

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554.

NOV 09 2012

Adama

OFFICE OF
MANAGING DIRECTOR

Mr. Karl Pilati
Pilati Investments, Inc.
113 Washington Ave., NW
Russellville, AL 35653

Re: Waiver Request (Late Payment Penalty; 47
U.S.C. § 159(c)(1), 31 U.S.C. § 3717, 47 C.F.R. §
1.1166)
Licensee/Applicant: Pilati Investments, Inc.
Stations: WKAX and WGOL
Fee: Fiscal Year (FY) 2011 Regulatory Fee Late
Fees
Date Request Filed: Jul. 23, 2012
Date Regulatory Fees Paid: Aug. 8, 2012
Date Regulatory Late Fees Paid: Aug. 8, 2012
Fee Control No.: RROG-11-00014410

Dear Mr. Pilati:

This responds to Licensee's *Request*¹ for waiver and refund of the statutory penalty, interest and penalty charges, and charges for collection (*penalties*) that accrued because Licensee did not pay its required Fiscal Year (FY) 2011 regulatory fees.

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 been received until August 6, 2012, thus Licensee failed to meet its obligations. Licensee's asserts that it was unaware that "bills through the mail are no longer sent as of last year[, and if Licensee had received a bill ... it would have been timely paid for both stations." Furthermore, because the stations are "cash strapped," Licensee asked that the

¹ Email from John Pilati, [jfp@franklinmediagroup.net] to ARINQUIRES (Jul. 23, 2012)(*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).

“penalties and interest be waived.”⁶ This is not legal ground or clear mitigating circumstance 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.

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 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.”¹¹ 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 On September 2, 2009, the Commission released a third public notice reiterating that “**HARDCOPY BILLS WILL NO LONGER BE MAILED BY THE FCC.**”¹³

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, 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 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,"¹⁷ which Licensee did not establish. Thus, under the law, we must deny the *Request*.

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 in a cursive style with a long horizontal flourish extending to the right.

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: John Pilati [jfp@franklinmediagroup.net]
Sent: Monday, July 23, 2012 7:31 PM
To: ARINQUIRIES
Subject: WKAX/WGOL

8/6/12

Dear Sirs:

We received Bills for Collection for both of our small AM stations today for annual regulatory fees plus penalties for 2011. Prior to last year, we have always paid these fees on time when we were billed through the mail. I think the records will show that. Unbeknownst to me, apparently bills through the mail are no longer sent as of last year.

Our family owned stations had no idea about. We live and operate in a small town and pay our bills as they come in through the mail. We don't do drafts, etc. Had we received a bill, I assure you it would have been timely paid for both stations. But we never got a bill. Before today, I had never heard of Red Light Display Site. The only way I knew we owed the fees today is that we received a Bill for Collection in the mail.

Considering our tight budget with two cash strapped small stations, and the fact these fees for 2012 will apparently soon be due again, I am writing to ask that the penalties and interest be waived, allowing us to pay the fees of \$600 for WKAX and \$900 for WGOL.

Our FRN # is 0014310874. It's not a matter that we dispute owing the fees, but that we never received a bill and knew nothing about going on your web site to pay. I appreciate your consideration in this matter and look forward to hearing from you.

Karl Pilati
President

*Pilati Investments, Inc
113 Washington Ave NW
Russellville, AL 35653*

7/24/2012