §1.1160(b)

Intelsat

RROC-09-00011887

Adama Jarr

**From:** Regina Dorsey  
**Sent:** Friday, September 04, 2009 12:13 PM  
**To:** Adama Jarr  
**Subject:** FW: FCC WAIVER REQUEST FRN 0009308008  
**Importance:** High

Regina W. Dorsey  
 Deputy Chief Financial Officer  
 Federal Communication Commission  
 445 12 Street, SW  
 Washington, DC 20554  
 Phone: (202) 418-1993  
 Fax: (202) 418-2843  
 Email: regina.dorsey@fcc.gov

**From:** Billham, Melissa D CIV SPAWARSCEN-ATLANTIC, 537B0 [mailto:melissa.billham@navy.mil]  
**Sent:** Wednesday, August 26, 2009 12:22 PM  
**To:** Regina Dorsey; Monique Goodman  
**Cc:** Peebles, Michael CIV SPAWARSCEN-ATLANTIC, 537K0; Kelch, David W CIV SPAWARSCEN-ATLANTIC, 53750; Rushing, Matthew CIV SPAWARSCEN-ATLANTIC, 53750; Buchanan, Jack C CIV SPAWARSCEN-ATLANTIC, 53740; Parker, Karen N CTR SPAWARSCEN-ATLANTIC, 53750  
**Subject:** RE: FCC WAIVER REQUEST FRN 0009308008  
**Importance:** High

Ms. Regina Dorsey,

Thank you for your acknowledgement. Yes Ma'am, this is in reference to the annual license fee.

The effective end of service date for the Marisat-F2 Satellite, via Intelsat General Corp., was 28OCT08. On behalf of the National Science Foundation, Office of Polar Operations, we appreciate the waiver consideration, after the point of operational service provision.

Respectfully,  
 Melissa D. Billham  
 SSC LANT Technical Business Operations, Code 5.3.7.B.0  
 Supporting SSC LANT Office of Polar Program, Code 5.3.7.K.0  
[melissa.billham@navy.mil](mailto:melissa.billham@navy.mil)  
 843.218.4211 dsn 588 fax 5366

**From:** Regina Dorsey [mailto:Regina.Dorsey@fcc.gov]  
**Sent:** Wednesday, August 26, 2009 11:41 AM  
**To:** Billham, Melissa D CIV SPAWARSCEN-ATLANTIC, 537B0; Monique Goodman  
**Cc:** Peebles, Michael CIV SPAWARSCEN-ATLANTIC, 537K0; Kelch, David W CIV SPAWARSCEN-ATLANTIC, 53750; Rushing, Matthew CIV SPAWARSCEN-ATLANTIC, 53750; Buchanan, Jack C CIV SPAWARSCEN-ATLANTIC, 53740; Parker, Karen N CTR SPAWARSCEN-ATLANTIC, 53750

9/8/2009

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

NOV 05 2009

OFFICE OF  
MANAGING DIRECTOR

Suzanne E. Rogers, President  
Meridian Communications of Idaho, Inc.  
455 Capitol Mall, Suite 210  
Sacramento, California 95814

Re: Meridian Communications of Idaho, Inc.  
Fiscal Year 2009 Regulatory Fee Waiver Request  
Fee Control No. RROG-09-00012015

Dear Ms. Rogers:

This letter is in response to your petition filed on September 21, 2009, on behalf of Meridian Communications of Idaho, Inc. ("Meridian"), permittee of commercial television station Channel 20, Idaho Falls, Ohio, for a waiver and refund of the \$1,950 fiscal year 2009 regulatory fee ("*Waiver Petition*").<sup>1</sup> Our records show Meridian has paid the regulatory fee. For the reasons below, we grant the petition.

In support of your petition, you state that the construction permit, which authorizes Channel 20 to serve the community of Idaho Falls, Idaho, was granted to Meridian on July 22, 2003, but The Post Company ("Post") filed a petition for reconsideration of the grant on August 21, 2003; and although the petition for reconsideration was denied on July 21, 2005, NPG of Idaho, Inc. ("NPG"), the successor-in-interest to Post, filed an Application for Review on August 22, 2005, which remains pending.<sup>2</sup> You also state that Meridian "has not been in possession of a functional Commission license or permit since August 21, 2003 (including on October 1, 2008, the date for determining 2009 regulatory fee obligations), resulting in the tolling of M[eridian]'s Station permit since that time."<sup>3</sup>

We agree with you that the construction permit for Channel 20 remains encumbered. In this regard, it appears that the construction of Meridian's proposed station has been prevented by causes not under the control of the permittee, *i.e.*, the pending status of Post's petition for reconsideration and now NPG's application for review, and that the expiration date of the construction permit has been tolled pursuant to the provisions of section 73.3598(b)(2) of our

<sup>1</sup> *Waiver Petition* at 1.  
<sup>2</sup> *Id.* at 2-3.  
<sup>3</sup> *Id.* at 3.

rules.<sup>4</sup> Under these circumstances, we find good cause for a waiver of the fiscal year 2009 regulatory fee and, accordingly, we grant your request for a refund of the fee.<sup>5</sup> A check in the amount of \$1,950, made payable to the maker of the original check, will be sent to you on the earliest practicable date. If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark Stephens  
Chief Financial Operations

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<sup>4</sup> 47 C.F.R. § 73.3598(b)(2).

<sup>5</sup> We note that we previously granted Meridian a waiver and refund of the regulatory fee for fiscal years 2004, 2005, 2006, 2007 and 2008, for the same reasons that we grant this request regarding the fiscal year 2009 regulatory fee. *See* January 4, 2005 Letter from Mark A. Reger to Suzanne E. Rogers; January 6, 2006 Letter from Mark A. Reger to Suzanne E. Rogers; December 5, 2006 Letter from Mark Stephens to Suzanne E. Rogers; December 20, 2007 Letter from Mark Stephens to Suzanne E. Rogers; and February 12, 2009 Letter from Mark Stephens to Suzanne E. Rogers.

MERIDIAN COMMUNICATIONS  
OF IDAHO, INC.

455 Capitol Mall, Suite 210, Sacramento, California 95814 (916) 448-8800 Fax (916) 448-6455

RECEIVED

SEP 21 2009  
Financial Services  
Center

Received & Inspected

SEP 21 2009

FCC Mail Room

September 18, 2009

VIA FEDERAL EXPRESS OVERNIGHT

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
9300 East Hampton Drive  
Capitol Heights, MD 20743

12015

0909189084881337

ATTN: Steven VanRoekel, Managing Director  
Office of Managing Director

Re: **Regulatory Fee Waiver Request of Meridian Communications of Idaho, Inc.  
Permittee of Analog TV Channel 20, Idaho Falls, Idaho; Facility ID 41238**

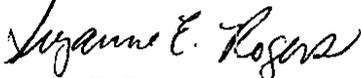
Dear Ms. Dortch:

Enclosed for filing with the Office of Managing Director is one original and four copies of Meridian Communications of Idaho's ("MCID") Petition for Waiver of Regulatory Fee ("Petition"). MCID has submitted full payment of the assessed regulatory fee electronically and encloses herein at Exhibit C to the Petition a true and correct copy of its regulatory fee remittance, FCC Form 159 (with the FRN number redacted for confidentiality purposes).

Also enclosed is a "stamp & receipt" copy of the Petition for return-receipt purposes. For your convenience a self-addressed stamped envelope is provided to return the stamp-receipted copy.

Thank you for your assistance with this matter. If you require any additional information in support of this request or have any questions regarding the enclosed documents, please feel free to contact me at the address and phone number listed above.

Sincerely,



Suzanne E. Rogers  
President

Enclosures

Fy 09 payment in the amount of  
\$1950.00 was received  
9/18/09 AJ

Received & Inspected

SEP 21 2009

FCC Mail Room

12015

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

0909189084881337

In the Matter of )  
)  
Meridian Communications of Idaho )  
)  
Permittee of UHF Television Station )  
Channel 20 )  
Idaho Falls, Idaho )  
Facility ID 41238 )

FCC File No. BPCT-19950306KF

To Managing Director, Office of Managing Director

**PETITION FOR WAIVER OF REGULATORY FEE**

Meridian Communications of Idaho ("MCID"), permittee of commercial television station Channel 20, Idaho Falls, Idaho, Facility ID 41238 ("Station"), hereby petitions the Commission for a waiver and refund of the Station's 2009 regulatory fee due to the continuing tolled status of its construction permit.<sup>1</sup> In support of its Petition, MCID submits that the "good cause" standard of Section 1.1166 of the Commission's Rules has been met, and, specifically, that "extraordinary and compelling circumstances" exist which "override the public interest in

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<sup>1</sup>See Letters dated January 4, 2005, and January 6, 2006, from Mark A. Reger, Chief Financial Officer, Office of Managing Director, FCC, to Suzanne E. Rogers, President, Meridian Communications of Idaho, Inc., and Letters dated December 5, 2006, December 20, 2007, and February 12, 2009, from Mark Stephens, Chief Financial Officer, Office of Managing Director, FCC, to Suzanne E. Rogers, President, Meridian Communications of Idaho, Inc., granting waivers of the 2004, 2005, 2006, 2007 and 2008 regulatory fees, respectively, based on the tolling of the Channel 20 construction permit pursuant to Section 73.3598(b)(ii) of the Commission's Rules (copies of which are attached hereto at Exhibit A).

reimbursing the Commission for its regulatory costs.”<sup>2</sup> MCID declares the following in support of this submission.

1. The Station construction permit, which authorizes Channel 20 to serve the community of Idaho Falls, Idaho, was granted on July 22, 2003, following a protracted application and settlement process. The original application for a construction permit for Channel 20 in Idaho Falls, Idaho, was filed on the 6<sup>th</sup> of March, 1995 (*See* BPCT-19950306KF) (“Application”), and on May 15, 1995, The Post Company (“Post”), licensee of station KIFI-TV, Idaho Falls, Idaho, filed a Petition to Deny that Application (“Petition to Deny”). In August of 1999, MCID filed a settlement agreement with the Commission, which it had entered into with mutually exclusive applicant Flat Iron Ranches, Inc., asking the Commission to grant MCID’s Application. On December 17, 1999, in response to the filing of the settlement agreement, Post filed a Supplement to its earlier May 15, 1995 Petition to Deny MCID’s Application (“Supplement”), and Fisher Broadcasting, Inc. (“Fisher”), licensee of station KIDK(TV), Idaho Falls, Idaho, filed Comments in support thereof. The Supplement and the Comments raised several allegations about MCID’s qualifications to be a licensee, all of which were denied upon the July 22, 2003 grant of the Station’s construction permit. In a letter dated July 22, 2003, from Barbara A. Kreisman, Chief, Video Division, Media Bureau, to J. Dominic Monahan, Esq., the Commission rejected all of Post’s and Fisher’s allegations, denied Post’s May 15, 1995 Petition to Deny, and granted MCID’s Application.

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<sup>2</sup>*See In Re* Implementation of Section 9 of the Communications Act, 59 F.R. 30984 (June 16, 1994), 9 FCC Rcd 5333 ¶ 29 (1994) (hereinafter “FY 1994 *Report and Order*”); and *In Re* Implementation of Section 9 of the Commissions Act Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Memorandum Opinion and Order*, FCC 95-257, 10 FCC Rcd. 12759, ¶ 12 (1995) (hereinafter “FY 1994 *Memorandum Opinion and Order*”).

2. Despite the Commission's well-reasoned decision, Post filed a Petition for Reconsideration thereof on August 21, 2003 (followed by responsive pleadings by both parties), which made the status of the Station uncertain and tolled the construction period on the permit.<sup>3</sup> On July 21, 2005, the Commission again denied Post's claims in a letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau, to J. Dominic Monahan. However, the successor to Post, NPG of Idaho, Inc., filed an Application for Review thereof (which MCID has opposed in a responsive pleading) on August 22, 2005.

3. Accordingly, based on administrative review proceedings beyond the control of MCID, MCID has not been in possession of a functional Commission license or permit since August 21, 2003 (including on October 1, 2008, the date for determining 2009 regulatory fee obligations), resulting in the tolling of MCID's Station permit since that time.<sup>4</sup> Under present circumstances, MCID is unable to generate any cash flow, let alone make projections of cash flow. Although MCID firmly believes the Commission will rule in its favor with respect to the pending Application for Review, it cannot realistically begin buildout of the Station or business operations until it has received such a ruling.

4. For these reasons, MCID believes that good cause exists for waiver of the \$1,950 2009 regulatory fee (PTC Code 0964) for its tolled television construction permit with respect to the Station, and that indeed, "extraordinary and compelling circumstances" exist which

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<sup>3</sup>See 74 C.F.R. 73.3598(b)(ii).

<sup>4</sup>*Id.* See at Exhibit B hereto the December 7, 2006 letter to Meridian Communications of Idaho, Inc., c/o Dorann Bunkin, Esquire, from Clay C. Pendarvis, Associate Chief, Video Division, Media Bureau, FCC, granting tolling of the Channel 20 construction permit "for a time period of three years from the date on which the permit is no longer the subject of judicial review."

“override the public interest in reimbursing the Commission for its regulatory costs.”<sup>5</sup>

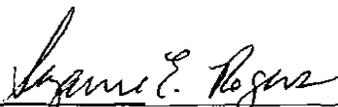
Specifically, MCID asserts that the Commission’s levy of a regulatory fee on the Station is not in the public interest, as no regulated interest has been vested in MCID.

5. MCID has timely remitted the full \$1,950 in regulatory fees due (*see* copy of electronic File Copy of FCC Online Payment Receipt, FCC Form 159, attached hereto at Exhibit C), and accompanies such payment with this Petition for Waiver of Regulatory Fee. MCID does so having made no income to date, as it has not been able to build or operate the Station.

Pursuant to the facts set forth above and in accordance with the policy stated in the FY 1994 *Report and Order* and the FY 1994 *Memorandum Opinion and Order*, MCID requests a waiver and refund of its regulatory fees for fiscal year 2009. MCID requests that this refund be tendered at the earliest possible date.

Respectfully submitted,

Meridian Communications of Idaho, Inc.

By:   
Suzanne E. Rogers, President

Dated: September 18, 2009

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<sup>5</sup>See FY 1994 *Report and Order* and FY 1994 *Memorandum Opinion and Order*, *supra* note 2.

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

OCT 29 2009

OFFICE OF  
MANAGING DIRECTOR

Nancy L. Isserlis, Esq.  
Winston & Cashatt  
Bank of America Financial Center  
601 W. Riverside  
Suite 1900  
Spokane, Washington 99201-0695

Re: Stations KAZZ(FM) and KAZZ-FM1  
FY 2009 Regulatory Fees  
Fee Control No. RROG-09-0001203

Dear Ms. Isserlis:

This letter responds to your request dated September 16, 2009 (*Request*), for waiver of the fiscal year (FY) 2009 regulatory fees for Stations KAZZ(FM) and KAZZ-FM1. Our records reflect that Stations KAZZ(FM) and KAZZ-FM1 (the Stations) have not paid the FY 2009 regulatory fees of \$1,325.00 and \$400.00, respectively. For the reasons stated herein, we grant your request.

You state that the Stations were placed in receivership by order of the Spokane County Superior Court of Washington on May 8, 2009.<sup>1</sup> You say that the involuntary assignment of the station licenses to you as receiver was granted and consummated on May 15, 2009.<sup>2</sup>

---

<sup>1</sup> *Request* at 1.

<sup>2</sup> *See id.* at 1-2, Exhibit A (FCC Form 316, Application for Consent to Assign Broadcast Station Construction Permit or License or to Transfer Control of Entity Holding Broadcast Station Construction Permit or License (from Proactive Communications, Inc., Licensee, to Nancy L. Isserlis, Receiver for KAZZ), Attachment 5 (Order Granting Petitioner's Emergency Motion for Appointment of Receiver (Spokane County Superior Court, State of Washington, May 8, 2009) (*Court Order Appointing Receiver*)); *see also id.* at 2 (*citing* FCC File No. BALH-20090511BAU).

The Commission has determined that it will waive regulatory fees for licensees who are bankrupt or are in receivership at the time the fees are due.<sup>3</sup> Based on the evidence that you provide that the Stations were in receivership on the September 22, 2009, due date for filing FY 2009 regulatory fees,<sup>4</sup> including the *Court Order Appointing Receiver*, we grant the Stations a waiver of the FY 2009 regulatory fees.

If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,



 Mark Stephens  
Chief Financial Officer

---

<sup>3</sup> See *Implementation of Section 9 of the Communications Act*, 10 FCC Rcd 12759, 12762 (1995).

<sup>4</sup> See *Public Notice, FY 2009 Regulatory Fees Due No Later Than September 22, 2009, Eastern Time (ET)*, DA 09-1837, 2009 WL 2595896 (Aug. 21, 2009).

Spokane Office  
Bank of America Financial Center  
601 W. Riverside, Suite 1500  
Spokane, Washington 99201-0695

Phone: (509) 838-6131  
Fax: (509) 838-1416  
website: www.winstoncashatt.com

Winston & Cashatt  
AND RETURN  
LAWYERS

A Professional Service Corporation

Winston & Cashatt has offices in Spokane, Washington  
and Coeur d'Alene, Idaho

RROG-09-0001203

FILED/ACCEPTED

SEP 21 2009

September 16, 2009

Federal Communications Commission  
Office of the Secretary

HAND DELIVERY

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Washington, DC 20554

Re: Request for Waiver of FY 2009 Regulatory Fees  
Nancy L. Isserlis, Receiver for KAZZ  
FRN: 0018773556

Attn: Office of the Managing Director

Dear Ms. Dortch:

This letter is provided to request a waiver of the obligation of licensee Nancy L. Isserlis, Receiver for KAZZ, to pay regulatory fees due September 22, 2009, for the following broadcast stations:

KAZZ (FM), Spokane, WA, Facility Id. No. 3922  
KAZZ-FM1, Spokane, WA, Facility Id. No. 161590.

This waiver request is submitted pursuant to the Commission's determination, in *Implementation of Section 9 of the Communications Act*, 10 FCC Red 12759, 12762 (1995), that it "will waive the regulatory fees for licensees whose stations are bankrupt, undergoing Chapter 11 reorganizations or in receivership." The above-referenced stations were placed in receivership by order of the Spokane County Superior Court in the state of Washington on May 8, 2009. The

C. Matthew Andersen  
Beverly L. Anderson  
Courtney R. Beardsley  
Robert B. Beachel  
Kevin H. Beck  
Richard L. Cease  
Christopher S. Crigo  
Patrick J. Cronin  
Kevin J. Curtis  
Greg M. Devlin

Stephen L. Farrell  
David B. Gardner  
Donald J. Gery, Jr.  
Jeffrey A. Herberich  
Tim M. Higgins  
Michael T. Howard  
Carl E. Huber  
Nancy L. Isserlis  
Brian T. McGinn  
Kamari Mencke Smith

Sean E. O'Quinn  
Fred C. Pilanz  
Lynden O. Rasmussen  
James E. Reed  
Richard W. Relyea  
Rowen S. Roentrater  
Elizabeth A. Tellesten  
Lawrence H. Vance, Jr.  
Lucinda S. Whaley  
Meriwether D. Williams

Ryan D. Zahne  
  
Of Counsel  
Janice P. Connelly

Retired  
Len J. Duncell  
Leo N. Cashatt  
Joseph J. Rehrke  
Patrick H. Winston

All lawyers admitted in WA. Lawyers admitted in CA, ID, MI and WY as indicated.

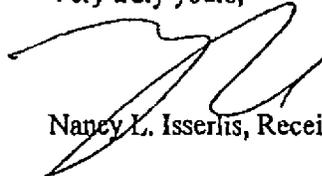
Marlene Dortch, Secretary  
September 16, 2009  
Page 2

involuntary assignment to Ms. Isserlis as Receiver was granted and consummated on May 15, 2009. See FCC File No. BALH-20090511BAU. A copy of the assignment application, inclusive of the court order, is attached hereto as Exhibit A for your reference.

In light of the foregoing, relief from payment of the FY 2009 regulatory fees due for the above-referenced stations is respectfully requested.

Should you have any questions, please do not hesitate to contact the undersigned.

Very truly yours,



Nancy L. Isserlis, Receiver for KAZZ

Enclosure

cc (by email w/ enclosure): Mr. Mark Stephens  
Ms. Regina Dorsey

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

OCT 21 2009

OFFICE OF  
MANAGING DIRECTOR

Ginny Shelton  
Advertising Director  
NationsLine  
Post Office Box 13287  
Roanoke, Virginia 24037-3287

Re: Request for Waiver of FY 2007  
Regulatory Late Fee  
Fee Control No. RROG-08-00010528

Dear Ms. Shelton:

This responds to your Letter requesting waiver of the penalty for late payment of the fiscal year (FY) 2007 regulatory fee for NationsLine District of Columbia, Inc., Roanoke, Virginia (NationsLine DC).<sup>1</sup> Our records reflect that the FY 2007 late payment penalty in the amount of \$105.50 has not been paid. For the reasons set forth below, your request is denied.

In your Letter, you state that “[NationsLine DC] has been placed in Red Light Status due to late fees for [its] 2007 Regulatory Fees.”<sup>2</sup> In support of your request, you attach 2007 and 2008 income statements for NationsLine DC.<sup>3</sup>

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. 47 U.S.C. § 159(c)(1). It is the obligation of the licensee 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.<sup>4</sup> Your request does not indicate or substantiate that you met this obligation. Nor does the statute permit the Commission to remove this obligation under circumstances such as those you present.<sup>5</sup> Therefore, your request is denied.

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<sup>1</sup> Letter from Ginny Shelton, NationsLine, to Stephen French, Revenue & Receivables Operations Group, FCC (undated) (Letter).

<sup>2</sup> *Id.*

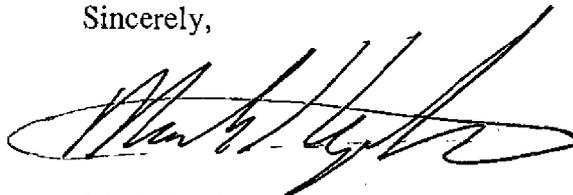
<sup>3</sup> *Id.* at Attachment.

<sup>4</sup> See 47 C.F.R. § 1.1164; *Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, 22 FCC Rcd 15712, 15729 ¶ 53 (2007).

<sup>5</sup> With respect to the financial documentation you submitted, we further note that although the Commission will waive its regulatory fees in those instances where a petitioner presents a compelling case of financial hardship, see *Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5346, *on recon*, 10 FCC Rcd 12759 (1995), you do not request a waiver and refund of the FY 2007 regulatory fee on this basis.

Payment of the \$105.50 penalty for late payment of the FY 2007 regulatory fee is now due. The penalty should be submitted, together with a copy of Bill number 0820000054 (copy enclosed), within 30 days of the date of this letter. If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Stephens', written in a cursive style with a large loop at the end.

Mark Stephens  
Chief Financial Officer

Enclosure

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

OCT 29 2009

OFFICE OF  
MANAGING DIRECTOR

Heberto Limas-Villers  
President and CEO of NRV  
KNRV 1150AM  
1582 S. Parker Road, Suite 204  
Denver, CO 80231

Re: Stations KNUV-AM and KNRV-AM  
FY 2009 Regulatory Fees  
Fee Control No. RROG-09-00011921

Dear Mr. Limas-Villers:

This letter responds to your request dated August 26, 2009 (*Request*), and supplemented on September 28, 2009,<sup>1</sup> on behalf of New Radio Venture (NRV), licensee of Stations KNUV-AM and KNRV-AM, for waiver of the fiscal year (FY) 2009 regulatory fees. Our records reflect that NRV has not paid the \$5,400.00 FY 2009 regulatory fee for each station, for a total of \$10,800.00. For the reasons stated herein, we grant your request.

You state that NRV "was forced into Chapter 7 Bankruptcy in September of 2008 and voluntarily changed to Chapter 11 in December of 2008."<sup>2</sup> You say that NRV was in bankruptcy on September 22, 2009.<sup>3</sup>

The Commission has determined that it will waive regulatory fees for licensees who are bankrupt or are in receivership at the time the fees are due.<sup>4</sup> Based on the evidence that you provide that the NRV was in bankruptcy on the September 22, 2009, due date for

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<sup>1</sup> See email from Heberto Limas-Villers to Joanne Wall (Sept. 28, 2009) (*September 2009 email*).

<sup>2</sup> *Request* at 1; see also *September 2009 email*, Attachment 1 (Notice of Conversion of Chapter 7 Case to Case under Chapter 11 (Bankr. D. Co. Dec. 1, 2008) (*Bankruptcy Court Notice*) and Attachment 2 (Order Following Notice of Conversion of Chapter 7 Case to Case under Chapter 11 (Bankr. D. Co. Dec. 2, 2008) (*Bankruptcy Court Order*)).

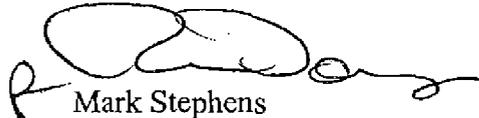
<sup>3</sup> See *September 2009 email*.

<sup>4</sup> See *Implementation of Section 9 of the Communications Act*, 10 FCC Rcd 12759, 12762 (1995).

filing FY 2009 regulatory fees,<sup>5</sup> including the *Bankruptcy Court Notice* and the *Bankruptcy Court Order*, we grant NRV a waiver of the FY 2009 regulatory fees.

If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark Stephens  
Chief Financial Officer

---

<sup>5</sup> See *Public Notice, FY 2009 Regulatory Fees Due No Later Than September 22, 2009, Eastern Time (ET)*, DA 09-1837, 2009 WL 2595896 (Aug. 21, 2009).



August 26, 2009

RROG-09-00011921

FCC  
Office of the Managing Director  
445 12<sup>th</sup> Street, S.W.  
Room 1-A625  
Washington, DC 20554

Dear Sir/Madame,

The purpose of this letter is to request a waiver for the payment of this year's FCC Regulatory Fee.

The company that I operate, New Radio Venture, the licensee of KNUV-AM (29019) and KNRV-AM (29019), was forced into Chapter 7 Bankruptcy in September of 2008 and voluntarily changed to Chapter 11 in December of 2008.

All this time, New Radio Venture (NRV) has been working in the elaboration of a restructuring plan that would allow the company to leave bankruptcy early next year. As we restructure the company's expenses, the company is finding the ability, once again, to generate cashflow. Such cashflow, however, is expected to be very low for the rest of the year, so low that it may not cover, in all likelihood, the Regulatory Fee that needs to be paid on September 22.

We expect that, as we continue restructuring the company, and with the prospect of a better economy for next year, in 2010 NRV will be in a position to pay such fee as it has always done it. Your assistance will allow the continued operation of a minority owned and run Radio Company.

Please feel free to call me at (917) 535-9083 in the event that you would need additional information and to inform me how to proceed with my request.

Sincerely,

A handwritten signature in black ink, appearing to read 'Heberto Villers', is written over a horizontal line. The signature is stylized and somewhat cursive.

Heberto Limas Villers  
President and CEO

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

AUG 31 2009

OFFICE OF  
MANAGING DIRECTOR

Martin L. Stern, Esq.  
K & L Gates LLP  
1735 New York Ave., N.W.  
Suite 500  
Washington, D.C. 20006-5209

Re: PC Landing Corp.  
FY 2008 Regulatory Fees  
Fee Control No. 0906259084739001

Dear Mr. Stern:

This letter is in response to your request dated July 19, 2009 (*Request*), supplemented on August 18, 2009 (*August 18 Email*),<sup>1</sup> submitted on behalf of PC Landing Corp. (PC Landing), for waiver of the penalty for late payment of the fiscal year (FY) 2008 regulatory fees. Our records reflect that you paid the \$451,728.90 FY 2008 regulatory fees, but not the \$112,932.22 late payment penalty. For the reasons set forth below, we grant your request.

You assert that PC Landing timely paid its FY 2008 regulatory fees on September 23, 2008, through the Commission's online Fee Filer system and received a confirmatory receipt from the Fee Filer system and an email payment confirmation from Pay.gov (the United States Department of Treasury's (Treasury Department's) on-line system for payments to government agencies).<sup>2</sup> You state that after noticing that the funds representing the FY 2008 regulatory fee had not been deducted from PC Landing's bank account (and after reporting that fact to Commission staff), the corporation "diligently followed-up with Commission staff over a six month period to confirm and ensure the

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<sup>1</sup> See Email from Marty Stern to Joanne Wall (August 18, 2009). The due date for paying the FY 2008 regulatory fee was September 25, 2008.

<sup>2</sup> *Request* at 1; see also *August 18 Email*, Attachment 1 (*FCC Fee Filer Report for Submitted Fees* (Sept. 23, 2008) (indicating that PC Landing filed \$451,728.90)), Attachment 2, (*FCC Online Payment Receipt* (Sept. 23, 2008) (indicating that PC Landing Corp. paid \$451,728.90 on September 23, 2008)), and Attachment 3 (Email from [paygovadmin@mail.doc.twai.gov](mailto:paygovadmin@mail.doc.twai.gov) to [johno@pcl.com](mailto:johno@pcl.com) (i.e., John Ofenloch, Jr., Senior Vice President, Pacific Crossing Limited) (Sept. 23, 2008) (stating that PC Landing Corp.'s "transaction has been successfully completed" and indicating a "Payment Amount" and "Payment Date" of \$451,728.90 and September 24, 2008, respectively) (*September 23 Pay.gov Email*)). Pay.gov is a web-based application allowing consumers to make online payments to government agencies by credit card or by debit from a checking or savings account.

Commission's receipt of the funds, notwithstanding assurances from Commission staff that the funds had in fact been received by the Commission."<sup>3</sup> You state that on June 5, 2009, after Commission staff had repeatedly reassured PC Landing that the FY 2008 regulatory fee had been timely received, Commission staff advised PC Landing in a voicemail message that the fees had not been paid. You state that on June 24, 2009, Commission staff requested that PC Landing wire the fees to the Commission, which the corporation did on June 25, 2009. You say that on July 8, 2009, PC Landing received a notice from the Commission requesting payment of a penalty for late payment of the FY 2008 regulatory fee.<sup>4</sup>

Our records reflect that PC Landing submitted an FCC Electronic Form 159 (Form 159) via Fee Filer on September 23, 2008, and submitted an ACH debit request for payment of the \$451,728.90 FY 2008 regulatory fee from its bank.<sup>5</sup> In completing the ACH debit section in Fee Filer, PC Landing provided inaccurate bank account information associated with the payment of the regulatory fee. As a result, PC Landing's bank could not locate the account number presented in order to process the ACH debit request.<sup>6</sup>

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<sup>3</sup> Request at 1; see also *August 18 Email*, Attachment 4 (Email from ARINQUIRIES to [johnno@pc1.com](mailto:johnno@pc1.com) (April 17, 2009) (in response to PC Landing's April 17, 2009, email stating that the funds representing the FY 2008 regulatory fees are still in the corporation's bank account and requesting assistance, Commission staff states that the inquiry will be forwarded to the Commission's Revenue and Receivables Operations Group; Email from ARINQUIRIES to John Ofenloch (Jan. 7, 2009) (in response to PC Landing's January 7, 2009 email, Commission staff assures PC Landing that the "accounting system reflects that [PC Landing's] . . . FY 2008 regulatory fee payment was received on September 24, 2008 in the amount of \$451,728.90"); see also *August 18 Email* (stating that on January 9, 2009, Commission staff confirms with PC Landing that the Commission's records reflect that the FY 2008 regulatory fee has been paid, but that staff will investigate the matter; after not hearing back from Commission staff in February and March of 2009, on April 17, 2009, PC Landing leaves a voicemail inquiring about the matter with Commission staff).

<sup>4</sup> See *August 18 Email*.

<sup>5</sup> Because PC Landing filed the FCC Electronic Form 159 on September 23, 2009, the form is deemed filed on September 24, 2009. Automated Clearing House (ACH) transactions require at least one business day for processing. ACH is a secure payment transfer system that connects all U.S. financial institutions. The ACH network acts as the central clearing facility for all Electronic Fund Transfer (EFT) transactions that occur nationwide, representing a crucial link in the national banking system. It is here that payments linger in something akin to a holding pattern while awaiting clearance for their final banking destination.

<sup>6</sup> See *Transaction Detail Results [from the U.S. Department of Treasury's pay.gov]*, FCC Application: Remittance Advice Form 159: PC Landing Corp. ("Return Reason Code: . . . No Account/Unable to Locate"; "ACH Type: Debit;" effective date: Sept. 26, 2008)) (*Pay.gov Transaction Report*).

Although the Treasury Department provided Commission staff with a copy of the *Pay.gov Transaction Report* on September 29, 2008 (thereby alerting staff to the fact that PC Landing had not paid the FY 2008 regulatory fee), Commission staff failed to record the nonpayment in the Commission's Revenue Accounting Management Information System (RAMIS)<sup>7</sup> until January 16, 2009. As a result, until that date, RAMIS continued to reflect (inaccurately) that PC Landing had paid the FY 2008 regulatory fee.<sup>8</sup> Accordingly, until that time, anyone consulting RAMIS to determine whether PC Landing had paid its FY 2008 regulatory fee, including Commission staff and representatives of PC Landing, would be under the misapprehension that the corporation had done so.

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.<sup>9</sup> 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.<sup>10</sup> PC Landing paid the regulatory fee for FY 2008 on June 25, 2009, after the September 25, 2008, deadline for filing regulatory fees, and therefore failed to meet this obligation. In this case, we find that your timely efforts to ascertain the status of your payment and your receipt of payment confirmations from the payment systems, combined with your repeated subsequent good faith efforts to advise the Commission that PC Landing's bank account did not reflect payment of the fee, present mitigating circumstances sufficient to warrant waiver of the late payment penalty. We note that the waiver granted herein is based solely on the unique circumstances of this particular case and is not intended to serve as precedent for any other request to waive late payment penalties.

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<sup>7</sup> RAMIS is the Commission's automated system that manages all aspects of the agency's revenue and receipts functions.

<sup>8</sup> Consistent with Commission policy, RAMIS (as well as the *FCC Fee Filer Report for Submitted Fees* (see *supra* note 2)) reflected PC Landing's regulatory fee as paid when the corporation submitted its payment authorization on September 24, 2008, even though the payment had not cleared the payor's bank.

<sup>9</sup> 47 U.S.C. §159(c)(1).

<sup>10</sup> See 47 C.F.R. §1.1164, and see *Assessment and Collection of Regulatory Fees for Fiscal Year 2008, Report and Order and Further Notice of Proposed Rulemaking*, FCC 08-182, 2008 WL 3318967, paras. 63 and 64 (released: Aug. 8, 2008); *Public Notice, Payment Methods and Procedures for Fiscal Year 2008 Regulatory Fees*, 23 FCC Rcd 12849, 12849, 12851 (Aug. 26, 2008) (reminding of filing deadline and that "[i]t is the responsibility of the licensee to pay for all regulatory fee obligations by the due date, regardless of whether or not a bill is received"); *Public Notice, Fee Filer Now Available for 2008 Regulatory Fees*, 23 FCC Rcd 12857, 12857 (Aug. 26, 2008) (reminding of filing deadline and late payment penalty).

Martin L. Stern, Esq.

4.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Stephens', with a long horizontal flourish extending to the right.

Mark Stephens  
Chief Financial Officer

11856

**Regina Dorsey**

**From:** Roland Helvajian  
**Sent:** Wednesday, August 12, 2009 1:06 PM  
**To:** Regina Dorsey

090625908473900

**Subject:** FW: PC Landing Corp., FRN No. 0007507825 -- Request for Waiver, Bill No. 0920000016/FY 2008 Reg Fee Late Payment Penalty

0876

Hi Regina:

This is the e-mail from Marty Stern.

---

**From:** Stern, Marty [mailto:marty.stern@klgates.com]  
**Sent:** Sunday, July 19, 2009 9:34 PM  
**To:** ARINQUIRIES  
**Cc:** Mark Stephens; Roland Helvajian; Todd Rahimi; John Ofenloch  
**Subject:** PC Landing Corp., FRN No. 0007507825 -- Request for Waiver, Bill No. 0920000016/FY 2008 Reg Fee Late Payment Penalty

PC Landing Corp., by its undersigned counsel, respectfully requests waiver of the above-referenced penalty in the amount of \$ 112,932.22, invoiced on July 1, 2009, in connection with its payment of FY 2008 regulatory fees.

PC Landing Corp. timely paid its FY 2008 regulatory fees on September 23, 2008 through the Commission's online Fee Filer system, and received a confirmatory receipt and an email payment confirmation from pay.gov confirming its timely payment. After a routine bank reconciliation indicated that the ACH associated with the payment had not been debited from its account, PC Landing Corp. diligently followed-up with Commission staff over a six month period in an effort to confirm and ensure the Commission's receipt of the funds, notwithstanding assurances from Commission staff that the funds had in fact been received by the Commission. In June 2009, Commission staff confirmed that the fee, in fact, had not been received by the FCC, and asked PC Landing Corp. to wire transfer the amount of the fee, which PC Landing Corp. promptly did on June 25, 2009. PC Landing Corp. then received the referenced July 1 invoice for a late payment penalty, apparently because the June 25, 2009 wire transfer was after the September 2008 due date, despite the fact that the regulatory fee had been timely paid in the first instance through Fee Filer on September 23, 2008.

There is no question that PC Landing Corp. timely paid its FY 2008 regulatory fee through the Fee Filer system, and acted diligently and forthrightly with the Commission when it became apparent to the company, that for reasons that still remain unknown, the amount of the payment had not been debited from its account. Under the circumstances here, there is no basis to impose a late payment penalty on PC Landing Corp. and it would be manifestly unjust to do so. Accordingly, PC Landing Corp. respectfully requests that the above-referenced late payment penalty be waived and immediately reversed, and that this matter be closed.

Respectfully submitted,  
/s/ Martin L. Stern  
Martin L. Stern  
K&L Gates LLP  
1601 K Street, NW  
Washington, DC 20006  
Direct Dial: 202-661-3700  
Mobile: 202-236-0865  
Fax: 202-778-9100  
marty.stern@klgates.com  
[www.klgates.com](http://www.klgates.com)

*Counsel for PC Landing Corp.*

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