

News-Press & Gazette Company

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Bruce A. Kneib
Corporate Controller
(816)271-8651

August 30, 2011

FCC Help Desk

Ref: FRN: 0014920581 and FRN: 0015304884 – Status RED

On August 20, 2010 [REDACTED] mailed check number 14371 for \$28,320.00 to the FCC for fees on the above referenced FRN numbers. The check was mailed to the Federal Communication Commission Regulatory Fees in Pittsburg, PA 15251-5365. We later discovered that the Pittsburg office no longer processes payments but thought that our payment had been forwarded on to the St Louis office for processing. After several attempts to confirm that the payment had been received, with no success, and the fact that our check had not cleared our bank, we decided to stop payment on that check and issue a new check.

So on December 14, 2010 we mailed another check, check # 15054 for \$28,320.00, to the St Louis office, we did include an explanation of why this check was sent in after the renewal deadline. We do have confirmation that the check was received on December 15 and it cleared our bank on December 17.

It is my understanding that the status of RED on our above referenced FRN numbers is due to "Late fees" and I am requesting that the late fees be waived and the status of RED removed and our account returned to a status of good standing. So that we can continue to do business with the FCC.

We are processing and mailing this year's renewal fees in the amount of \$28,855.00 tomorrow August 31. So I would like to get this issue resolved this week.

I am enclosing copies of both checks for your reference. Please call me with any questions or if you need additional information, 816-271-8651, brucek@npgco.com.

Sincerely,



Bruce Kneib
Corporate Controller
Newspaper Division and Broadcast Division

Adama

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAR 29 2012

OFFICE OF
MANAGING DIRECTOR

Matthew H. McCormick, Esq.
Fletcher, Heald & Hildreth
1300 North 17th Street, 11th Floor
Arlington, VA 22209

Re: Waiver Request (Dark Station)
Licensee/Applicant: Radio Stations WPAY/WPFB,
Inc.
Station: WPAY (AM)
Fee: FY 2011 Regulatory Fee
Date Request Filed: Aug. 22, 2011
Date Regulatory Fee Paid: (Not paid)
Fee Control No.: RROG-11-00013691
Regulatory Fee Amount: \$ 800.00
25% Penalty: \$ 200.00
Collection Fee: \$ 50.00
Interest: \$ 5.00
Penalties: \$ 30.00

Dear Mr. McCormick:

This letter responds to Licensee's *Request*¹ for a waiver of the above-referenced fee. The *Request* does not include a petition to defer payment accompanied by appropriate supporting documentation, and our records reflect that Licensee did not pay the fee. Accordingly, as required by the law,² we dismiss the *Request* and assess a penalty equal to 25% of the amount of the regulatory fee unpaid.³ Furthermore, because the unpaid fee is a delinquent debt, we are required to assess the administrative costs of collection, accrued interest, and accrued penalties.⁴ Finally, under section 1.1910 of our rules,⁵ until the debt is paid or other satisfactory arrangements are made for payment, we are required to withhold action on any application filed by Licensee.

¹ Letter from Matthew H. McCormick, Esq., Fletcher, Heald & Hildreth, 1300 North 17th Street, 11th Floor, Arlington, VA 22209 to Marlene H. Dortch, Secretary, FCC, 445 12th St. S.W, Washington, DC 20554 (received Aug. 22, 2011) (*Request*).

² 47 C.F.R. § 1.1166(c) provides: "Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship."

³ 47 U.S.C. § 159(c)(1); 47 C.F.R. § 1.1164(c).

⁴ 31 U.S.C. § 3717(e); 31 C.F.R. § 901.9; 47 C.F.R. § 1.1940.

⁵ 47 C.F.R. § 1.1910.

We have dismissed the *Request*; however, had Licensee petitioned to defer payment (or paid the fee and requested a refund), we would nonetheless deny the *Request*. Licensee's mere assertion that the station is silent does not establish financial hardship.

In establishing a regulatory fee program, the Commission recognized that in certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee. Such fees may be waived, reduced or deferred, but only upon a case-by-case showing of good cause and a finding that the public interest will be served thereby.⁶ The Commission has narrowly interpreted its waiver authority to require a showing of compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.⁷ Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee's ability to serve the public.⁸ "Mere allegations or documentation of financial loss, standing alone," do not suffice and "it [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public."⁹ In reviewing a showing of financial hardship, the Commission relies on a range of financial documents including a licensee's balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. It is on this information that the Commission considers on a case-by-case basis whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.¹⁰ Thus, for example, even if a station loses money, any funds paid to principals and deductions for depreciation or amortization are considered funds available to pay the fees. And pertinent to stations that file "[p]etitions to go dark," as is set forth at 47 C.F.R. § 73.1740(a)(4), the Commission opined that such petitions "are generally based on financial hardship. Under these circumstances, imposition of the regulatory fees could be an impediment to the restoration of broadcast service, and it is unnecessary to require a licensee to make a further showing of financial hardship."¹¹ Licensee did not establish that those circumstances are present and applicable.

Licensee refers to the Commission's above-referenced discussion concerning a dark station, and it asserts only that "station WPAY went silent on June 3, 2011. It remains silent as of this date [Aug. 22, 2011] and will not return to the air on or before September 14, 2011."¹² Licensee provided a copy of its Notification of Suspension of Operations/Request for Silent STA,¹³ but no additional information to support its *Request*, e.g., verified financial documentation.

⁶ 47 U.S.C. §159(d); 47 C.F.R. § 1.1166. *See also* Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for Fiscal Year 1994, *Report and Order*, 9 FCC Rcd 5333, 5344 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995).

⁷ 9 FCC Rcd at 5344 ¶ 29.

⁸ 10 FCC Rcd at 12761-62 ¶ 13.

⁹ *Id.*

¹⁰ *Id.*

¹¹ 10 FCC Rcd at 12762 ¶ 15.

¹² *Request* at 1.

¹³ Notification of Suspension of Operations/Request for Silent STA, FCC File No. BLSTA-201100607ABC (*Request for Silent STA*).

A waiver of the Commission's rules is appropriate only if special circumstances warrant deviation from the general rule, and such deviation will serve the public interest.¹⁴ In demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner.¹⁵ In this case, however, Licensee did not carry its burden as set forth at 47 C.F.R. § 1.1166 to demonstrate that on "a case-by-case" it has shown "good cause" and that the "waiver [of the required fee] would promote the public interest."¹⁶ Instead, Licensee asserts only that its station was silent. It did not present any evidence to establish whether or not its application to go silent was supported by a fully documented financial position that shows at the time the FY 2011 regulatory fee was due, it lacked funds sufficient to pay the regulatory fee and to maintain its service to the public.¹⁷ It is not enough merely to assert dark status, especially because a licensee may request to go dark for reasons unrelated to financial hardship.¹⁸ Inherent in the Commission's statement that "it is unnecessary to require a licensee to make a *further showing of financial hardship* (emphasis added),"¹⁹ is the understanding that the applicant's petition to go dark was (a) filed because of financial hardship and (b) supported by full documentation of its financial position that met the Commission's relevant standards. Plainly, in order for it to be unnecessary to require a *further* showing, the applicant must have made a valid *prior* showing of the requisite financial information. Moreover, because each waiver is considered on a case-by-case basis, the financial information must be relevant to the current request for a waiver of the fee and it must be sufficient to demonstrate compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.²⁰

In asserting only that the "station is silent,"²¹ Licensee failed to clarify its position before the Commission.²² Rather than the unsupported conclusion offered, Licensee should have provided evidence whether its application to go dark was based on financial hardship that was "fully document[ed]"²³ and accepted by the Commission as such evidence, and if not (apparently as is the case here), licensee should have provided sufficient documentation to meet the standard set forth at 47 C.F.R. § 1.1166.²⁴ In this case, Licensee's justification for its request to go dark was for "financing," *i.e.*, "AT THIS POINT, CONTINUED OPERATION OF WPAY IS NOT ECONOMICALLY VIABLE. THE LICENSEE IS ACTIVELY SEEKING A BUYER FOR

¹⁴ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); 47 C.F.R. § 1.3.

¹⁵ *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

¹⁶ 47 C.F.R. § 1.1166.

¹⁷ 10 FCC Rcd at 12761-62 ¶ 13.

¹⁸ The FCC Form to request silent status includes in the section, "Reason for going silent" five categories, *i.e.*, Technical, Financing, Staffing, Program Source, and Other. The applicant also may provide the reason for the request.

¹⁹ 10 FCC Rcd at 12762 ¶ 15.

²⁰ 9 FCC Rcd at 5344 ¶ 29.

²¹ *Request* at 1.

²² *Bartholdi Cable Co. Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997).

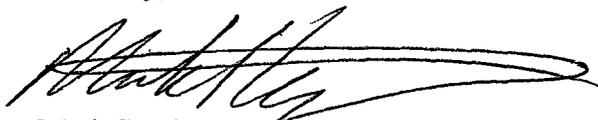
²³ 10 FCC Rcd at 12762 ¶ 13 ("It will be incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fees and to maintain its service to the public.").

²⁴ 47 C.F.R. § 1.1166 ("The fee . . . may be waived . . . in specific instances, on a case-by-case basis, where good cause is shown and where waiver . . . of the fee would promote the public interest."). *See also* 10 FCC Rcd at 12761-62 ¶ 13.

THE STATION.”²⁵ That is not evidence of financial hardship. We will not assume the existence or sufficiency of information that is not part of the *Request*.²⁶ Accordingly, in addition to the grounds stated above for dismissal, we deny Licensee’s *Request* for a waiver of the required regulatory fee.

Payment of Licensee’s FY 2011 regulatory fee plus the penalty and all accrued charges is now due, which, as of the date of this letter, is \$1,085.00. That amount must be received, together with a Form 159 (copy enclosed), within 30 days of the date of this letter. Thereafter, additional charges will accrue. 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

Enclosure

²⁵ *Request for Silent STA*, Exhibit 1, Description. *See also* Section I, Item 7 (Licensee asserted it had gone silent on 6/3/2011.).

²⁶ We note that on December 14, 2010, the Audio Division, FCC extended an STA granted on March 24, 2009, to operate at reduced power. The extension summarized Licensee’s asserted reasons as being “the station’s ground system has been stolen several times, and that efforts to replace the ground system had been hampered by the presence of snakes at the site and the need for security at the remote site to prevent further theft.”

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAY 04 2012

Ad

OFFICE OF
MANAGING DIRECTOR

Matthew M. McCormick, Esq.
Davina S. Sashkin
Fletcher, Heald & Hildreth
1300 North 17th Street, 11th Floor
Arlington, VA 22209

Re: Waiver Request (Financial Hardship; 47 C.F.R.
§ 1.1166)
Licensee: Reier Broadcasting Company, Inc.
Stations: KBOZ, KOBZ-FM, KOBB, KOBB-FM,
KOZB, K240CO, K265AS, K288ES, and
Auxiliaries KB97406, KQB693, WGZ540,
WHN278, WMG482
Fee: FY 2011 Regulatory Fees
Date Request Filed: Sep. 14, 2011
Fee Control No.: RROG-11-00013925
Regulatory Fees (FY 2011): \$8,935.00

Dear Counsel:

This responds to Licensee's *Request*,¹ for waiver and deferment of the required Fiscal Year (FY) 2011 regulatory fees due for Stations KBOZ, KOBZ-FM, KOBB, KOBB-FM, KOZB, K240CO, K265AS, K288ES, and Auxiliaries KB97406, KQB693, WGZ540, WHN278, and WMG482. Our records reflect that FY 2011 fees have not been paid. For the reasons stated herein, we dismiss and, in the alternative, deny the *Request*.² Accordingly, the \$8,935.00 FY 2011 regulatory fees are due now. To avoid accrual of additional charges,³ Licensee's payment must be received within 30 days of the date of this letter.

In establishing a regulatory fee program, the Commission recognized that in certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee.

¹ Letter from Mathew M. McCormick, Esq., and Davina S. Sashkin, Esq., Fletcher, Heald & Hildreth, P.L.C., 1300 North 17th Street, Arlington, VA 22209 to FCC, Office of the Managing Director, 445 12th St., S.W., Washington, D.C. 20554 (received Sept. 14, 2011) (*Request*).

² Assessment and Collection of Regulatory Fee for Fiscal Year 2011, *Report and Order*, 26 FCC Rcd 10812, 10819, ¶ 17 (2011) ("A regulatee's mere allegation of financial hardship thus does not automatically entitle it to a deferral of its obligation to pay regulatory fees; only a properly supported claim of financial hardship will entitle the regulatee to a deferral. Accordingly, if a request for deferral is not supported by documentation of financial hardship, it will be denied, and an associated petition for waiver or reduction will be dismissed.")

³ 47 U.S.C. § 159(c)(1); 31 U.S.C. § 3717; 47 C.F.R. §§ 1.1164; 1.1940.

Such fees may be waived, reduced or deferred, but only upon a showing of good cause and a finding that the public interest will be served thereby.⁴ The Commission has narrowly interpreted its waiver authority to require a showing of compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.⁵ Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee's ability to serve the public.⁶ "Mere allegations or documentation of financial loss, standing alone," do not suffice and "it [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public."⁷ In reviewing a showing of financial hardship, the Commission relies on a range of financial documents including a licensee's balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. It is on this information that the Commission considers on a case-by-case basis whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.⁸ Thus, for example, even if a station loses money, any funds paid to principals and deductions for depreciation or amortization are considered funds available to pay the fees.

Licensee has the burden of demonstrating that a waiver or deferral would override the public interest, as determined by Congress, that the government should be reimbursed for the Commission's regulatory action.⁹ Hence, to carry its burden, Licensee must present compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.¹⁰ Licensee did not meet its obligation.

A waiver of the Commission's rules is appropriate only if special circumstances warrant deviation from the general rule, and such deviation will serve the public interest.¹¹ In demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner.¹² In this case, Licensee did not carry its burden as set forth in our rules at section 1.1166 to demonstrate that on "a case-by-case" it has shown "good cause" and that the "waiver [of the required fees] would promote the public interest."¹³ Instead, Licensee offered only an unsupported assertion that it "experienced a negative cash flow in 2010," and an unfulfilled proffer¹⁴ that the assertion "will [be] confirmed by forthcoming documentation."¹⁵ In its

⁴ 47 U.S.C. §159(d); 47 C.F.R. § 1.1166. *See also* Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for Fiscal Year 1994, *Report and Order*, 9 FCC Rcd 5333, 5344 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995).

⁵ 9 FCC Rcd at 5344 ¶ 29.

⁶ 10 FCC Rcd at 12761-62 ¶ 13.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *See Bartholdi Cable Co., Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997) ("petitioner . . . has the 'burden of clarifying its position' before the agency."). *See also* 47 C.F.R. § 1.16 (An applicant is responsible for the continuing accuracy and completeness of information furnished.).

¹¹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); 47 C.F.R. § 1.3.

¹² *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

¹³ 47 C.F.R. § 1.1166.

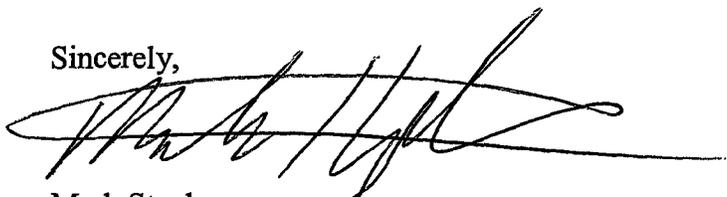
¹⁴ We have no record of Licensee offering to supplement its filing with any document.

submission, Licensee left us with no alternative to follow section 1.1166(c)¹⁶ of our rules, which provides, “[w]aiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.” Licensee failed to present any evidence of financial hardship supported by a fully documented financial position that showed at the time the FY 2011 regulatory fees were due, it lacked funds sufficient to pay the regulatory fees and to maintain its service to the public.¹⁷ Finally, we note that the financial information must be relevant to the current request for a waiver of the fees and it must be sufficient to demonstrate compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission’s regulatory costs.¹⁸ Here, the proffered documentation of the prior year’s cash flow, even if it had been received, does not meet that standard.

Accordingly, because Licensee did not present any evidence of financial hardship,¹⁹ we deny the *Request* for a waiver and deferral from payment of the required regulatory fees.

The \$8,935.00 FY 2011 regulatory fees must be received, together with a Form 159 (copy enclosed), within 30 days of the date of this letter. If Licensee’s full payment of that amount is not received by that date, any unpaid portion of the debt will be delinquent, and on that amount, we will assess the statutory penalty of 25% of the unpaid fee,²⁰ and assess interest and applicable additional penalties and charges required by 31 U.S.C. § 3717(e) that will accrue from the date of this letter. Furthermore, under the law,²¹ the Commission will initiate collection proceedings. 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

Enclosure

¹⁵ *Request* at 2.

¹⁶ 47 C.F.R. § 1.1166(c); *Report and Order*, 26 FCC Rcd at 10819, ¶ 17.

¹⁷ 10 FCC Rcd at 12761-62 ¶ 13.

¹⁸ 9 FCC Rcd at 5344 ¶ 29.

¹⁹ *Id.*

²⁰ 47 U.S.C. § 159(c)(1). *See* 9 FCC Rcd at 5346, ¶ 35 (“the petitioner will have 30 days to [pay the fee] in order to avoid the assessment of penalty charges and the invocation of any other available remedy. The filing of a petition for reconsideration will not toll this 30-day period.”).

²¹ *See* 47 C.F.R. § 1.1901, *et seq.*



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September 14, 2011

* NOT ADMITTED IN VIRGINIA

DAVINA S. SASHKIN
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HAND DELIVERY

Federal Communications Commission
Office of the Managing Director
445 12th Street, S.W., Room 1-A625
Washington, D.C. 20554

**Re: Request for Deferment and Waiver of FY 2011 Regulatory Fees
REIER BROADCASTING COMPANY, INC.
FRN: 0005-0731-84**

Dear Sir or Madam:

Reier Broadcasting Company, Inc. ("RBC") hereby respectfully requests waiver and/or deferment of its obligation to pay regulatory fees due September 14, 2011, for the following broadcast and associated auxiliary stations for reasons of financial hardship. The stations at issue are:

Full Power Stations:

KBOZ , Facility Id 16775, Bozeman, MT
KOBBS , Facility Id 55677, Bozeman, MT
KBOZ-FM , Facility Id 55676, Bozeman, MT
KOBBS-FM , Facility Id 16776, Bozeman, MT
KOZB , Facility Id 6777, Livingston, MT
K240CO, Facility Id 76695, Livingston, MT
K265AS , Facility Id 11248, Livingston, MT
K288ES, Facility Id 76696, Big Sky, MT

Auxiliaries:

KB97406, Facility Id 16775, Bozeman, MT
KQB693, Facility Id 16775, Bozeman, MT
WGZ540, Facility Id 16777, Livingston, MT
WHN278, Facility Id 16776, Bozeman, MT
WMG482 , Facility Id 55676, Bozeman, MT

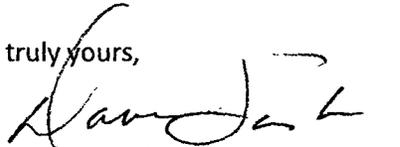
September 14, 2011

Page 2

In *Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5345-46 (1994), *recon. granted* 10 FCC Rcd 12759 (1995) ("Regulatory Fee Order"), the Commission determined that, in certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee. In such cases, the Commission considers a licensee's cash flow, as opposed to the entity's profits, and considers whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public. Within the guidance of this policy, the Commission considers waivers on a fact-specific, case-by-case basis. See *id.* at 5344.

RBC experienced a negative cash flow in 2010, a fact which will be confirmed by forthcoming financial documentation and a declaration from RBC's president. In light of this financial hardship, RBC therefore respectfully requests relief from payment of the FY 2010 regulatory fees due for the above-referenced stations. Should you have any questions, please do not hesitate to contact the undersigned.

Very truly yours,



Matthew M. McCormick

Davina S. Sashkin

Counsel for Reier Broadcasting Company, Inc.

cc: Mr. Mark Stephens
Mr. Bill Reier

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAY 09 2012

OFFICE OF
MANAGING DIRECTOR

Scott Orviss
Accounting and Human Resources Manager
Splice Communication, Inc.
4040 Campbell Ave., Suite 120
Menlo Park, CA 94025

Re: Waiver Request (Late Payment Penalties; 47
C.F.R. §§ 1.1164, 1.1167, 1.1910)
Licensee/Applicant: Splice Communications, Inc.
Station: N/A
Fees: FY 2010 and FY 2011 Regulatory Fees and
Late Fees
Date Request Filed: Mar. 21, 2012
Date Regulatory Fees Paid: Not Paid
Date Regulatory Late Penalties Paid: Not Paid
Fee Control No.: RROG-11-00014246

Regulatory Fee (FY 2011):	\$16,669.00
\$16,669 x 25% (due 9-17-2011):	\$4,167.25
Interest (1%) from 9-17-2011:	\$122.93
Penalty (6%) from 9-17-2011:	\$737.60
Charge for collection:	\$50.00
Regulatory Fee (FY 2010):	\$7,835.00
\$7,835 x 25% (due 9-1-2010):	\$1,958.75
Interest (1%) from 9-1-2010:	\$163.56
Penalty (6%) from 9-1-2010:	\$981.33
Charge for collection:	\$50.00
Current total due	\$32,735.42

Dear Mr. Orviss:

This responds to Licensee's *Request*¹ for waiver of the statutory penalties² for late payment of Fiscal Year (FY) 2010 and FY 2011 regulatory fees (*penalties*) included within its request for an installment payment plan.³ For the reasons stated herein, we dismiss and, in the alternative, deny that portion of the *Request* to waive the *penalties*.

¹ Email from Scott Orviss (sorviss@splicetelecom.com) to ARINQUIRIES (ARINQUIRIES@fcc.gov) (dated Mar. 21, 2012)(*Request*).

² 47 U.S.C. § 159(c)(1).

³ Our records show that Licensee is delinquent \$10,988.64 (including the accrued statutory penalty, interest and penalties, and charges for collection) for nonpayment of FY 2010 Regulatory Fees and the statutory penalty, and \$21,746.78 (including the accrued statutory penalty, interest and penalties, and charges for collection). The total of these amounts is \$32,735.42.

Under our rules,⁴ because Licensee is delinquent in paying the FY 2010 and FY 2011 regulatory fees and the *penalties*, we must dismiss and, in the alternative, if full payment of the *penalties* and charges (including accrued interest, penalties, and charges of collection)⁵ had been received, we nonetheless are required to deny the relevant portion of the *Request* seeking a waiver of the statutory penalty. Separately, we prepared for Licensee an installment payment plan.

Under 47 U.S.C. § 159 and the Commission's implementing rules, we are required to "assess and collect regulatory fees" to recover the costs of the Commission's regulatory activities,⁶ and when the required payment is received late or it is incomplete, and "not excused by bank error,"⁷ then "to assess a penalty equal to "25 percent of the amount of the fee which was not paid in a timely manner."⁸ Thereafter, from the date of delinquency, as required by the law,⁹ we assess interest, penalties, and administrative charges for collection.

For FY 2011, the deadline for paying regulatory fees was September 16, 2011,¹⁰ and for FY 2010, payment was due no later than August 31, 2010.¹¹ By failing to pay the FY 2010 and

⁴ 47 C.F.R. §§ 1.1167(b) ("The filing of a petition for reconsideration or an application for review of a fee determination will not relieve licensees from the requirement that full and proper payment of the underlying fee payment be submitted"); 1.1164(e) ("Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee The application may be resubmitted only if accompanied by the required regulatory fee and by any assessed penalty payment."); 1.1166(c) ("Petitions for waiver of a regulatory fee must be accompanied by the required fee and FCC Form 159. Submitted fees will be returned if a waiver is granted. Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship."); 1.1910(b)(2) ("Action will be withheld on applications, including on a petition for reconsideration or any application for review of a fee determination, or requests for authorization by any entity found to be delinquent in its debt to the Commission").

⁵ 31 U.S.C. § 3717; 47 C.F.R. §§ 1.1164, 1.1940.

⁶ 47 U.S.C. § 159(a)(1); 47 C.F.R. § 1.1151.

⁷ 47 C.F.R. § 1.1164.

⁸ 47 U.S.C. § 159(c)(1); 47 C.F.R. § 1.1164.

⁹ 31 U.S.C. § 3717; 47 C.F.R. §§ 1.1164(f)(4), 1.1940; In The Matter Of Implementation Of Section 9 Of The Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Report and Order*, 9 FCC Rcd. 5333, 5354 ¶ 65 (1994) ("Included in the recovery of any delinquent fee will be an assessment of interest on the debt due, a penalty for nonpayment, and the allowable cost incurred due to the federal government in the collection process."); In The Matter Of Assessment And Collection Of Regulatory Fees For Fiscal Year 2010, *Report and Order*, 25 FCC Rcd. 9278, 9297-98 ¶ 54 (2010) ("A late payment penalty of 25 percent of the unpaid amount of the required regulatory fee will be assessed on the first day following the deadline date for filing of these fees. Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including those set forth in section 1.1910 of the Commission's Rules and in the Debt Collection Improvement Act of 1996 ("DCIA"). We also assess administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the related debt pursuant to the DCIA and section 1.1940(d) of the Commission's rules. These administrative processing charges will be assessed on any delinquent regulatory fee, in addition to the 25 percent late charge penalty. In case of partial payments (underpayments) of regulatory fees, the licensee will be given credit for the amount paid, but if it is later determined that the fee paid is incorrect or not timely paid, then the 25 percent late charge penalty (and other charges and/or sanctions, as appropriate) will be assessed on the portion that is not paid in a timely manner.").

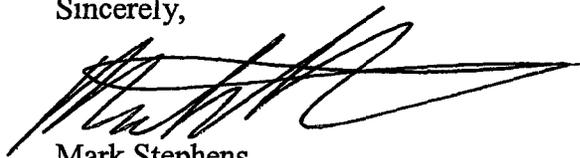
¹⁰ See FY 2011 Regulatory Fees Due No Later Than September 14, 2011, Eastern Time, *Public Notice*, DA 11-1420 (Aug. 17, 2011); FY 2011 Regulatory Fee Deadline Is Extended To 11:59 PM ET, September 16, 2011, *Public Notice*, DA 11-1559 (Sep. 15, 2011).

FY 2011 regulatory fees when due, Licensee failed to meet its obligations. The resulting consequences are not excused or mitigated by Licensee's general request that the Commission remove "the penalties added to bill number R11P85408 ... due to the current business climate."¹² Such a statement referring to an unspecified condition related to business generally is neither a legal ground nor a clear mitigating circumstance to waive collection of the penalties. 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."¹³

Every licensee is obliged to make the fee payment by the deadline. For example, neither the statute nor the Commission's regulations contemplates a waiver of or reduction in the late payment penalty based on the amount of time after the deadline within which the regulatee satisfies its payment obligations; indeed, the penalty for late payment applies even to situations where the deadline is missed by a short period of time.¹⁴ Moreover, the penalty required by 47 U.S.C. § 159(c)(1) is not limited to situations where the failure to pay was knowing or willful. If it is to be waived, it is "only in the most extraordinary circumstances,"¹⁵ which are not described in Licensee's situation.

We will, however, consider separately Licensee's "request [to have the] total due on account broken out into an installment plan."¹⁶ If Licensee has any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark Stephens
Chief Financial Officer

¹¹ See FY 2010 Regulatory Fees Due No Later Than August 31, 2010, Eastern Time, *Public Notice*, DA 10-1451 (Aug. 9, 2010).

¹² *Request*.

¹³ 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); see also *NextGen Telephone* (OMD, Apr. 22, 2010); *Istel, Inc.* (OMD, Apr. 22, 2010).

¹⁴ See *XO Communications, LLC* (OMD, Nov. 10, 2010).

¹⁵ *McLeodUSA Telecommunications Services, Inc.*, *Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589 (2004) (denying the request for waiver of 25 percent penalty).

¹⁶ *Request*.

Stephen French

From: Scott Orviss [solviss@splicetelecom.com]
Sent: Wednesday, March 21, 2012 4:08 PM
To: ARINQUIRIES
Subject: RE: Account 0013244959, request for installment plan

Hi Stephen,

This letter serves as official request to have our total due on account broken out into an installment plan for invoices 10RE010264 and R11P825408. In addition, due to the current business climate, I respectfully request that the penalties added to bill number BRF R11P825408 1 be removed from the amount due. If you could please inform us of what information is required to initiate an installment plan it would be greatly appreciated.

Thank you very much,

Scott Orviss
Accounting Manager

T 650 577 2304 Ext. 2208
M 714 679 7760
F 650 577 2311
solviss@splicetelecom.com

Splice Communications, Inc.
1900 S. Norfolk Street, Suite 350
San Mateo, CA 94403

splicetelecom.com

From: ARINQUIRIES [mailto:ARINQUIRIES@fcc.gov]
Sent: Wednesday, March 21, 2012 12:04 PM
To: Scott Orviss
Subject: RE: Account 0013244959, request for installment plan

Scott,

It's your call. If you want to include the 2010 fees in your request, just rewrite your initial email. If not, you can access the 2010 bill online in the Red Light Display system using your FRN and password. You can pay online or print the 159-B and mail it in with a check.

Red Light Display System: <https://fjallfoss.fcc.gov/redlight/login.cfm>

Stephen M. French
VMD Systems Integrators
OMD-Financial Operations
Office: 2-A629
Direct Line: 202-418-1878
Fax: 202-418-7869

From: Scott Orviss [mailto:solviss@splicetelecom.com]
Sent: Wednesday, March 21, 2012 2:43 PM
To: ARINQUIRIES
Subject: RE: Account 0013244959, request for installment plan

3/21/2012

Adama

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

APR 04 2012

OFFICE OF
MANAGING DIRECTOR

Frank R. Jazzo, Esq.
Fletcher, Heald & Hildreth, PLC
1300 North 17th Street, 11th Floor
Arlington, VA 22209

Re: Waiver Request (Dark Station)
Licensee/Applicant: Tune In Broadcasting, LLC
Station: KRUY (AM)
Fee: FY 2011 Regulatory Fee
Date Request Filed: Sep. 13, 2011
Date Regulatory Fee Paid: (Not Paid)
Fee Control No.: RROG-11-00013972
Regulatory Fee Amount: \$ 800.00
25% Penalty: \$ 200.00
Collection Fee: \$ 50.00
Interest: \$ 5.00
Penalties: \$ 30.00

Dear Mr. Jazzo:

This letter responds to Licensee's *Request*¹ for a waiver of the above-referenced fee. The *Request* does not include a petition to defer payment accompanied by appropriate supporting documentation, and our records reflect that Licensee did not pay the fee. Accordingly, as required by the law,² we dismiss the *Request* and assess a penalty equal to 25% of the amount of the regulatory fee unpaid.³ Furthermore, because the unpaid fee is a delinquent debt, we are required to assess the administrative costs of collection, accrued interest, and accrued penalties.⁴ Finally, under section 1.1910 of our rules,⁵ until the debt is paid or other satisfactory arrangements are made for payment, we are required to withhold action on any application filed by Licensee.

¹ Letter from Frank R. Jazzo, Fletcher, Heald & Hildreth, 1300 North 17th St., 11th Floor, Arlington, VA 22209 to Marlene H. Dortch, Secretary, FCC, 445 12th St. S.W, Washington, DC 20554 (received Sep. 13, 2011) (*Request*).

² 47 C.F.R. § 1.1166(c) provides: "Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship."

³ 47 U.S.C. § 159(c)(1); 47 C.F.R. § 1.1164(c).

⁴ 31 U.S.C. § 3717(e); 31 C.F.R. § 901.9; 47 C.F.R. § 1.1940.

⁵ 47 C.F.R. § 1.1910.

We have dismissed the *Request*; however, had Licensee petitioned to defer payment (or paid the fee and requested a refund), we would nonetheless deny the *Request*. Licensee's mere assertion that the station is silent does not establish financial hardship.

In establishing a regulatory fee program, the Commission recognized that in certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee. Such fees may be waived, reduced or deferred, but only upon a case-by-case showing of good cause and a finding that the public interest will be served thereby.⁶ The Commission has narrowly interpreted its waiver authority to require a showing of compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.⁷ Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee's ability to serve the public.⁸ "Mere allegations or documentation of financial loss, standing alone," do not suffice and "it [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public."⁹ In reviewing a showing of financial hardship, the Commission relies on a range of financial documents including a licensee's balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. It is on this information that the Commission considers on a case-by-case basis whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.¹⁰ Thus, for example, even if a station loses money, any funds paid to principals and deductions for depreciation or amortization are considered funds available to pay the fees. And pertinent to stations that file "[p]etitions to go dark," as is set forth at 47 C.F.R. § 73.1740(a)(4), the Commission opined that such petitions "are generally based on financial hardship. Under these circumstances, imposition of the regulatory fees could be an impediment to the restoration of broadcast service, and it is unnecessary to require a licensee to make a further showing of financial hardship."¹¹ Licensee did not establish that those circumstances are present and applicable.

Licensee refers to the Commission's above-referenced discussion concerning a dark station, and it asserts only that the station "went silent on May 6, 2011[, and i]t remains silent ore September 14, 2011."¹² Licensee provided a copy of the Application Search Details,¹³ but no additional information to support its *Request*, e.g., verified financial documentation.

⁶ 47 U.S.C. §159(d); 47 C.F.R. § 1.1166. *See also* Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for Fiscal Year 1994, *Report and Order*, 9 FCC Rcd 5333, 5344 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995).

⁷ 9 FCC Rcd at 5344 ¶ 29.

⁸ 10 FCC Rcd at 12761-62 ¶ 13.

⁹ *Id.*

¹⁰ *Id.*

¹¹ 10 FCC Rcd at 12762 ¶ 15.

¹² *Request* at 1.

¹³ Application Search Details, BLSTA-20110208ADS.

A waiver of the Commission's rules is appropriate only if special circumstances warrant deviation from the general rule, and such deviation will serve the public interest.¹⁴ In demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner.¹⁵ In this case, however, Licensee did not carry its burden as set forth at 47 C.F.R. § 1.1166 to demonstrate that on "a case-by-case" it has shown "good cause" and that the "waiver [of the required fee] would promote the public interest."¹⁶ Instead, Licensee asserts only that its station was silent. It did not present any evidence to establish whether or not its application to go silent was supported by a fully documented financial position that shows at the time the FY 2011 regulatory fee was due, it lacked funds sufficient to pay the regulatory fee and to maintain its service to the public.¹⁷ It is not enough merely to assert dark status, especially because a licensee may request to go dark for reasons unrelated to financial hardship.¹⁸ Inherent in the Commission's statement that "it is unnecessary to require a licensee to make a *further showing of financial hardship* (emphasis added),"¹⁹ is the understanding that the applicant's petition to go dark was (a) filed because of financial hardship and (b) supported by full documentation of its financial position that met the Commission's relevant standards. Plainly, in order for it to be unnecessary to require a *further* showing, the applicant must have made a valid *prior* showing of the requisite financial information. Moreover, because each waiver is considered on a case-by-case basis, the financial information must be relevant to the current request for a waiver of the fee and it must be sufficient to demonstrate compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.²⁰

In asserting only that the "station is dark,"²¹ Licensee failed to clarify its position before the Commission.²² Rather than the unsupported conclusion offered, Licensee should have provided evidence whether its application to go dark was based on financial hardship that was "fully document[ed]"²³ and accepted by the Commission as such evidence, and if not (apparently as is the case here), Licensee should have provided sufficient documentation to meet the standard set forth at 47 C.F.R. § 1.1166.²⁴ In this case, Licensee's justification for its request to go dark was for "technical" reasons, *i.e.*, "TUNE IN BROADCASTING, LLC, ACQUIRED WRUY ON MAY 6, 2011. THE LICENSEE ... REQUESTS AUTHORIZATION TO REMAIN SILENT WHILE IT SEARCHES FOR A NEW STUDIO LOCATION AND COMPLETES CONSTRUCTION. ... WRUY REQUIRES A MAIN STUDIO."²⁵ That is not evidence of

¹⁴ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); 47 C.F.R. § 1.3.

¹⁵ *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

¹⁶ 47 C.F.R. § 1.1166.

¹⁷ 10 FCC Rcd at 12761-62 ¶ 13.

¹⁸ The FCC Form to request silent status includes in the section, "Reason for going silent" five categories, *i.e.*, Technical, Financing, Staffing, Program Source, and Other. The applicant also may provide the reason for the request.

¹⁹ 10 FCC Rcd at 12762 ¶ 15.

²⁰ 9 FCC Rcd at 5344 ¶ 29.

²¹ *Request* at 1.

²² *Bartholdi Cable Co. Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997).

²³ 10 FCC Rcd at 12762 ¶ 13 ("It will be incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fees and to maintain its service to the public.")

²⁴ 47 C.F.R. § 1.1166 ("The fee . . . may be waived . . . in specific instances, on a case-by-case basis, where good cause is shown and where waiver . . . of the fee would promote the public interest."). *See also* 10 FCC Rcd at 12761-62 ¶ 13.

²⁵ Notification of Suspension of Operations/Request for Silent STA, BLSTA-20110519ADG, Exhibit 1, Description.

financial hardship. We will not assume the existence or sufficiency of information that is not part of the *Request*. Accordingly, without sufficient evidence of financial hardship, we deny Licensee's *Request* for a waiver of the required regulatory fee.

Payment of Licensee's FY 2011 regulatory fee plus the penalty and all accrued charges is now due, which, as of the date of this letter, is \$1,085.00. That amount must be received, together with a Form 159 (copy enclosed), within 30 days of the date of this letter. Thereafter, additional charges will accrue. If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Stephens", written over a horizontal line.

Mark Stephens
Chief Financial Officer

Enclosure

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

APR 04 2012

Adama

OFFICE OF
MANAGING DIRECTOR

Kevin Photiades
Regulatory Manager
Telecom Management, Inc.
39 Darling Avenue
South Portland, ME 04106

Re: Waiver Request (Late Payment Penalty)
Licensee/Applicant: Telecom Management, Inc.
Station: N/A
Fee: FY2011 Regulatory Fee Late Penalty
Date Request Filed: Oct. 31, 2011
Date Regulatory Fee Paid: Oct. 31, 2011
Fee Control No.: RROG-11-00014009
Regulatory Fee (FY 2011): \$39,604.00
Penalty: \$ 9,901.00

Dear Mr. Photiades:

This responds to Licensee's *Request*¹ for waiver of the penalty for late payment of FY 2011 regulatory fees. For the reasons stated herein, we must deny the *Request*.

Under 47 U.S.C. § 159 and the Commission's implementing rules, we are required to "assess and collect regulatory fees" to recover the costs of the Commission's regulatory activities,² and when the required payment is received late or it is incomplete, to assess a penalty equal to "25 percent of the amount of the fee which was not paid in a timely manner."³ Specifically, "[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee ... which was not paid in a timely manner."⁴

For FY 2011, the deadline for paying regulatory fees was September 16, 2011.⁵ Licensee's payment was not received and credited until October 31, 2011, thus Licensee failed to meet this obligation. Licensee asserts it "did not get the bills ... [it was] not aware ... the FCC

¹ Email from Kevin Photiades (kphotiades@pioneertelephone.com) to ARINQUIRIES (ARINQUIRIES@fcc.gov) (dated Oct.31, 2011)(*Request*).

² 47 U.S.C. §159(a)(1); 47 C.F.R. § 1.1151.

³ 47 U.S.C. §159(c)(1); 47 C.F.R. § 1.1164.

⁴ 47 C.F.R. § 1.1164

⁵ See FY 2011 Regulatory Fees Due No Later Than September 14, 2011, Eastern Time, *Public Notice*, DA 11-1420 (Aug. 17, 2011); FY 2011 Regulatory Fee Deadline Is Extended To 11:59 PM ET, September 16, 2011, *Public Notice*, DA 11-1559 (Sep. 15, 2011).

stopped sending bills [and Licensee] did not get any delinquent notices”⁶ Those assertions, however, are not legal grounds or clear mitigating circumstances to waive collection of the penalty. 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 The absence of a reminder notice is not an excuse. Indeed, beginning in 2009, the Commission provided ample notice that it would not be sending paper pre-bills to regulatees.

For example, on May 14, 2009, the Commission proposed to mandate electronic filing of regulatory fee information through the agency’s Fee Filer system.⁸ The Commission explained that, “[c]onsistent with [its] proposal to require mandatory use of Fee Filer ..., pre-bill information would be loaded into Fee Filer for viewing, but would not be mailed directly to the licensee via surface mail.”⁹ On July 31, 2009, the Commission released its order adopting these proposals,¹⁰ and notifying regulatees that “because all pre-bills will be loaded into Fee Filer, once Fee Filer becomes operational, this will be the signal by which licensees can view their pre-bill information online.”¹¹ Thereafter, the Commission issued a public notice informing regulatees that use of Fee Filer was mandatory in FY 2009 and that “regulatory fee bills will no longer be mailed to the regulatee, but can be viewed by logging on the Fee Filer.”¹² Finally, on September 2, 2009, the Commission released a third public notice that “**HARDCOPY BILLS WILL NO LONGER BE MAILED BY THE FCC.**”¹³

Similarly, in 2010, the Commission’s final order on the FY 2010 regulatory fees reaffirmed that regulatees should “check[] the Commission’s website periodically beginning in July” in order to “ascertain the fee due date, and receive instructions on how to access Fee Filer, view their bill, and make a fee payment.”¹⁴ This notification was part of the Commission’s increased effort to notify licensees that hardcopy bills will no longer be mailed.¹⁵

Every licensee is obliged to make the fee payment by the deadline. In such cases, neither the statute nor the Commission’s regulations contemplates a waiver of or reduction in the late payment penalty based on the amount of time after the deadline within which the regulatee satisfies its payment obligations; indeed, the penalty for late payment applies even to situations

⁶ *Request.*

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); see also *NextGen Telephone (OMD)*, Apr. 22, 2010); *Istel, Inc. (OMD)*, Apr. 22, 2010).

⁸ *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Notice of Proposed Rulemaking and Order*, 24 FCC Rcd 5966, 5972 ¶ 16 (2009).

⁹ *Id.* at 5973 ¶ 20.

¹⁰ *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Report and Order*, 24 FCC Rcd 10301, 10307-09 ¶¶ 18-27 (2009) (*FY 2009 Regulatory Fees NPRM*).

¹¹ *Id.* at 10309 ¶ 26.

¹² *Fee Filer Mandatory for FY 2009 Regulatory Fees, Public Notice*, 24 FCC Rcd 10893 (Aug. 21, 2009).

¹³ *Payment Methods and Procedures for Fiscal Year 2009 Regulatory Fees, Public Notice*, 24 FCC Rcd 11513, 11514 (2009) (emphasis in original).

¹⁴ *Assessment and Collection of Regulatory Fees for Fiscal Year 2010, Report and Order*, 25 FCC Rcd 9278, 9291 ¶ 37 (2010).

¹⁵ *See Assessment and Collection of Regulatory Fees for Fiscal Year 2010, Notice of Proposed Rulemaking*, 25 FCC Rcd 3918, 3923 ¶ 12 (2010).

where the deadline is missed by a short period of time.¹⁶ Further, although the Commission has waived late fees on a showing of good cause, neither the statute nor the Commission's regulations contemplates a waiver of or reduction in the late payment penalty based on the amount of time after the deadline within which the regulatee made payment. As we explained, the penalty required by 47 U.S.C. § 159(c)(1) is not limited to situations where the failure to pay was knowing or willful. If it is to be waived, it is "only in the most extraordinary circumstances,"¹⁷ which are not described in Licensee's situation. Thus, under the law, we must deny Licensee's Request, and we cannot refund the penalty amount paid.

If Licensee has 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", written over a horizontal line.

Mark Stephens
Chief Financial Officer

¹⁶ See *XO Communications, LLC* (OMD, Nov. 10, 2010).

¹⁷ *McLeodUSA Telecommunications Services, Inc., Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589 (2004) (denying the request for waiver of 25 percent penalty).

Stephen French

From: Kevin Photiades [kphotiades@pioneertelephone.com]
Sent: Monday, October 31, 2011 11:06 AM
To: ARINQUIRIES
Cc: Peter Bouchard
Subject: Regulatory Fee payment to the FCC FRN 0005859111
Follow Up Flag: Follow up
Flag Status: Red
Attachments: imageadd4e2.gif@11117c9e.20754646

Hello. We recently paid our FCC regulatory fee, including a hefty \$9K penalty for late payment. In our 10 year history with this fee and the FCC, we have never been late with this payment. In addition, the process to make our company aware of the fee amount and when it was due was confusing this year - we did not receive a paper notice as in years past. Therefore, I am respectfully requesting a one-time abatement of the penalty amount. Please let me know when possible – thank you.

Sincerely,

Kevin Photiades
Regulatory Manager

From: Peter Bouchard
Sent: Monday, October 31, 2011 7:03 AM
To: Kevin Photiades
Subject: Fwd: Your Regulatory Fee payment to the FCC has been received!

----- Forwarded message -----

From: "payment@fcc.gov" <payment@fcc.gov>
To: "Peter Bouchard" <peter@pioneertelephone.com>
Subject: Your Regulatory Fee payment to the FCC has been received!
Date: Mon, Oct 31, 2011 1:01 am

Your Regulatory Fee payment to the Federal Communications Commission (FCC) has been received:

Voucher Number: E002029388
 Payer FRN: 0005859111
 Payer Name: Telecom Management, Inc.
 Total Paid: \$39,604.00
 Payment Date: 10/31/2011

** This is an automatically generated email, please do not reply. If you wish to contact the FCC, please send your message to arinquiries@fcc.gov.

10/31/2011