

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )  
Amendment of the Schedule )  
of Application Fees Set Forth )  
In Sections 1.1102 through 1.1109 )  
of the Commission's Rules )

GEN Docket No. 86-285

FILED/ACCEPTED

JUL 20 2010

Federal Communications Commission  
Office of the Secretary

**BRIGHT HOUSE NETWORKS, LLC  
PETITION FOR RECONSIDERATION  
OF FEE DECISION OF THE MANAGING DIRECTOR**

Pursuant to 47 C.F.R. § 1.106, Bright House Networks, LLC ("BHN") hereby petitions for reconsideration of the decision released June 21, 2010<sup>1</sup>, by the Managing Director denying BHN's request for a waiver of FY 2009 late fee payment penalty.

BHN recognizes that the FCC does not routinely waive the penalty, which is statutorily established at 25% of the amount due<sup>2</sup>. But it can and does waive it, as well as the fees themselves, based on circumstances the FCC found leads to "inequitable" results<sup>3</sup> under its waiver authority. Failure to waive or substantially reduce the size of this late fee penalty is surely inequitable. BHN seeks reconsideration of the Managing Director's order and seeks waiver of the fine, given the facts and circumstances here.

BHN was fined \$64,184.50 in late fees for being 72 hours late in regards to its 2009 ITSP (e.g., telecom) regulatory fee payment. As explained in the request for waiver filed October 27, 2009, the company clerk who pays these fees only handles

<sup>1</sup> Public Notice, "Fee Decisions of the Managing Director Available to the Public", June 21, 2010, DA-10-1098.

<sup>2</sup> 47 U.S.C. § 159(c)(1).

<sup>3</sup> Implementation of Section 9 of the Communications Act, MD Docket No. 94-10, Memorandum Opinion and Order, 10 FCC Rcd 12759, 12763 (1995) ("1995 Reconsideration Order").

ITSP regulatory fees, not the company's longtime, ongoing cable regulatory fee payments. She missed the deadline because the agency switched from a paper to a paperless model, and she was unaware that the FCC would not be sending a paper bill, which had up until 2009 been the trigger for remitting payment. The due date also changed from Sept. 25 (in 2008) to Sept. 22 (in 2009). The fee was paid on September 25, immediately upon the clerk's discovery that no paper notice was forthcoming from the agency and that the fee was due on the 22<sup>nd</sup>. The result was a 72-hour delay in payment.

More significantly to this Petition, in this instance, the FCC itself acknowledged culpability in the confusion over changing from paper to paperless. Referring to the switchover, the FCC's 2010 Fee Notice of Proposed Rulemaking, which the Commission unanimously approved on April 13, 2010, stated: "Although the overall response to this procedural change was positive, it was apparent that a greater effort should have been made to inform licensees that they would not be receiving a hardcopy regulatory fee bill in the mail."<sup>4</sup>

The form response from the Managing Director's Office, sent on April 22, 2010, denying a reduction of the penalty without explanation, did not address any of the particulars mentioned in BHN's October 27, 2009 request<sup>5</sup>. Nor did it account for the FCC's April 13, 2010 pronouncement regarding its own shortcomings in the paper-to-paperless switchover. It summarily concluded that "no extraordinary circumstances" warranted waiver.

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<sup>4</sup> Assessment and Collection of Regulatory Fees for Fiscal Year 2010, MD Docket No. 10-87, Notice of Proposed Rulemaking (FCC 10-51), ¶ 12 (April. 13, 2010) .

<sup>5</sup> Letter to Thomas M. Wilson, Esq. from Mark Stephens, Chief Financial Officer, FCC, Re: Bright House Networks, LLC Fiscal Year 2009 Regulatory Fee Waiver Request, Fee Control No. 0909289084603008.

In informal discussions about this decision before it was published on June 21, 2010, Office of General Counsel staff members who handle these matters for the Managing Director insisted that the FCC's penalty waiver rule policy is strictly limited to situations where the fee payer cannot afford to pay the penalty (or the regulatory fee) or where the payment was late due to the failure of delivery by the U.S. Postal Service or a private delivery carrier. With all due respect, the insistence that the only criteria for waiver of penalties and fees are financial hardship or failure of delivery by FedEx or USPS is simply not supported by the FCC's published decisions, at least where fees have been concerned. And as to fees and penalties, the FCC has never established the waiver policy that has been enforced against BHN here.

Contrary to the Office of General Counsel's internal policy, at the Commission level, there have been waivers of fees where "inequitable" results would occur. Financial hardship is certainly mentioned as a basis for waiver in the 1994 Report and Order<sup>6</sup> and the 1995 Reconsideration Order<sup>7</sup> establishing the rules for assessment and collection of regulatory fees. But it is not the only basis for waiver.

As early as 1995, when the FCC was developing its rules regarding Congress's first establishment of regulatory fees, the Commission decided to adjust the fee schedule established by Congress, where "certain anomalies" existed<sup>8</sup> or where "the regulatory fees can be particularly inequitable."<sup>9</sup> In the Reconsideration Order on the implementation of the FY 1994 Fees, the FCC agreed to grant a waiver from Congress's

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<sup>6</sup> Implementation of Section 9 of the Communications Act, MD Docket No. 94-10, Memorandum Opinion and Order, 9 FCC Rcd 5333 (1994).

<sup>7</sup> *Supra* note 2.

<sup>8</sup> 10 FCC Rcd 12759, 12763 ¶ 18.

<sup>9</sup> *Id.*, ¶ 20.

enacted Schedule of Fees and reduce fees for reasons having nothing to do with financial hardship but because the statute would work an unacceptable unfairness.

In that instance, the FCC concluded that Congress had failed to distinguish between the fees due from full service and satellite television stations. The FCC on its motion, and despite the explicit fee schedule adopted by Congress, granted partial waivers and reduced the fees for licensees operating satellite stations to avoid an “inequitable” result. In that same order, it affirmed a reduction in regulatory fees for large market stations that were deemed larger market stations (and thus owed a higher fee) because of the viewing behavior of residents in their market<sup>10</sup>.

Reductions in fees to avoid “particularly inequitable” circumstances have been, therefore, part of the administration of Congress’s fee schedule since its inception. The statutory language of the regulatory fee schedule is no more forgiving as to its terms than the penalty provision of Section 159(c)(1), yet the FCC has used its general authority to grant waivers for inequitable situations. This waiver authority should be applied here.

BHN recognizes that parties will often try to provide excuses for late payments, and the FCC cannot<sup>11</sup> and should not make a habit of excusing them. Here, however,

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<sup>10</sup> *Id.*, ¶ 22. Indeed, the Managing Director at the time, under delegated authority had previously adjusted the regulatory fee for this reason, again unrelated to financial hardship, an approach approved of by the full Commission when reviewing the issue in the *1995 Reconsideration Order*.

<sup>11</sup> “Late payment penalty waivers are seldom granted.” Volcano Communications Group, Request for Waiver of Penalty, DA-10-1098, June 21, 2010. BHN takes note that of this opinion, released in the same group of decisions that included the BHN denial. Here, the Managing Director granted Volcano’s request to waive the late fee, causing the fee to be paid after the due date. In this case, the licensee’s payment was delivered to the wrong address, namely the Mellon Bank, the bank that formerly handled payments on behalf of the FCC, instead of St. Louis, where the payment was due. The Licensee had a USPS “Track and Confirm record” indicating that an item was sent from its office to Pittsburgh, Penn. The Managing Director’s office accepted the licensee’s representation that “[t]he reason that the original payments arrived in Pittsburgh rather than St. Louis, remains unclear.” It is certainly possible that the error was caused by the licensee misaddressing the envelope. Were this the basis (and BHN recognizes that the

the FCC itself recognized in April a "greater effort should have been made" in managing the fee changeover. Where the changeover caused the fee payer to be late, and the FCC recognizes its own role in the shortcoming, the FCC should not hold this fee payer entirely at fault.

The amount of the penalty here, given these circumstances, is excessive and harsh and we respectfully request a full or substantial waiver of the penalty.

Punishment should be proportional to the offense.

Respectfully submitted,



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July 20, 2010

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Managing Director did not make that finding but accepted the reason as "unclear", it would constitute a ground that does not fall into the previously described narrow criteria used by the Managing Director in reviewing waivers. Thus, even in this case, contemporaneous with the BHN decision, the Managing Director appeared to recognize circumstances that were not definitively based on financial hardship or evidence that the delivery service itself is to blame for the late payment.

## CERTIFICATE OF SERVICE

I, Grace Kavadoy, a paralegal at the law firm of Hogan Lovells US LLP, hereby certify that on this 20th day of July, 2010, I have hand-delivered a copy of the foregoing Petition for Reconsideration addressed as follows:

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