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FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

NOV 09 2012

OFFICE OF
MANAGING DIRECTOR

Greta Latona
Assistant Program Director
Mariana Broadcasting, Inc.
1878 Lincoln Avenue
Pompton Lake, NJ 07442

Re: Waiver Request (Late Payment Penalty; 47
U.S.C. § 159(c)(1), 31 U.S.C. § 3717, 47 C.F.R. §
1.1164)
Licensee/Applicant: Mariana Broadcasting, Inc.
Station: WGHT
Fee: FY 2011 Regulatory Fees and Late Fees
Date Request Filed: July 24, 2012
Date Regulatory Fee Paid: Aug. 16, 2012
Date Regulatory Late Penalty Paid: Aug. 18, 2012
Fee Control No.: RROG-11-00014415

Dear Ms. Latona:

This responds to Licensee's *Request*¹ for waiver of the statutory penalty, interest and penalty charges, and collection charges (*penalties*) that accrued because Licensee did not pay its Fiscal Year (FY) 2011 regulatory fee. 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, and it is "not excused by bank error,"³ then to assess a penalty equal to "25 percent of the amount of the fee which was not paid in a timely manner."⁴ Thereafter, as required by the law,⁵ from the date of

¹ Email from Greta Latona [greta.latona@ghtradio.com] to ARINQUIRIES (ARINQUIRIES@fcc.gov) (Jul. 24, 2012)(*Request*).

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

³ 47 C.F.R. § 1.1164.

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

⁵ 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

delinquency, we assess interest, penalties, and administrative charges for collection. For FY 2011, the deadline for paying regulatory fees was September 16, 2011.”⁶ Licensee’s payment were not received and credited until August 16, 2012, thus Licensee failed to meet its obligation. Licensee’s assertions that it believed the “that the Red Light Display System[would provide an alert notification] as to when a bill is outstanding and due[, and that when Licensee] checked the status ... it has been Green until [Licensee] received a Demand Letter dated July 18, 2012”⁷ are not a 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.”⁸

On May 14, 2009, the Commission proposed to mandate electronic filing of regulatory fee information through the agency’s Fee Filer system.⁹ 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.”¹⁰ On July 31, 2009, the Commission released its order adopting these proposals.¹¹ In that order, the Commission advised 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.”¹² 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.”¹³ On September 2, 2009, the Commission released a third public notice reiterating that “**HARDCOPY BILLS WILL NO LONGER BE MAILED BY THE FCC.**”¹⁴

Similarly, 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,

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.”).

⁶ 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).

⁷ *Request*.

⁸ 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).

⁹ Assessment and Collection of Regulatory Fees for Fiscal Year 2009, *Notice of Proposed Rulemaking and Order*, 24 FCC Rcd 5966, 5972 ¶ 16 (2009).

¹⁰ *Id.* at 5973 ¶ 20.

¹¹ 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*).

¹² *Id.* at 10309 ¶ 26.

¹³ *Fee Filer Mandatory for FY 2009 Regulatory Fees*, *Public Notice*, 24 FCC Rcd 10893 (Aug. 21, 2009).

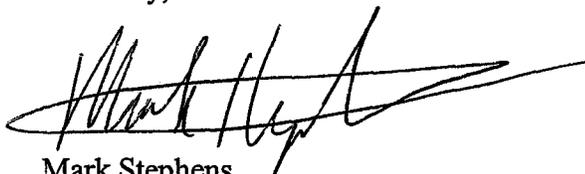
¹⁴ Payment Methods and Procedures for Fiscal Year 2009 Regulatory Fees, *Public Notice*, 24 FCC Rcd 11513, 11514 (2009) (emphasis in original).

and make a fee payment.”¹⁵ This notification was part of the Commission’s increased effort to notify licensees that hardcopy bills will no longer be mailed.¹⁶

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 where the deadline is missed by a short period of time.¹⁷ 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 satisfies its payment obligations. 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,”¹⁸ which License did not establish. Thus, under the law, we must deny the *Request*.

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

¹⁵ Assessment and Collection of Regulatory Fees for Fiscal Year 2010, *Report and Order*, 25 FCC Rcd 9278, 9291 ¶ 37 (2010).

¹⁶ See Assessment and Collection of Regulatory Fees for Fiscal Year 2010, *Notice of Proposed Rulemaking*, 25 FCC Rcd 3918, 3923 ¶ 12 (2010).

¹⁷ See *XO Communications, LLC* (OMD, Nov. 10, 2010).

¹⁸ *McLeodUSA Telecommunications Services, Inc., Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589 (2004) (denying the request for waiver of 25 percent penalty).

July 24, 2012

Federal Communications Commission

Washington, DC 20554

Re: Bill Number BRF R11R040078 1

I am writing this letter to ask for re-consideration in the of additional fees added to our Regulatory Fees.

It was in my understanding that the Red Light Display System, alerts you as to when a bill is outstanding and due. I checked the status and it has been Green until we received a Demand Letter dated July 18, 2012.

Mariana Broadcasting has always paid this fee on time and has always been in good standing. Last year WGHT suffered in the North Jersey flooding and with the status green, it was in good faith that we had no outstanding debts.

I am respectfully asking for consideration as to waving the additional fees as we thought we had no outstanding debts owed and will pay the initial fee.

Respectfully,

G. Latona

Assistant Program Director

Mariana Broadcasting Inc.

WGHT Radio

1878 Lincoln Avenue

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