

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

NOV 08 2012

OFFICE OF
MANAGING DIRECTORMs. Jennifer Brooks
Talton Communications, Inc.
910 Ravenwood Drive
Selma, AL 36701Re: 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: Talton Communications, Inc.
Station: N/AFees: Fiscal Year (FY) 2010 and FY 2011
Regulatory Fee Late Fees

Date Request Filed: Mar. 23, 2012

Date Regulatory Fees Paid: Apr. 6, 2012

Date Late Penalty Fees Paid: Apr. 6, 2012

Fee Control No.: RROG-11-00014249

Dear Ms. Brooks:

This responds to Licensee's *Request*¹ for waiver and refund of the statutory penalty, interest and penalty charges, and collection charges (*penalties*) that accrued because Licensee did not pay its Fiscal Year (FY) 2010 and 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, 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 Jennifer Brooks, [jennifer@talton.com], to ARINQUIRIES, (ARINQUIRES@fcc.gov) (Mar. 23, 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").

delinquency, we assess interest, penalties, and administrative charges for collection. For FY 2010, the deadline for paying regulatory fees was August 31, 2010,⁶ and for FY 2011, the deadline for paying regulatory fees was September 16, 2011.”⁷ Licensee’s payment was not received and credited until April 6, 2012, thus Licensee failed to meet its obligations. Licensee’s assertions that Licensee “do[es] not understand why [it was] charged interest, admin, and penalty fees when [Licensee] did not even know that [it] owed this [amount, and Licensee was] not aware of the regulatory fee”⁸ 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.”⁹

On May 14, 2009, the Commission proposed to mandate electronic filing of regulatory fee information through the agency’s Fee Filer system.¹⁰ 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.”¹¹ On July 31, 2009, the Commission released its order adopting these proposals.¹² 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.”¹³ 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.”¹⁴ On September 2, 2009, the Commission released a third public notice reiterating that “**HARDCOPY BILLS WILL NO LONGER BE MAILED BY THE FCC.**”¹⁵

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.”)

⁶ See FY 2010 Regulatory Fees Due No Later Than August 31, 2010, Eastern Time (ET), *Public Notice*, DA 10-1451, 2010 WL 3133517 (Aug. 9, 2010).

⁷ 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).

⁸ *Request*.

⁹ 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).

¹⁰ Assessment and Collection of Regulatory Fees for Fiscal Year 2009, *Notice of Proposed Rulemaking and Order*, 24 FCC Rcd 5966, 5972 ¶ 16 (2009).

¹¹ *Id.* at 5973 ¶ 20.

¹² 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*).

¹³ *Id.* at 10309 ¶ 26.

¹⁴ *Fee Filer Mandatory for FY 2009 Regulatory Fees*, *Public Notice*, 24 FCC Rcd 10893 (Aug. 21, 2009).

¹⁵ Payment Methods and Procedures for Fiscal Year 2009 Regulatory Fees, *Public Notice*, 24 FCC Rcd 11513, 11514 (2009) (emphasis in original).

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."¹⁶ This notification was part of the Commission's increased effort to notify licensees that hardcopy bills will no longer be mailed.¹⁷

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.¹⁸ 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,"¹⁹ 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,



Mark Stephens
Chief Financial Officer

¹⁶ Assessment and Collection of Regulatory Fees for Fiscal Year 2010, *Report and Order*, 25 FCC Rcd 9278, 9291 ¶ 37 (2010).

¹⁷ See Assessment and Collection of Regulatory Fees for Fiscal Year 2010, *Notice of Proposed Rulemaking*, 25 FCC Rcd 3918, 3923 ¶ 12 (2010).

¹⁸ See *XO Communications, LLC* (OMD, Nov. 10, 2010).

¹⁹ *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: Jennifer Brooks [jennifer@talton.com]
Sent: Friday, March 23, 2012 5:57 PM
To: ARINQUIRIES
Subject: Acct. 0019405778
Attachments: SKMBT_C28012032315370.pdf

Attached is a "Demand Letter" that I received via U.S. mail yesterday. I did not know what this was for, so I called the number on the notice. I was told that this was a regulatory fee that derived from the USAC 499-A form. I understand that Talton Communications, Inc. owes this fee; however, I do not understand why we were charged interest, admin, and penalty fees when we did not even know that we owed this. Until I received this notice, we were not aware of the regulatory fee. I told your representative that we have never been notified until now of this regulatory fee. Your representative said that the FCC doesn't send out invoices.

Due to the fact that we didn't know about this, I would like to request that the interest, admin, and penalty fees be waived this one time since we did not know about it. Your representative said that we owed two invoices. Can we get this taken off of both? I will pay these invoices immediately, but I just don't understand why we were charged these additional fees when we did not know about it.

Could someone please look into this and let me know the FCC's decision?

Thank you,

Jennifer Brooks

Human Resources/Accounting Manager

Office: 1-800-844-6505 Direct Phone: 334-375-4195 | Fax: 334-872-0572 | www.talton.com

From: necscanner@taltoncommunications.com [mailto:necscanner@taltoncommunications.com]
Sent: Friday, March 23, 2012 10:37 AM
To: jennifer@talton.com
Subject: Message from KMBT_C280