



PUBLIC NOTICE

Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554
DA- 13-679

News media information 202/ 418-0500
TTY: 1-888-835-5322
Internet: <http://www.fcc.gov>
<ftp.fcc.gov>

**Before the
Federal Communications Commission
Washington, D.C. 20554**

PUBLIC NOTICE

Released: April 11, 2013

FEE DECISIONS OF THE MANAGING DIRECTOR AVAILABLE TO THE PUBLIC

The Managing Director is responsible for fee decisions in response to requests for waiver or deferral of fees as well as other pleadings associated with the fee collection process. A public notice of these fee decisions is published in the FCC record.

The decisions are placed in General Docket 86-285 and are available for public inspection. A copy of the decision is also placed in the appropriate docket, if one exists.

Listed below are the Managing Director fee decisions released for public information. These decisions can be searched for and viewed on the Commission's Electronic Comment Filing System, available at <http://apps.fcc.gov/ecfs/>. Questions concerning the use of ECFS should be directed to 202-418-0193 or ecfshelp@fcc.gov.

Bott Communications - Request for refund of long form construction permit Application Fee Form 301, Auction No. 37. Denied (March 27, 2013).

Legacy Communications, LLC - Request for refund of long form construction permit Application Fee Form 301, Auction No. 62. Denied (March 27, 2013).

Absolute Communications, LLC - Request for refund of long form construction permit Application Fee Form 301, Auction No. 37. Denied (March 27, 2013).

Programmers Broadcasting, Inc. - Request for refund of long form construction permit Application Fee Form 301, Auction No. 37. Denied (March 27, 2013).

Mattox Broadcasting, Inc. - Request for refund of long form construction permit Application Fee Form 301, Auction No. 70. Denied (March 27, 2013).

Airen Broadcasting Company - Request for refunds of long form construction permit Application Fees Form 301, Auction Nos. 37 and 62. Denied (March 27, 2013).

Tri State Radio, LLC - Request for refund of long form construction permit Application Fee Form 301, Auction No. 68. Denied (March 27, 2013).

Horizon Christian Fellowship - Request for refund of long form construction permit Application Fee Form 301, Auction No. 62. Denied (March 27, 2013).

JAB Broadcasting, LLC - Request for refund of long form construction permit Application Fee Form 301, Auction No. 62. Denied (March 27, 2013).

Independence Media Holdings - Request for refund of long form construction permit Application Fee Form 301, Auction No. 70. **Denied** (March 27, 2013).

E-String Wireless, Ltd. - Request for refunds of long form construction permit Application Fees Form 301, Auction Nos. 37 and 70. **Denied** (March 27, 2013).

Delta Media Corporation - Request for refund of long form construction permit Application Fee Form 301, Auction No. 37. **Denied** (March 27, 2013).

Munbilla Broadcasting Properties, Ltd. - Request for refunds of long form construction permit Application Fees Form 301, Auctions Nos. 62 and 70. **Denied** (March 27, 2013).

Ramar Communications, Inc. - Request for refund of long form construction permit Application Fee Form 301, Auction No. 88. **Denied** (March 27, 2013).

Richland Reserve, LLC - Request for refund of long form construction permit Application Fee Form 301, Auction No. 64. **Denied** (March 27, 2013).

Charles Crawford - Request for refund of long form construction permit Application Fee Form 301, Auction No. 70. **Denied** (March 27, 2013).

Red Peach, LLC - Request for refund of long form construction permit Application Fee Form 301, Auction No. 91. **Denied** (March 27, 2013).

Katherine Pyeatt - Request for refund of long form construction permit Application Fee Form 301, Auction No. 91. **Denied** (March 27, 2013).

Porter Hogan Charitable Trust #1 - Request for refunds of long form construction permit Application Fee Form 301, Auction No. 37 62. **Denied** (March 27, 2013).

Frank Neely - Request for refund of long form construction permit Application Fee Form 301, Auction No. 62. **Denied** (March 27, 2013).

Pampa Broadcasters, Inc. - Request for refund of long form construction permit Application Fee Form 301, Auction No. 79. **Denied** (March 27, 2013).

Katherine Pyeatt - Request for refund of long form construction permit Application Fee Form 301, Auction No. 62. **Denied** (March 27, 2013).

Stroh Communications Corporation - Request for refund of long form construction permit Application Fee Form 301, Auction No. 70. **Denied** (March 27, 2013).

Gary Katz - Request for refund of long form construction permit Application Fee Form 301, Auction No. 37. **Denied** (March 27, 2013).

Keystone Broadcasting Corporation - Request for refund of long form construction permit Application Fee Form 301, Auction No. 79. **Denied** (March 27, 2013).

Janet Jensen - Request for refund of long form construction permit Application Fee Form 301, Auction No. 37. **Denied** (March 27, 2013).

James River Broadcasting Company, Inc. - Request for refund of long form construction permit Application Fee Form 301, Auction No. 37. **Denied** (March 27, 2013).

College Creek Broadcasting, Inc. - Request for refunds of long form construction permit Application Fee Form 301, Auctions No. 37. **Denied** (March 27, 2013).

Cochise Media Licensees, LLC - Request for refund of long form construction permit Application Fee Form 301, Auction No. 79. **Denied** (March 27, 2013).

Western Pacific Broadcast LLC - Request for refund of long form construction permit Application Fee Form 301, Auction No. 90. **Denied** (March 27, 2013).

Williston Community Broadcasting Corporation - Request for refund of long form construction permit Application Fee Form 301, Auction No. 791. **Denied** (March 27, 2013).

WGHN, Inc. - Request for refund of long form construction permit Application Fee Form 301, Auction No. 91. **Denied** (March 27, 2013).

CSI Media Research- Request for refund of long form construction permit Application Fee Form 301, Auction No.91. **Denied** (March 27, 2013).

Edward De La Hunt - Request for refund of long form construction permit Application Fee Form 301, Auction No. 62. **Denied** (March 27, 2013).

William C. Doleman - Request for refund of long form construction permit Application Fee Form 301, Auction No. 37. **Denied** (March 27, 2013).

Stephen T. Butler - Request for refund of long form construction permit Application Fee Form 301, Auction No. 70. **Denied** (March 27, 2013).

Christian Ministries of the Valley, Inc. - Request for refund of long form construction permit Application Fee Form 301, Auction No. 79. **Denied** (March 27, 2013).

Chaparral Broadcasting, Inc. - Request for refund of long form construction permit Application Fee Form 301, Auction No. 37. **Denied** (March 27, 2013).

RadioJones, LLC - Request for refund of long form construction permit Application Fee Form 301, Auction No. 79. **Denied** (March 27, 2013).

Bryan A. King- Request for refund of long form construction permit Application Fee Form 301, Auction No. 79. **Denied** (March 27, 2013).

LiveAir Communications, Inc. - Request for refund of long form construction permit Application Fees Form 301, Auction Nos. 62, 70, and 91. **Denied** (March 27, 2013).

Mount Wilson FM Broadcasters, Inc. - Request for refund of long form construction permit Application Fee Form 301, Auction No. 79. **Denied** (March 27, 2013).

Grenax Broadcasting III, LLC - Request for refund of long form construction permit Application Fee Form 301, Auction No. 37. **Denied** (March 27, 2013).

Cochise Media Licensees, LLC - Request for refund of long form construction permit Application Fee Form 301, Auction No. 79. **Denied** (March 27, 2013).

Conquering With Christ, LLC - Request for refund of long form construction permit Application Fee Form 301, Auction No. 91. **Denied** (March 27, 2013).

Richard Comras - Request for refund of long form construction permit Application Fee Form 301, Auction No. 79. **Denied** (March 27, 2013).

Georgia-Carolina Wireless, LLC - Request for refund of long form construction permit Application Fee Form 301, Auction No. 70. **Denied** (March 27, 2013).

Hispanic Target Media, Inc. - Request for refund of long form construction permit Application Fee Form 301, Auction No. 79. **Denied** (March 27, 2013).

Hispanic Target Media, Inc. - Request for refund of long form construction permit Application Fee Form 301, Auction No. 62. **Denied** (March 27, 2013).

Hispanic Target Media, Inc. - Request for refund of long form construction permit Application Fees Form 301, Auction No. 37. **Denied** (March 27, 2013).

Hispanic Target Media, Inc. - Request for refund of long form construction permit Application Fee Form 301, Auction No. 91. **Denied** (March 27, 2013).

Valleydale Broadcasting, LLC - Request for refund of long form construction permit Application Fee Form 301, Auction No. 91. **Denied** (March 27, 2013).

Valleydale Broadcasting, LLC - Request for refund of long form construction permit Application Fee Form 301, Auction No. 79. **Denied** (March 27, 2013).

Virtues Communications Network LLC - Request for refund of long form construction permit Application Fee Form 301, Auction No. 91. **Denied** (March 27, 2013).

Radick Constructions, Inc. - Request for refund of long form construction permit Application Fee Form 301, Auction No. 37. **Denied** (March 27, 2013).

Simon T - Request for refund of long form construction permit Application Fee Form 301, Auction No. 37. **Denied** (March 27, 2013).

Radio WEBS, Inc. - Request for refund of long form construction permit Application Fee Form 301, Auction No. 91. **Denied** (March 27, 2013).

Skywest Media, LLC - Request for refund of long form construction permit Application Fees Form 301, Auction Nos. 37, 62, and 70. **Denied** (March 27, 2013).

Georgia Eagle Broadcasting, Inc. - Request for refund of long form construction permit Application Fee Form 301, Auction No. 70. **Denied** (March 27, 2013).

Fox Radio Network, LLC - Request for refund of long form construction permit Application Fee Form 301, Auction No. 70. **Denied** (March 27, 2013).

Edward De La Hunt - Request for refund of long form construction permit Application Fee Form 301, Auction No. 62. **Denied** (March 27, 2013).

William C. Doleman - Request for refund of long form construction permit Application Fee Form 301, Auction No. 37. **Denied** (March 27, 2013).

Champlin Broadcasting, Inc. - Request for refund of long form construction permit Application Fee Form 301, Auction No. 62. **Denied** (March 27, 2013).

Chaparral Broadcasting, Inc. - Request for refund of long form construction permit Application Fee Form 301, Auction No. 37. **Denied** (March 27, 2013).

Catholic Radio Network - Request for refund of long form construction permit Application Fee Form 301, Auction No. 62. **Denied** (March 27, 2013).

Sheila Callahan & Friends, Inc. - Request for refund of long form construction permit Application Fee Form 301, Auction No. 62. **Denied** (March 27, 2013).

Catholic Radio Network - Request for refund of long form construction permit Application Fee Form 301, Auction No. 6. **Denied** (March 27, 2013).

A & J Media LLC - Request for refund of long form construction permit Application Fee Form 301, Auction No. 62. **Denied** (March 27, 2013).

Howard C. Toole - Request for refund of long form construction permit Application Fee Form 301, Auction No. 70. **Denied** (March 27, 2013).

Valleydale Broadcasting, LLC - Request for refund of long form construction permit Application Fee Form 301, Auction No. 79. **Denied** (March 27, 2013).

Stephen T. Butler - Request for refund of long form construction permit Application Fee Form 301, Auction No. 70. **Denied** (March 27, 2013).

Julie Epperson - Request for refund of long form construction permit Application Fee Form 301, Auction No. 37. **Denied** (March 27, 2013).

TeleSouth Communications, Inc. - Request for refund of long form construction permit Application Fee Form 301 Auction No. 70. **Denied** (March 27, 2013).

Alexandra Communications, Inc. - Request for refund of long form construction permit Application Fee Form 301, Auction No. 91. **Denied** (March 27, 2013).

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAR 27 2013

OFFICE OF
MANAGING DIRECTOR

Christine Goepf, Esq.
Fletcher, Heald & Hildreth
1300 North 17th Street, 11th Floor
Arlington, VA 22209

Re: Bott Communications, Inc.
File No. BNPH-20041220AAM

Dear Ms. Goepf:

This responds to your August 1, 2011 request for refund of a \$2,980.00 application fee paid by Bott Communications, Inc. (Bott) in conjunction with the filing of a long form construction permit application (FCC Form 301) following the conclusion of Auction No. 37. For the reasons stated below, payment of the fee was correct and no refund is warranted.

You contend that no filing fee was required pursuant to section 1.2107(c) of the rules, which states that high bidders in spectrum auctions need not submit an additional application fee notwithstanding any other provision of our rules. Section 1.2107(c) is one of the uniform competitive bidding rules that the Commission adopted in 1997 for non-broadcast spectrum auctions. *Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures, Third Report and Order and Second Further Notice of Proposed Rulemaking in WT Docket No. 97-82 and ET Docket No. 94-32*, 13 FCC Rcd 374 (1997) (*Third Report and Order*). The Commission stated that the rules adopted in the *Third Report and Order* would apply to all auctionable services, unless the Commission determined that with regard to particular matters the adoption of service-specific rules was warranted. *Id.* at 382.

The Commission subsequently adopted service-specific rules for broadcast service auctions in 1998, and stated that those rules would apply to all broadcast service auctions. *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234, First Report and Order*, 13 FCC Rcd 15920, 15923 (1998) ("*Broadcast Auction Report and Order*"). At paragraph 164 of the *Broadcast Auction Report and Order* the Commission stated that winning bidders' Form 301 applications should be filed pursuant to the rules governing the relevant broadcast service and according to any procedures set out by public notice, and specifically stated that the statutorily established application fees would apply to the long-form applications filed by winning bidders. *Id.* at 15984.

The Public Notice issued after the close of Auction 37 provided that "In accordance with the Commission's rules, electronic filing of FCC Form 301 must be accompanied by the appropriate application filing fee," and referenced the fee requirement contained in Paragraph 164 of the *Broadcast Auction Report and Order. Auction of FM Broadcast Construction Permits Closes*, 20 FCC Rcd 1021, 1025 (2004) (*Auction 37 Closing Notice*). In compliance with the *Broadcast Auction Report and Order* and the *Auction 37 Closing Notice*, Bott paid the fee at the prescribed time and in the correct amount. This demonstrates that Bott had actual and timely knowledge of the requirement that winning bidders in media service auctions must pay the prescribed application fee when filing a Form 301 long-form construction permit application. A party with actual and timely notice of a requirement is bound by its terms. See *United States v. Mowat*, 582 F.2d 1194, 1201-02 (9th Cir. 1978); *United States v. Aarons*, 310 F.2d 341, 348 (2nd Cir. 1962).

We also note your reference to the fact that a refund of a Form 301 application fee had previously been made to a winning bidder in a media service auction and your argument that such refund constitutes a direct precedent for granting this refund request. The refund you cite was made in error and the Commission is seeking return of the refunded amounts to assure that all winning bidders in broadcast auctions comply with the fee payment requirement adopted in the Broadcast Auction Report and Order and promulgated in the auctions' closing Public Notices. Absent a statutory barrier, not present here, the Government must recover funds which its agents have wrongfully, erroneously, or illegally paid. *United States v. Wurts*, 303 U.S. 414, 415-16 (1938); *Amtec Corp. v. United States*, 69 Fed. Cl. 79, 88 (2005), *aff'd*, 239 Fed. Appx. 585 (Fed. Cir. 2007); *Aetna Casualty and Surety Co. v. United States*, 208 Ct. Cl. 515, 526 F.2d 1127 (Fed. Cir. 1975), *citing Fansteel Metallurgical Corp. v. United States*, 172 F.Supp. 268, 270 (Ct. Cl. 1959) ("When a payment is erroneously or illegally made...it is not only lawful but the duty of the Government to sue for a refund thereof..."). Moreover, the erroneous refund made in this case neither binds the Commission in this matter nor requires it to make further refunds. *Office of Personnel Management v. Richmond*, 496 U.S. 414, 428 (1990); *Vernal Enterprises, Inc. v. FCC*, 335 F.3d 650, 665 (D.C. Cir. 2004); *and see WLOS TV, Inc. v. FCC*, 932 F.2d 993, 995 (D.C. Cir. 1991) (Commission may depart from policy set in a previous adjudication if it provides a reasoned analysis showing that a prior policy is being deliberately changed, not casually ignored).

For these reasons your request for refund of the application fee is denied.

Sincerely,

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

Mark Stephens
Chief Financial Officer

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

MAR 27 2013

OFFICE OF
MANAGING DIRECTOR

Christine Goepp, Esq.
Fletcher, Heald & Hildreth
1300 North 17th Street, 11th Floor
Arlington, VA 22209

Re: Legacy Communications, LLC
File No. BNPH-20060309ACU

Dear Ms. Goepp:

This responds to your July 8, 2011 request for refund of a \$2,980.00 application fee paid by Legacy Communications, LLC (Legacy) in conjunction with the filing of a long form construction permit application (FCC Form 301) following the conclusion of Auction No. 62. For the reasons stated below, payment of the fee was correct and no refund is warranted.

You contend that no filing fee was required pursuant to section 1.2107(c) of the rules, which states that high bidders in spectrum auctions need not submit an additional application fee notwithstanding any other provision of our rules. Section 1.2107(c) is one of the uniform competitive bidding rules that the Commission adopted in 1997 for non-broadcast spectrum auctions. *Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures, Third Report and Order and Second Further Notice of Proposed Rulemaking in WT Docket No. 97-82 and ET Docket No. 94-32*, 13 FCC Rcd 374 (1997) (*Third Report and Order*). The Commission stated that the rules adopted in the *Third Report and Order* would apply to all auctionable services, unless the Commission determined that with regard to particular matters the adoption of service-specific rules was warranted. *Id.* at 382.

The Commission subsequently adopted service-specific rules for broadcast service auctions in 1998, and stated that those rules would apply to all broadcast service auctions. *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234, First Report and Order*, 13 FCC Rcd 15920, 15923 (1998) ("*Broadcast Auction Report and Order*"). At paragraph 164 of the *Broadcast Auction Report and Order* the Commission stated that winning bidders' Form 301 applications should be filed pursuant to the rules governing the relevant broadcast service and according to any procedures set out by public notice, and specifically stated that the statutorily established application fees would apply to the long-form applications filed by winning bidders. *Id.* at 15984.

The Public Notice issued after the close of Auction 62 provided that "In accordance with the Commission's rules, electronic filing of FCC Form 301 must be accompanied by the appropriate application filing fee," and referenced the fee requirement contained in Paragraph 164 of the *Broadcast Auction Report and Order. Auction of FM Broadcast Construction Permits Closes*, 21 FCC Rcd 1071, 1076 (2006) (*Auction 62 Closing Notice*). In compliance with the *Broadcast Auction Report and Order*

and the *Auction 62 Closing Notice*, Legacy paid the fee at the prescribed time and in the correct amount. This demonstrates that Legacy had actual and timely knowledge of the requirement that winning bidders in media service auctions must pay the prescribed application fee when filing a Form 301 long-form construction permit application. A party with actual and timely notice of a requirement is bound by its terms. See *United States v. Mowat*, 582 F.2d 1194, 1201-02 (9th Cir. 1978); *United States v. Aarons*, 310 F.2d 341, 348 (2nd Cir. 1962).

We also note your reference to the fact that a refund of a Form 301 application fee had previously been made to a winning bidder in a media service auction and your argument that such refund constitutes a direct precedent for granting this refund request. The refund you cite was made in error and the Commission is seeking return of the refunded amounts to assure that all winning bidders in broadcast auctions comply with the fee payment requirement adopted in the Broadcast Auction Report and Order and promulgated in the auctions' closing Public Notices. Absent a statutory barrier, not present here, the Government must recover funds which its agents have wrongfully, erroneously, or illegally paid. *United States v. Wurts*, 303 U.S. 414, 415-16 (1938); *Amtec Corp. v. United States*, 69 Fed. Cl. 79, 88 (2005), *aff'd*, 239 Fed. Appx. 585 (Fed. Cir. 2007); *Aetna Casualty and Surety Co. v. United States*, 208 Ct. Cl. 515, 526 F.2d 1127 (Fed. Cir. 1975), *citing Fansteel Metallurgical Corp. v. United States*, 172 F.Supp. 268, 270 (Ct. Cl. 1959) ("When a payment is erroneously or illegally made...it is not only lawful but the duty of the Government to sue for a refund thereof..."). Moreover, the erroneous refund made in this case neither binds the Commission in this matter nor requires it to make further refunds. *Office of Personnel Management v. Richmond*, 496 U.S. 414, 428 (1990); *Vernal Enterprises, Inc. v. FCC*, 335 F.3d 650, 665 (D.C. Cir. 2004); and see *WLOS TV, Inc. v. FCC*, 932 F.2d 993, 995 (D.C. Cir. 1991) (Commission may depart from policy set in a previous adjudication if it provides a reasoned analysis showing that a prior policy is being deliberately changed, not casually ignored).

For these reasons your request for refund of the application fee is denied.

Sincerely,



Mark Stephens
Chief Financial Officer

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

MAR 27 2013

OFFICE OF
MANAGING DIRECTOR

Susan A. Marshall, Esq.
Fletcher, Heald & Hildreth
1300 North 17th Street, 11th Floor
Arlington, VA 22209

Re: Absolute Communications, LLC
File No. BNPB-20041227AAB

Dear Ms. Marshall:

This responds to your July 21, 2011 request for refund of a \$2,980.00 application fee paid by Absolute Communications, LLC (Absolute) in conjunction with the filing of a long form construction permit application (FCC Form 301) following the conclusion of Auction No. 37. For the reasons stated below, payment of the fee was correct and no refund is warranted.

You contend that no filing fee was required pursuant to section 1.2107(c) of the rules, which states that high bidders in spectrum auctions need not submit an additional application fee notwithstanding any other provision of our rules. Section 1.2107(c) is one of the uniform competitive bidding rules that the Commission adopted in 1997 for non-broadcast spectrum auctions. *Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures, Third Report and Order and Second Further Notice of Proposed Rulemaking in WT Docket No. 97-82 and ET Docket No. 94-32*, 13 FCC Rcd 374 (1997) (*Third Report and Order*). The Commission stated that the rules adopted in the *Third Report and Order* would apply to all auctionable services, unless the Commission determined that with regard to particular matters the adoption of service-specific rules was warranted. *Id.* at 382.

The Commission subsequently adopted service-specific rules for broadcast service auctions in 1998, and stated that those rules would apply to all broadcast service auctions. *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234, First Report and Order*, 13 FCC Rcd 15920, 15923 (1998) (*Broadcast Auction Report and Order*). At paragraph 164 of the *Broadcast Auction Report and Order* the Commission stated that winning bidders' Form 301 applications should be filed pursuant to the rules governing the relevant broadcast service and according to any procedures set out by public notice, and specifically stated that the statutorily established application fees would apply to the long-form applications filed by winning bidders. *Id.* at 15984.

The Public Notice issued after the close of Auction 37 provided that "In accordance with the Commission's rules, electronic filing of FCC Form 301 must be accompanied by the appropriate application filing fee," and referenced the fee requirement contained in Paragraph 164 of the *Broadcast Auction Report and Order. Auction of FM Broadcast Construction Permits Closes*, 20 FCC Rcd 1021, 1025 (2004) (*Auction 37 Closing Notice*). In compliance with the *Broadcast Auction Report and Order* and the *Auction 37 Closing Notice*, Absolute paid the fee at the prescribed time and in the correct amount. This demonstrates that Absolute had actual and timely knowledge of the requirement that winning bidders in media service auctions must pay the prescribed application fee when filing a Form 301 long-form

construction permit application. A party with actual and timely notice of a requirement is bound by its terms. See *United States v. Mowat*, 582 F.2d 1194, 1201-02 (9th Cir. 1978); *United States v. Aarons*, 310 F.2d 341, 348 (2nd Cir. 1962).

We also note your reference to the fact that a refund of a Form 301 application fee had previously been made to a winning bidder in a media service auction and your argument that such refund constitutes a direct precedent for granting this refund request. The refund you cite was made in error and the Commission is seeking return of the refunded amounts to assure that all winning bidders in broadcast auctions comply with the fee payment requirement adopted in the Broadcast Auction Report and Order and promulgated in the auctions' closing Public Notices. Absent a statutory barrier, not present here, the Government must recover funds which its agents have wrongfully, erroneously, or illegally paid. *United States v. Wurts*, 303 U.S. 414, 415-16 (1938); *Amtec Corp. v. United States*, 69 Fed. Cl. 79, 88 (2005), *aff'd*, 239 Fed. Appx. 585 (Fed. Cir. 2007); *Aetna Casualty and Surety Co. v. United States*, 208 Ct. Cl. 515, 526 F.2d 1127 (Fed. Cir. 1975), *citing Fansteel Metallurgical Corp. v. United States*, 172 F.Supp. 268, 270 (Ct. Cl. 1959) ("When a payment is erroneously or illegally made...it is not only lawful but the duty of the Government to sue for a refund thereof..."). Moreover, the erroneous refund made in this case neither binds the Commission in this matter nor requires it to make further refunds. *Office of Personnel Management v. Richmond*, 496 U.S. 414, 428 (1990); *Vernal Enterprises, Inc. v. FCC*, 335 F.3d 650, 665 (D.C. Cir. 2004); *and see WLOS TV, Inc. v. FCC*, 932 F.2d 993, 995 (D.C. Cir. 1991) (Commission may depart from policy set in a previous adjudication if it provides a reasoned analysis showing that a prior policy is being deliberately changed, not casually ignored).

For these reasons your request for refund of the application fee is denied.

Sincerely,

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

Mark Stephens
Chief Financial Officer

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAR 27 2013

OFFICE OF
MANAGING DIRECTOR

Kathleen Victory, Esq.
Fletcher, Heald & Hildreth
1300 North 17th Street, 11th Floor
Arlington, VA 22209

Re: Programmers Broadcasting, Inc.
File No. BNPH-20041229ABT
BNPH-20041229ABX
FRN 0006097794

Dear Ms. Victory:

This responds to your August 2, 2011 request for refund of application fees totaling \$5,960.00 paid by Programmers Broadcasting, Inc. (Programmers) in conjunction with the filing of long form construction permit applications (FCC Form 301) following the conclusion of Auction No. 37. For the reasons stated below, payment of the fees was correct and no refund is warranted.

You contend that no filing fees were required pursuant to section 1.2107(c) of the rules, which states that high bidders in spectrum auctions need not submit an additional application fee notwithstanding any other provision of our rules. Section 1.2107(c) is one of the uniform competitive bidding rules that the Commission adopted in 1997 for non-broadcast spectrum auctions. *Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures, Third Report and Order and Second Further Notice of Proposed Rulemaking in WT Docket No. 97-82 and ET Docket No. 94-32*, 13 FCC Rcd 374 (1997) (*Third Report and Order*). The Commission stated that the rules adopted in the *Third Report and Order* would apply to all auctionable services, unless the Commission determined that with regard to particular matters the adoption of service-specific rules was warranted. *Id.* at 382.

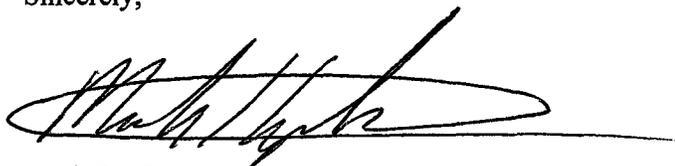
The Commission subsequently adopted service-specific rules for broadcast service auctions in 1998, and stated that those rules would apply to all broadcast service auctions. *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234, First Report and Order*, 13 FCC Rcd 15920, 15923 (1998) ("*Broadcast Auction Report and Order*"). At paragraph 164 of the *Broadcast Auction Report and Order* the Commission stated that winning bidders' Form 301 applications should be filed pursuant to the rules governing the relevant broadcast service and according to any procedures set out by public notice, and specifically stated that the statutorily established application fees would apply to the long-form applications filed by winning bidders. *Id.* at 15984.

The Public Notice issued after the close of Auction 37 provided that "In accordance with the Commission's rules, electronic filing of FCC Form 301 must be accompanied by the appropriate application filing fee," and referenced the fee requirement contained in Paragraph 164 of the *Broadcast Auction Report and Order. Auction of FM Broadcast Construction Permits Closes*, 20 FCC Rcd 1021, 1025 (2004) (*Auction 37 Closing Notice*). In compliance with the *Broadcast Auction Report and Order* and the *Auction 37 Closing Notice*, Programmers paid the fees at the prescribed time and in the correct amounts. This demonstrates that Programmers had actual and timely knowledge of the requirement that winning bidders in media service auctions must pay the prescribed application fee when filing a Form 301 long-form construction permit application. A party with actual and timely notice of a requirement is bound by its terms. See *United States v. Mowat*, 582 F.2d 1194, 1201-02 (9th Cir. 1978); *United States v. Aarons*, 310 F.2d 341, 348 (2nd Cir. 1962).

We also note your reference to the fact that a refund of a Form 301 application fee had previously been made to a winning bidder in a media service auction and your argument that such refund constitutes a direct precedent for granting this refund request. The refund you cite was made in error and the Commission is seeking return of the refunded amounts to assure that all winning bidders in broadcast auctions comply with the fee payment requirement adopted in the Broadcast Auction Report and Order and promulgated in the auctions' closing Public Notices. Absent a statutory barrier, not present here, the Government must recover funds which its agents have wrongfully, erroneously, or illegally paid. *United States v. Wurts*, 303 U.S. 414, 415-16 (1938); *Amtec Corp. v. United States*, 69 Fed. Cl. 79, 88 (2005), *aff'd*, 239 Fed. Appx. 585 (Fed. Cir. 2007); *Aetna Casualty and Surety Co. v. United States*, 208 Ct. Cl. 515, 526 F.2d 1127 (Fed. Cir. 1975), *citing Fansteel Metallurgical Corp. v. United States*, 172 F.Supp. 268, 270 (Ct. Cl. 1959) ("When a payment is erroneously or illegally made...it is not only lawful but the duty of the Government to sue for a refund thereof..."). Moreover, the erroneous refund made in this case neither binds the Commission in this matter nor requires it to make further refunds. *Office of Personnel Management v. Richmond*, 496 U.S. 414, 428 (1990); *Vernal Enterprises, Inc. v. FCC*, 335 F.3d 650, 665 (D.C. Cir. 2004); *and see WLOS TV, Inc. v. FCC*, 932 F.2d 993, 995 (D.C. Cir. 1991) (Commission may depart from policy set in a previous adjudication if it provides a reasoned analysis showing that a prior policy is being deliberately changed, not casually ignored).

For these reasons your request for refund of the application fees is denied.

Sincerely,

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

Mark Stephens
Chief Financial Officer

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAR 27 2013

OFFICE OF
MANAGING DIRECTOR

Christine Goepp, Esq.
Fletcher, Heald & Hildreth
1300 North 17th Street, 11th Floor
Arlington, VA 22209

Re: Mattox Broadcasting, Inc.
File No. BNPH-20070501AFY

Dear Ms. Goepp:

This responds to your July 11, 2011 request for refund of a \$3,210.00 application fee paid by Mattox Broadcasting, Inc. (Mattox) in conjunction with the filing of a long form construction permit application (FCC Form 301) following the conclusion of Auction No. 70. For the reasons stated below, payment of the fee was correct and no refund is warranted.

You contend that no filing fee was required pursuant to section 1.2107(c) of the rules, which states that high bidders in spectrum auctions need not submit an additional application fee notwithstanding any other provision of our rules. Section 1.2107(c) is one of the uniform competitive bidding rules that the Commission adopted in 1997 for non-broadcast spectrum auctions. *Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures, Third Report and Order and Second Further Notice of Proposed Rulemaking in WT Docket No. 97-82 and ET Docket No. 94-32*, 13 FCC Rcd 374 (1997) (*Third Report and Order*). The Commission stated that the rules adopted in the *Third Report and Order* would apply to all auctionable services, unless the Commission determined that with regard to particular matters the adoption of service-specific rules was warranted. *Id.* at 382.

The Commission subsequently adopted service-specific rules for broadcast service auctions in 1998, and stated that those rules would apply to all broadcast service auctions. *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234, First Report and Order*, 13 FCC Rcd 15920, 15923 (1998) (*Broadcast Auction Report and Order*). At paragraph 164 of the *Broadcast Auction Report and Order* the Commission stated that winning bidders' Form 301 applications should be filed pursuant to the rules governing the relevant broadcast service and according to any procedures set out by public notice, and specifically stated that the statutorily established application fees would apply to the long-form applications filed by winning bidders. *Id.* at 15984.

The Public Notice issued after the close of Auction 70 provided that "In accordance with the Commission's rules, electronic filing of FCC Form 301 must be accompanied by the appropriate application filing fee," and referenced the fee requirement contained in Paragraph 164 of the *Broadcast Auction Report and Order. Auction of FM Broadcast Construction Permits Closes*, 221 FCC Rcd 6326, 6327 (2007) (*Auction 70 Closing Notice*). In compliance with the *Broadcast Auction Report and Order* and the *Auction 70 Closing Notice*, Mattox paid the fee at the prescribed time and in the correct amount. This demonstrates that Mattox had actual and timely knowledge of the requirement that winning bidders in media service auctions must pay the prescribed application fee when filing a Form 301 long-form construction permit application. A party with actual and timely notice of a requirement is bound by its terms. See *United States v. Mowat*, 582 F.2d 1194, 1201-02 (9th Cir. 1978); *United States v. Aarons*, 310 F.2d 341, 348 (2nd Cir. 1962).

We also note your reference to the fact that a refund of a Form 301 application fee had previously been made to a winning bidder in a media service auction and your argument that such refund constitutes a direct precedent for granting this refund request. The refund you cite was made in error and the Commission is seeking return of the refunded amounts to assure that all winning bidders in broadcast auctions comply with the fee payment requirement adopted in the Broadcast Auction Report and Order and promulgated in the auctions' closing Public Notices. Absent a statutory barrier, not present here, the Government must recover funds which its agents have wrongfully, erroneously, or illegally paid. *United States v. Wurts*, 303 U.S. 414, 415-16 (1938); *Amtec Corp. v. United States*, 69 Fed. Cl. 79, 88 (2005), *aff'd*, 239 Fed. Appx. 585 (Fed. Cir. 2007); *Aetna Casualty and Surety Co. v. United States*, 208 Ct. Cl. 515, 526 F.2d 1127 (Fed. Cir. 1975), *citing Fansteel Metallurgical Corp. v. United States*, 172 F.Supp. 268, 270 (Ct. Cl. 1959) ("When a payment is erroneously or illegally made...it is not only lawful but the duty of the Government to sue for a refund thereof..."). Moreover, the erroneous refund made in this case neither binds the Commission in this matter nor requires it to make further refunds. *Office of Personnel Management v. Richmond*, 496 U.S. 414, 428 (1990); *Vernal Enterprises, Inc. v. FCC*, 335 F.3d 650, 665 (D.C. Cir. 2004); *and see WLOS TV, Inc. v. FCC*, 932 F.2d 993, 995 (D.C. Cir. 1991) (Commission may depart from policy set in a previous adjudication if it provides a reasoned analysis showing that a prior policy is being deliberately changed, not casually ignored).

For these reasons your request for refund of the application fee is denied.

Sincerely,

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

Mark Stephens
Chief Financial Officer

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

MAR 27 2013

Suzanne E. Rogers, President
Airen Broadcasting Company
455 Capitol Mall, Suite 210
Sacramento, CA 95814

Re: Airen Broadcasting Company
File No. BNPB-20041223ABI
BNPB-20060308AII
FRN 0011337649

Dear Ms. Rogers:

This responds to your July 11, 2011 request for refund of application fees totaling \$5,960.00 paid by Airen Broadcasting Company (Airen) in conjunction with the filing of long form construction permit applications (FCC Form 301) following the conclusion of Auction Nos. 37 and 62. For the reasons stated below, payment of the fees was correct and no refund is warranted.

You contend that no filing fees were required pursuant to section 1.2107(c) of the rules, which states that high bidders in spectrum auctions need not submit an additional application fee notwithstanding any other provision of our rules. Section 1.2107(c) is one of the uniform competitive bidding rules that the Commission adopted in 1997 for non-broadcast spectrum auctions. *Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures, Third Report and Order and Second Further Notice of Proposed Rulemaking in WT Docket No. 97-82 and ET Docket No. 94-32*, 13 FCC Rcd 374 (1997) (*Third Report and Order*). The Commission stated that the rules adopted in the *Third Report and Order* would apply to all auctionable services, unless the Commission determined that with regard to particular matters the adoption of service-specific rules was warranted. *Id.* at 382.

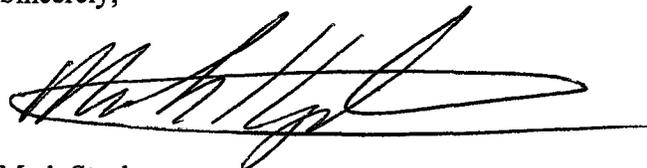
The Commission subsequently adopted service-specific rules for broadcast service auctions in 1998, and stated that those rules would apply to all broadcast service auctions. *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234, First Report and Order*, 13 FCC Rcd 15920, 15923 (1998) (*Broadcast Auction Report and Order*). At paragraph 164 of the *Broadcast Auction Report and Order* the Commission stated that winning bidders' Form 301 applications should be filed pursuant to the rules governing the relevant broadcast service and according to any procedures set out by public notice, and specifically stated that the statutorily established application fees would apply to the long-form applications filed by winning bidders. *Id.* at 15984.

The Public Notices issued after the close of Auctions 37 and 62 provided that “In accordance with the Commission’s rules, electronic filing of FCC Form 301 must be accompanied by the appropriate application filing fee,” and referenced the fee requirement contained in Paragraph 164 of the *Broadcast Auction Report and Order. Auction of FM Broadcast Construction Permits Closes*, 20 FCC Rcd 1021,1025 (2004) (*Auction 37 Closing Notice*) and 21 FCC Rcd 1071, 1076 (2006) (*Auction 62 Closing Notice*). In compliance with the *Broadcast Auction Report and Order* and the *Auction 37 and 62 Closing Notices*, Airen paid the fees at the prescribed times and in the correct amounts. This demonstrates that Airen had actual and timely knowledge of the requirement that winning bidders in media service auctions must pay the prescribed application fee when filing a Form 301 long-form construction permit application. A party with actual and timely notice of a requirement is bound by its terms. See *United States v. Mowat*, 582 F.2d 1194, 1201-02 (9th Cir. 1978); *United States v. Aarons*, 310 F.2d 341, 348 (2nd Cir. 1962).

We also note your reference to the fact that a refund of a Form 301 application fee had previously been made to a winning bidder in a media service auction and your argument that such refund constitutes a direct precedent for granting this refund request. The refund you cite was made in error and the Commission is seeking return of the refunded amounts to assure that all winning bidders in broadcast auctions comply with the fee payment requirement adopted in the Broadcast Auction Report and Order and promulgated in the auctions’ closing Public Notices. Absent a statutory barrier, not present here, the Government must recover funds which its agents have wrongfully, erroneously, or illegally paid. *United States v. Wurts*, 303 U.S. 414, 415-16 (1938); *Amtec Corp. v. United States*, 69 Fed. Cl. 79, 88 (2005), *aff’d*, 239 Fed. Appx. 585 (Fed. Cir. 2007); *Aetna Casualty and Surety Co. v. United States*, 208 Ct. Cl. 515, 526 F.2d 1127 (Fed. Cir. 1975), *citing Fansteel Metallurgical Corp. v. United States*, 172 F.Supp. 268, 270 (Ct. Cl. 1959) (“When a payment is erroneously or illegally made...it is not only lawful but the duty of the Government to sue for a refund thereof...”). Moreover, the erroneous refund made in this case neither binds the Commission in this matter nor requires it to make further refunds. *Office of Personnel Management v. Richmond*, 496 U.S. 414, 428 (1990); *Vernal Enterprises, Inc. v. FCC*, 335 F.3d 650, 665 (D.C. Cir. 2004); *and see WLOS TV, Inc. v. FCC*, 932 F.2d 993, 995 (D.C. Cir. 1991) (Commission may depart from policy set in a previous adjudication if it provides a reasoned analysis showing that a prior policy is being deliberately changed, not casually ignored).

For these reasons your request for refund of the application fees is denied.

Sincerely,

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

Mark Stephens
Chief Financial Officer

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

MAR 27 2013

OFFICE OF
MANAGING DIRECTOR

Susan A. Marshall, Esq.
Fletcher, Heald & Hildreth
1300 North 17th Street, 11th Floor
Arlington, VA 22209

Re: Tri State Radio, LLC
File No. BNPH-20070226AFD

Dear Ms. Marshall:

This responds to your July 22, 2011 request for refund of a \$3,210.00 application fee paid by Tri State Radio, LLC (Tri State) in conjunction with the filing of the a long form construction permit application (FCC Form 301) following the conclusion of Auction No. 68. For the reasons stated below, payment of the fee was correct and no refund is warranted.

You contend that no filing fee was required pursuant to section 1.2107(c) of the rules, which states that high bidders in spectrum auctions need not submit an additional application fee notwithstanding any other provision of our rules. Section 1.2107(c) is one of the uniform competitive bidding rules that the Commission adopted in 1997 for non-broadcast spectrum auctions. *Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures, Third Report and Order and Second Further Notice of Proposed Rulemaking in WT Docket No. 97-82 and ET Docket No. 94-32*, 13 FCC Rcd 374 (1997) (*Third Report and Order*). The Commission stated that the rules adopted in the *Third Report and Order* would apply to all auctionable services, unless the Commission determined that with regard to particular matters the adoption of service-specific rules was warranted. *Id.* at 382.

The Commission subsequently adopted service-specific rules for broadcast service auctions in 1998, and stated that those rules would apply to all broadcast service auctions. *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234, First Report and Order*, 13 FCC Rcd 15920, 15923 (1998) ("*Broadcast Auction Report and Order*"). At paragraph 164 of the *Broadcast Auction Report and Order* the Commission stated that winning bidders' Form 301 applications should be filed pursuant to the rules governing the relevant broadcast service and according to any procedures set out by public notice, and specifically stated that the statutorily established application fees would apply to the long-form applications filed by winning bidders. *Id.* at 15984.

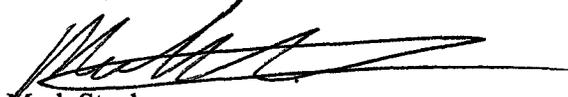
The Public Notice issued after the close of Auction 68 provided that "In accordance with the Commission's rules, electronic filing of FCC Form 301 must be accompanied by the appropriate application filing fee," and referenced the fee requirement contained in Paragraph 164 of the *Broadcast Auction Report and Order. Auction of FM Broadcast Construction Permits Closes*, 22 FCC Rcd 518, 523 (2007) (*Auction 68 Closing Notice*). In compliance with the *Broadcast Auction Report and Order* and the *Auction 68 Closing Notice*, Tri State paid the fee at the prescribed time and in the correct amount. This demonstrates that Tri State had actual and timely knowledge of the requirement that winning bidders in media service auctions must pay the prescribed application fee when filing a Form 301 long-form

construction permit application. A party with actual and timely notice of a requirement is bound by its terms. See *United States v. Mowat*, 582 F.2d 1194, 1201-02 (9th Cir. 1978); *United States v. Aarons*, 310 F.2d 341, 348 (2nd Cir. 1962).

We also note your reference to the fact that a refund of a Form 301 application fee had previously been made to a winning bidder in a media service auction and your argument that such refund constitutes a direct precedent for granting this refund request. The refund you cite was made in error and the Commission is seeking return of the refunded amounts to assure that all winning bidders in broadcast auctions comply with the fee payment requirement adopted in the Broadcast Auction Report and Order and promulgated in the auctions' closing Public Notices. Absent a statutory barrier, not present here, the Government must recover funds which its agents have wrongfully, erroneously, or illegally paid. *United States v. Wurts*, 303 U.S. 414, 415-16 (1938); *Amtec Corp. v. United States*, 69 Fed. Cl. 79, 88 (2005), *aff'd*, 239 Fed. Appx. 585 (Fed. Cir. 2007); *Aetna Casualty and Surety Co. v. United States*, 208 Ct. Cl. 515, 526 F.2d 1127 (Fed. Cir. 1975), *citing Fansteel Metallurgical Corp. v. United States*, 172 F.Supp. 268, 270 (Ct. Cl. 1959) ("When a payment is erroneously or illegally made...it is not only lawful but the duty of the Government to sue for a refund thereof..."). Moreover, the erroneous refund made in this case neither binds the Commission in this matter nor requires it to make further refunds. *Office of Personnel Management v. Richmond*, 496 U.S. 414, 428 (1990); *Vernal Enterprises, Inc. v. FCC*, 335 F.3d 650, 665 (D.C. Cir. 2004); and see *WLOS TV, Inc. v. FCC*, 932 F.2d 993, 995 (D.C. Cir. 1991) (Commission may depart from policy set in a previous adjudication if it provides a reasoned analysis showing that a prior policy is being deliberately changed, not casually ignored).

For these reasons your request for refund of the application fee is denied.

Sincerely,



Mark Stephens
Chief financial Officer

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

MAR 27 2013

OFFICE OF
MANAGING DIRECTOR

Christine Goepp, Esq.
Fletcher, Heald & Hildreth
1300 North 17th Street, 11th Floor
Arlington, VA 22209

Re: Horizon Christian Fellowship
File No. BNPH-20060310ACO
BNPH-20060310ACP
BNPH-20060310ADK
BNPH-20060310ACM
BNPH-20060310ACT
BNPH-20060310ADG
BNPH-20060310ACK

Dear Ms. Goepp:

This responds to your August 1, 2011 request for refund of a \$20,860.00 application fees paid by Horizon Christian Fellowship (HCF) in conjunction with the filing of long form construction permit applications (FCC Form 301) following the conclusion of Auction No. 62. For the reasons stated below, payment of the fees was correct and no refund is warranted.

You contend that no filing fees were required pursuant to section 1.2107(c) of the rules, which states that high bidders in spectrum auctions need not submit an additional application fee notwithstanding any other provision of our rules. Section 1.2107(c) is one of the uniform competitive bidding rules that the Commission adopted in 1997 for non-broadcast spectrum auctions. *Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures, Third Report and Order and Second Further Notice of Proposed Rulemaking in WT Docket No. 97-82 and ET Docket No. 94-32*, 13 FCC Rcd 374 (1997) (*Third Report and Order*). The Commission stated that the rules adopted in the *Third Report and Order* would apply to all auctionable services, unless the Commission determined that with regard to particular matters the adoption of service-specific rules was warranted. *Id.* at 382.

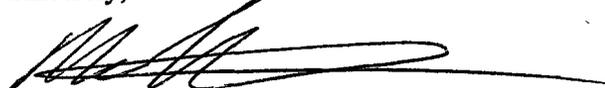
The Commission subsequently adopted service-specific rules for broadcast service auctions in 1998, and stated that those rules would apply to all broadcast service auctions. *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234, First Report and Order*, 13 FCC Rcd 15920, 15923 (1998) ("*Broadcast Auction Report and Order*"). At paragraph 164 of the *Broadcast Auction Report and Order* the Commission stated that winning bidders' Form 301 applications should be filed pursuant to the rules governing the relevant broadcast service and according to any procedures set out by public notice, and specifically stated that the statutorily established application fees would apply to the long-form applications filed by winning bidders. *Id.* at 15984.

The Public Notice issued after the close of Auction 62 provided that "In accordance with the Commission's rules, electronic filing of FCC Form 301 must be accompanied by the appropriate application filing fee," and referenced the fee requirement contained in Paragraph 164 of the *Broadcast Auction Report and Order. Auction of FM Broadcast Construction Permits Closes*, 21 FCC Rcd 1071, 1076 (2006) (*Auction 62 Closing Notice*). In compliance with the *Broadcast Auction Report and Order* and the *Auction 62 Closing Notice*, HCF paid the fees at the prescribed time and in the correct amount. This demonstrates that HCF had actual and timely knowledge of the requirement that winning bidders in media service auctions must pay the prescribed application fee when filing a Form 301 long-form construction permit application. A party with actual and timely notice of a requirement is bound by its terms. See *United States v. Mowat*, 582 F.2d 1194, 1201-02 (9th Cir. 1978); *United States v. Aarons*, 310 F.2d 341, 348 (2nd Cir. 1962).

We also note your reference to the fact that a refund of a Form 301 application fee had previously been made to a winning bidder in a media service auction and your argument that such refund constitutes a direct precedent for granting this refund request. The refund you cite was made in error and the Commission is seeking return of the refunded amounts to assure that all winning bidders in broadcast auctions comply with the fee payment requirement adopted in the Broadcast Auction Report and Order and promulgated in the auctions' closing Public Notices. Absent a statutory barrier, not present here, the Government must recover funds which its agents have wrongfully, erroneously, or illegally paid. *United States v. Wurts*, 303 U.S. 414, 415-16 (1938); *Amtec Corp. v. United States*, 69 Fed. Cl. 79, 88 (2005), *aff'd*, 239 Fed. Appx. 585 (Fed. Cir. 2007); *Aetna Casualty and Surety Co. v. United States*, 208 Ct. Cl. 515, 526 F.2d 1127 (Fed. Cir. 1975), *citing Fansteel Metallurgical Corp. v. United States*, 172 F.Supp. 268, 270 (Ct. Cl. 1959) ("When a payment is erroneously or illegally made...it is not only lawful but the duty of the Government to sue for a refund thereof..."). Moreover, the erroneous refund made in this case neither binds the Commission in this matter nor requires it to make further refunds. *Office of Personnel Management v. Richmond*, 496 U.S. 414, 428 (1990); *Vernal Enterprises, Inc. v. FCC*, 335 F.3d 650, 665 (D.C. Cir. 2004); *and see WLOS TV, Inc. v. FCC*, 932 F.2d 993, 995 (D.C. Cir. 1991) (Commission may depart from policy set in a previous adjudication if it provides a reasoned analysis showing that a prior policy is being deliberately changed, not casually ignored).

For these reasons your request for refund of the application fees is denied.

Sincerely,



Mark Stephens
Chief Financial Officer

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

MAR 27 2013

OFFICE OF
MANAGING DIRECTOR

Christine Goepp, Esq.
Fletcher, Heald & Hildreth
1300 North 17th Street, 11th Floor
Arlington, VA 22209

Re: JAB Broadcasting, LLC
File No. BNPH-20060310ACA

Dear Ms. Goepp:

This responds to your August 1, 2011 request for refund of a \$2,980.00 application fee paid by JAB Broadcasting, LLC (JAB) in conjunction with the filing of a long form construction permit application (FCC Form 301) following the conclusion of Auction No. 62. For the reasons stated below, payment of the fee was correct and no refund is warranted.

You contend that no filing fee was required pursuant to section 1.2107(c) of the rules, which states that high bidders in spectrum auctions need not submit an additional application fee notwithstanding any other provision of our rules. Section 1.2107(c) is one of the uniform competitive bidding rules that the Commission adopted in 1997 for non-broadcast spectrum auctions. *Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures, Third Report and Order and Second Further Notice of Proposed Rulemaking in WT Docket No. 97-82 and ET Docket No. 94-32*, 13 FCC Rcd 374 (1997) (*Third Report and Order*). The Commission stated that the rules adopted in the *Third Report and Order* would apply to all auctionable services, unless the Commission determined that with regard to particular matters the adoption of service-specific rules was warranted. *Id.* at 382.

The Commission subsequently adopted service-specific rules for broadcast service auctions in 1998, and stated that those rules would apply to all broadcast service auctions. *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234, First Report and Order*, 13 FCC Rcd 15920, 15923 (1998) ("*Broadcast Auction Report and Order*"). At paragraph 164 of the *Broadcast Auction Report and Order* the Commission stated that winning bidders' Form 301 applications should be filed pursuant to the rules governing the relevant broadcast service and according to any procedures set out by public notice, and specifically stated that the statutorily established application fees would apply to the long-form applications filed by winning bidders. *Id.* at 15984.

The Public Notice issued after the close of Auction 62 provided that "In accordance with the Commission's rules, electronic filing of FCC Form 301 must be accompanied by the appropriate application filing fee," and referenced the fee requirement contained in Paragraph 164 of the *Broadcast Auction Report and Order. Auction of FM Broadcast Construction Permits Closes*, 21 FCC Rcd 1071,

1076 (2006). In compliance with the *Broadcast Auction Report and Order* and the Auction 62 Public Notice, Porter Hogan paid the fee at the prescribed time and in the correct amount. This demonstrates that Porter Hogan had actual and timely knowledge of the requirement that winning bidders in media service auctions must pay the prescribed application fee when filing a Form 301 long-form construction permit application. A party with actual and timely notice of a requirement is bound by its terms. See *United States v. Mowat*, 582 F.2d 1194, 1201-02 (9th Cir. 1978); *United States v. Aarons*, 310 F.2d 341, 348 (2nd Cir. 1962).

We also note your reference to the fact that a refund of a Form 301 application fee had previously been made to a winning bidder in a media service auction and your argument that such refund constitutes a direct precedent for granting this refund request. The refund you cite was made in error and the Commission is seeking return of the refunded amounts to assure that all winning bidders in broadcast auctions comply with the fee payment requirement adopted in the Broadcast Auction Report and Order and promulgated in the auctions' closing Public Notices. Absent a statutory barrier, not present here, the Government must recover funds which its agents have wrongfully, erroneously, or illegally paid. *United States v. Wurts*, 303 U.S. 414, 415-16 (1938); *Amtec Corp. v. United States*, 69 Fed. Cl. 79, 88 (2005), *aff'd*, 239 Fed. Appx. 585 (Fed. Cir. 2007); *Aetna Casualty and Surety Co. v. United States*, 208 Ct. Cl. 515, 526 F.2d 1127 (Fed. Cir. 1975), *citing Fansteel Metallurgical Corp. v. United States*, 172 F.Supp. 268, 270 (Ct. Cl. 1959) ("When a payment is erroneously or illegally made...it is not only lawful but the duty of the Government to sue for a refund thereof..."). Moreover, the erroneous refund made in this case neither binds the Commission in this matter nor requires it to make further refunds. *Office of Personnel Management v. Richmond*, 496 U.S. 414, 428 (1990); *Vernal Enterprises, Inc. v. FCC*, 335 F.3d 650, 665 (D.C. Cir. 2004); *and see WLOS TV, Inc. v. FCC*, 932 F.2d 993, 995 (D.C. Cir. 1991) (Commission may depart from policy set in a previous adjudication if it provides a reasoned analysis showing that a prior policy is being deliberately changed, not casually ignored).

For these reasons your request for refund of the application fee is denied.

Sincerely,

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

Mark Stephens
Chief Financial Officer

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

MAR 27 2013

OFFICE OF
MANAGING DIRECTOR

Christine Goepp, Esq.
Fletcher, Heald & Hildreth
1300 North 17th Street, 11th Floor
Arlington, VA 22209

Re: Independence Media Holdings
File No. BNPH-20070430AAI

Dear Ms. Goepp:

This responds to your August 1, 2011 request for refund of a \$3,210.00 application fee paid by Independence Media Holdings (Independence) in conjunction with the filing of a long form construction permit application (FCC Form 301) following the conclusion of Auction No. 70. For the reasons stated below, payment of the fee was correct and no refund is warranted.

You contend that no filing fee was required pursuant to section 1.2107(c) of the rules, which states that high bidders in spectrum auctions need not submit an additional application fee notwithstanding any other provision of our rules. Section 1.2107(c) is one of the uniform competitive bidding rules that the Commission adopted in 1997 for non-broadcast spectrum auctions. *Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures, Third Report and Order and Second Further Notice of Proposed Rulemaking in WT Docket No. 97-82 and ET Docket No. 94-32*, 13 FCC Rcd 374 (1997) (*Third Report and Order*). The Commission stated that the rules adopted in the *Third Report and Order* would apply to all auctionable services, unless the Commission determined that with regard to particular matters the adoption of service-specific rules was warranted. *Id.* at 382.

The Commission subsequently adopted service-specific rules for broadcast service auctions in 1998, and stated that those rules would apply to all broadcast service auctions. *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234, First Report and Order*, 13 FCC Rcd 15920, 15923 (1998) (*Broadcast Auction Report and Order*). At paragraph 164 of the *Broadcast Auction Report and Order* the Commission stated that winning bidders' Form 301 applications should be filed pursuant to the rules governing the relevant broadcast service and according to any procedures set out by public notice, and specifically stated that the statutorily established application fees would apply to the long-form applications filed by winning bidders. *Id.* at 15984.

The Public Notice issued after the close of Auction 70 provided that "In accordance with the Commission's rules, electronic filing of FCC Form 301 must be accompanied by the appropriate application filing fee," and referenced the fee requirement contained in Paragraph 164 of the *Broadcast Auction Report and Order. Auction of FM Broadcast Construction Permits Closes*, 22 FCC Rcd 6323, 6327 (2007) (*Auction 70 Closing Notice*). In compliance with the *Broadcast Auction Report and Order*

and the *Auction 70 Closing Notice*, Independence paid the fee at the prescribed time and in the correct amount. This demonstrates that Independence had actual and timely knowledge of the requirement that winning bidders in media service auctions must pay the prescribed application fee when filing a Form 301 long-form construction permit application. A party with actual and timely notice of a requirement is bound by its terms. See *United States v. Mowat*, 582 F.2d 1194, 1201-02 (9th Cir. 1978); *United States v. Aarons*, 310 F.2d 341, 348 (2nd Cir. 1962).

We also note your reference to the fact that a refund of a Form 301 application fee had previously been made to a winning bidder in a media service auction and your argument that such refund constitutes a direct precedent for granting this refund request. The refund you cite was made in error and the Commission is seeking return of the refunded amounts to assure that all winning bidders in broadcast auctions comply with the fee payment requirement adopted in the *Broadcast Auction Report and Order* and promulgated in the auctions' closing Public Notices. Absent a statutory barrier, not present here, the Government must recover funds which its agents have wrongfully, erroneously, or illegally paid. *United States v. Wurts*, 303 U.S. 414, 415-16 (1938); *Amtec Corp. v. United States*, 69 Fed. Cl. 79, 88 (2005), *aff'd*, 239 Fed. Appx. 585 (Fed. Cir. 2007); *Aetna Casualty and Surety Co. v. United States*, 208 Ct. Cl. 515, 526 F.2d 1127 (Fed. Cir. 1975), *citing Fansteel Metallurgical Corp. v. United States*, 172 F.Supp. 268, 270 (Ct. Cl. 1959) ("When a payment is erroneously or illegally made...it is not only lawful but the duty of the Government to sue for a refund thereof..."). Moreover, the erroneous refund made in this case neither binds the Commission in this matter nor requires it to make further refunds. *Office of Personnel Management v. Richmond*, 496 U.S. 414, 428 (1990); *Vernal Enterprises, Inc. v. FCC*, 335 F.3d 650, 665 (D.C. Cir. 2004); *and see WLOS TV, Inc. v. FCC*, 932 F.2d 993, 995 (D.C. Cir. 1991) (Commission may depart from policy set in a previous adjudication if it provides a reasoned analysis showing that a prior policy is being deliberately changed, not casually ignored).

For these reasons your request for refund of the application fee is denied.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Stephens', with a long horizontal flourish extending to the right.

Mark Stephens
Chief Financial Officer

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

MAR 27 2013

OFFICE OF
MANAGING DIRECTOR

Christine Goepf, Esq.
Fletcher, Heald & Hildreth
1300 North 17th Street, 11th Floor
Arlington, VA 22209

Re: E-String Wireless, Ltd.
BNPH-20050103AHW
BNPH-20050103AGM
BNPH-20070529AFO

Dear Ms. Goepf:

This responds to your August 1, 2011 request for refunds of application fees totaling \$9,170.00 paid by E-String Wireless, Ltd. (E-String) in conjunction with the filing of long form construction permit applications (FCC Form 301) following the conclusion of Auction Nos. 37 and 70. For the reasons stated below, payment of the fees was correct and no refund is warranted.

You contend that no filing fees were required pursuant to section 1.2107(c) of the rules, which states that high bidders in spectrum auctions need not submit an additional application fee notwithstanding any other provision of our rules. Section 1.2107(c) is one of the uniform competitive bidding rules that the Commission adopted in 1997 for non-broadcast spectrum auctions. *Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures, Third Report and Order and Second Further Notice of Proposed Rulemaking in WT Docket No. 97-82 and ET Docket No. 94-32*, 13 FCC Rcd 374 (1997) (*Third Report and Order*). The Commission stated that the rules adopted in the *Third Report and Order* would apply to all auctionable services, unless the Commission determined that with regard to particular matters the adoption of service-specific rules was warranted. *Id.* at 382.

The Commission subsequently adopted service-specific rules for broadcast service auctions in 1998, and stated that those rules would apply to all broadcast service auctions. *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234, First Report and Order*, 13 FCC Rcd 15920, 15923 (1998) (*Broadcast Auction Report and Order*). At paragraph 164 of the *Broadcast Auction Report and Order* the Commission stated that winning bidders' Form 301 applications should be filed pursuant to the rules governing the relevant broadcast service and according to any procedures set out by public notice, and specifically stated that the statutorily established application fees would apply to the long-form applications filed by winning bidders. *Id.* at 15984.

The Public Notices issued after the close of Auctions 37 and 70 provided that "In accordance with the Commission's rules, electronic filing of FCC Form 301 must be accompanied by the appropriate application filing fee," and referenced the fee requirement contained in Paragraph 164 of the *Broadcast Auction Report and Order. Auction of FM Broadcast Construction Permits Closes*, 20 FCC Rcd

1021,1025 (2004) (*Auction 37 Closing Notice*) and 22 FCC Rcd 6323, 6327 (2007) (*Auction 70 Closing Notice*). In compliance with the *Broadcast Auction Report and Order* and the *Auction 37 and 70 Closing Notices*, E-String paid the fees at the prescribed times and in the correct amounts. This demonstrates that E-String had actual and timely knowledge of the requirement that winning bidders in media service auctions must pay the prescribed application fee when filing a Form 301 long-form construction permit application. A party with actual and timely notice of a requirement is bound by its terms. See *United States v. Mowat*, 582 F.2d 1194, 1201-02 (9th Cir. 1978); *United States v. Aarons*, 310 F.2d 341, 348 (2nd Cir. 1962).

We also note your reference to the fact that a refund of a Form 301 application fee had previously been made to a winning bidder in a media service auction and your argument that such refund constitutes a direct precedent for granting this refund request. The refund you cite was made in error and the Commission is seeking return of the refunded amounts to assure that all winning bidders in broadcast auctions comply with the fee payment requirement adopted in the *Broadcast Auction Report and Order* and promulgated in the auctions' closing Public Notices. Absent a statutory barrier, not present here, the Government must recover funds which its agents have wrongfully, erroneously, or illegally paid. *United States v. Wurts*, 303 U.S. 414, 415-16 (1938); *Amtec Corp. v. United States*, 69 Fed. Cl. 79, 88 (2005), *aff'd*, 239 Fed. Appx. 585 (Fed. Cir. 2007); *Aetna Casualty and Surety Co. v. United States*, 208 Ct. Cl. 515, 526 F.2d 1127 (Fed. Cir. 1975), *citing Fansteel Metallurgical Corp. v. United States*, 172 F.Supp. 268, 270 (Ct. Cl. 1959) ("When a payment is erroneously or illegally made...it is not only lawful but the duty of the Government to sue for a refund thereof..."). Moreover, the erroneous refund made in this case neither binds the Commission in this matter nor requires it to make further refunds. *Office of Personnel Management v. Richmond*, 496 U.S. 414, 428 (1990); *Vernal Enterprises, Inc. v. FCC*, 335 F.3d 650, 665 (D.C. Cir. 2004); *and see WLOS TV, Inc. v. FCC*, 932 F.2d 993, 995 (D.C. Cir. 1991) (Commission may depart from policy set in a previous adjudication if it provides a reasoned analysis showing that a prior policy is being deliberately changed, not casually ignored).

For these reasons your request for refund of the application fees is denied.

Sincerely,



Mark Stephens
Chief financial Officer

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

MAR 27 2013

OFFICE OF
MANAGING DIRECTOR

Christine Goepp, Esq.
Fletcher, Heald & Hildreth
1300 North 17th Street, 11th Floor
Arlington, VA 22209

Re: Delta Media Corporation
File No. BNPB-20041227ABP
BNPB-20091016ADX
BNPB-20091016AEB

Dear Ms. Goepp:

This responds to your July 11, 2011 request for refunds of application fees totaling \$9,710.00 paid by Delta Media Corporation (Delta) in conjunction with the filing of long form construction permit applications (FCC Form 301) following the conclusion of Auction No. 37. For the reasons stated below, payment of the fees was correct and no refund is warranted.

You contend that no filing fees were required pursuant to section 1.2107(c) of the rules, which states that high bidders in spectrum auctions need not submit an additional application fee notwithstanding any other provision of our rules. Section 1.2107(c) is one of the uniform competitive bidding rules that the Commission adopted in 1997 for non-broadcast spectrum auctions. *Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures, Third Report and Order and Second Further Notice of Proposed Rulemaking in WT Docket No. 97-82 and ET Docket No. 94-32*, 13 FCC Rcd 374 (1997) (*Third Report and Order*). The Commission stated that the rules adopted in the *Third Report and Order* would apply to all auctionable services, unless the Commission determined that with regard to particular matters the adoption of service-specific rules was warranted. *Id.* at 382.

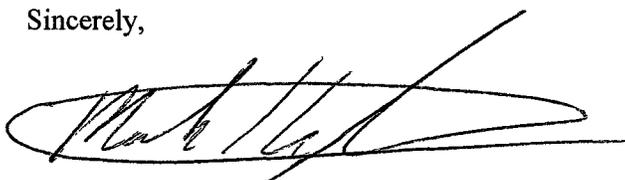
The Commission subsequently adopted service-specific rules for broadcast service auctions in 1998, and stated that those rules would apply to all broadcast service auctions. *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234, First Report and Order*, 13 FCC Rcd 15920, 15923 (1998) (*Broadcast Auction Report and Order*). At paragraph 164 of the *Broadcast Auction Report and Order* the Commission stated that winning bidders' Form 301 applications should be filed pursuant to the rules governing the relevant broadcast service and according to any procedures set out by public notice, and specifically stated that the statutorily established application fees would apply to the long-form applications filed by winning bidders. *Id.* at 15984.

The Public Notice issued after the close of Auction 37 provided that “In accordance with the Commission’s rules, electronic filing of FCC Form 301 must be accompanied by the appropriate application filing fee,” and referenced the fee requirement contained in Paragraph 164 of the *Broadcast Auction Report and Order. Auction of FM Broadcast Construction Permits Closes*, 20 FCC Rcd 1021, 1025 (2004) (*Auction 37 Closing Notice*). In compliance with the *Broadcast Auction Report and Order* and the *Auction 37 Closing Notice*, Delta paid the fees at the prescribed time and in the correct amounts. This demonstrates that Delta had actual and timely knowledge of the requirement that winning bidders in media service auctions must pay the prescribed application fee when filing a Form 301 long-form construction permit application. A party with actual and timely notice of a requirement is bound by its terms. See *United States v. Mowat*, 582 F.2d 1194, 1201-02 (9th Cir. 1978); *United States v. Aarons*, 310 F.2d 341, 348 (2nd Cir. 1962).

We also note your reference to the fact that a refund of a Form 301 application fee had previously been made to a winning bidder in a media service auction and your argument that such refund constitutes a direct precedent for granting this refund request. The refund you cite was made in error and the Commission is seeking return of the refunded amounts to assure that all winning bidders in broadcast auctions comply with the fee payment requirement adopted in the Broadcast Auction Report and Order and promulgated in the auctions’ closing Public Notices. Absent a statutory barrier, not present here, the Government must recover funds which its agents have wrongfully, erroneously, or illegally paid. *United States v. Wurts*, 303 U.S. 414, 415-16 (1938); *Amtec Corp. v. United States*, 69 Fed. Cl. 79, 88 (2005), *aff’d*, 239 Fed. Appx. 585 (Fed. Cir. 2007); *Aetna Casualty and Surety Co. v. United States*, 208 Ct. Cl. 515, 526 F.2d 1127 (Fed. Cir. 1975), *citing Fansteel Metallurgical Corp. v. United States*, 172 F.Supp. 268, 270 (Ct. Cl. 1959) (“When a payment is erroneously or illegally made...it is not only lawful but the duty of the Government to sue for a refund thereof...”). Moreover, the erroneous refund made in this case neither binds the Commission in this matter nor requires it to make further refunds. *Office of Personnel Management v. Richmond*, 496 U.S. 414, 428 (1990); *Vernal Enterprises, Inc. v. FCC*, 335 F.3d 650, 665 (D.C. Cir. 2004); *and see WLOS TV, Inc. v. FCC*, 932 F.2d 993, 995 (D.C. Cir. 1991) (Commission may depart from policy set in a previous adjudication if it provides a reasoned analysis showing that a prior policy is being deliberately changed, not casually ignored).

For these reasons your request for refund of the application fees is denied.

Sincerely,

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

Mark Stephens
Chief Financial Officer

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

MAR 27 2013

OFFICE OF
MANAGING DIRECTOR

John Joseph McVeigh, Esq.
16230 Falls Road, PO Box 128
Butler, MD 21023-0128

Re: Munbilla Broadcasting Properties, Ltd.
File No. BNPB-20060309AAT
BNPB-20060309AAU
BNPB-20070430CGN
BNPB-20070430CFO
FRN 0011027638

Dear Mr. McVeigh:

This responds to your June 9, 2011 request for refunds of application fees totaling \$12,380.00 paid by Munbilla Broadcasting Properties, Ltd. (MBPL) in conjunction with the filing of a long form construction permit applications (FCC Form 301) following the conclusion of Auction Nos. 62 and 70. For the reasons stated below, payment of the fees was correct and no refund is warranted.

You contend that no filing fees were required pursuant to section 1.2107(c) of the rules, which states that high bidders in spectrum auctions need not submit an additional application fee notwithstanding any other provision of our rules. Section 1.2107(c) is one of the uniform competitive bidding rules that the Commission adopted in 1997 for non-broadcast spectrum auctions. *Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures, Third Report and Order and Second Further Notice of Proposed Rulemaking in WT Docket No. 97-82 and ET Docket No. 94-32*, 13 FCC Rcd 374 (1997) (*Third Report and Order*). The Commission stated that the rules adopted in the *Third Report and Order* would apply to all auctionable services, unless the Commission determined that with regard to particular matters the adoption of service-specific rules was warranted. *Id.* at 382.

The Commission subsequently adopted service-specific rules for broadcast service auctions in 1998, and stated that those rules would apply to all broadcast service auctions. *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234, First Report and Order*, 13 FCC Rcd 15920, 15923 (1998) ("*Broadcast Auction Report and Order*"). At paragraph 164 of the *Broadcast Auction Report and Order* the Commission stated that winning bidders' Form 301 applications should be filed pursuant to the rules governing the relevant broadcast service and according to any procedures set out by public notice, and specifically stated that the statutorily established application fees would apply to the long-form applications filed by winning bidders. *Id.* at 15984.

The Public Notices issued after the close of Auctions 62 and 70 provided that “In accordance with the Commission’s rules, electronic filing of FCC Form 301 must be accompanied by the appropriate application filing fee,” and referenced the fee requirement contained in Paragraph 164 of the *Broadcast Auction Report and Order. Auction of FM Broadcast Construction Permits Closes*, 21 FCC Rcd 1071, 1076 (2006) (*Auction 62 Closing Notice*) and 22 FCC Rcd 6323, 6327 (2007) (*Auction 70 Closing Notice*). In compliance with the *Broadcast Auction Report and Order* and the *Auction 62 and 70 Closing Notices*, MBPL paid the fees at the prescribed times and in the correct amounts. This demonstrates that MBPL had actual and timely knowledge of the requirement that winning bidders in media service auctions must pay the prescribed application fee when filing a Form 301 long-form construction permit application. A party with actual and timely notice of a requirement is bound by its terms. *See United States v. Mowat*, 582 F.2d 1194, 1201-02 (9th Cir. 1978); *United States v. Aarons*, 310 F.2d 341, 348 (2nd Cir. 1962).

We also note your reference to the fact that a refund of a Form 301 application fee had previously been made to a winning bidder in a media service auction and your argument that such refund constitutes a direct precedent for granting this refund request. The refund you cite was made in error and the Commission is seeking return of the refunded amounts to assure that all winning bidders in broadcast auctions comply with the fee payment requirement adopted in the Broadcast Auction Report and Order and promulgated in the auctions’ closing Public Notices. Absent a statutory barrier, not present here, the Government must recover funds which its agents have wrongfully, erroneously, or illegally paid. *United States v. Wurts*, 303 U.S. 414, 415-16 (1938); *Amtec Corp. v. United States*, 69 Fed. Cl. 79, 88 (2005), *aff’d*, 239 Fed. Appx. 585 (Fed. Cir. 2007); *Aetna Casualty and Surety Co. v. United States*, 208 Ct. Cl. 515, 526 F.2d 1127 (Fed. Cir. 1975), *citing Fansteel Metallurgical Corp. v. United States*, 172 F.Supp. 268, 270 (Ct. Cl. 1959) (“When a payment is erroneously or illegally made... it is not only lawful but the duty of the Government to sue for a refund thereof...”). Moreover, the erroneous refund made in this case neither binds the Commission in this matter nor requires it to make further refunds. *Office of Personnel Management v. Richmond*, 496 U.S. 414, 428 (1990); *Vernal Enterprises, Inc. v. FCC*, 335 F.3d 650, 665 (D.C. Cir. 2004); *and see WLOS TV, Inc. v. FCC*, 932 F.2d 993, 995 (D.C. Cir. 1991) (Commission may depart from policy set in a previous adjudication if it provides a reasoned analysis showing that a prior policy is being deliberately changed, not casually ignored).

For these reasons your request for refund of the application fees is denied.

Sincerely,

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

Mark Stephens
Chief financial Officer

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

MAR 27 2013

OFFICE OF
MANAGING DIRECTOR

Dennis P. Corbett, Esq.
Lerman Senter PLLC
2000 K Street, NW, Suite 600
Washington DC 20006-1809

Re: Ramar Communications Inc.
File No. BNPH-19971016MJ
FRN 0004249850

Dear Mr. Corbett:

This responds to your August 3, 2011 request for refund of a \$2,470.00 application fee paid by Ramar Communications Inc. (Ramar) in conjunction with the filing of a long form construction permit application (FCC Form 301) following the conclusion of Auction No. 88. For the reasons stated below, payment of the fee was correct and no refund is warranted.

You contend that no filing fee was required pursuant to section 1.2107(c) of the rules, which states that high bidders in spectrum auctions need not submit an additional application fee notwithstanding any other provision of our rules. Section 1.2107(c) is one of the uniform competitive bidding rules that the Commission adopted in 1997 for non-broadcast spectrum auctions. *Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures, Third Report and Order and Second Further Notice of Proposed Rulemaking in WT Docket No. 97-82 and ET Docket No. 94-32*, 13 FCC Rcd 374 (1997) (*Third Report and Order*). The Commission stated that the rules adopted in the *Third Report and Order* would apply to all auctionable services, unless the Commission determined that with regard to particular matters the adoption of service-specific rules was warranted. *Id.* at 382.

The Commission subsequently adopted service-specific rules for broadcast service auctions in 1998, and stated that those rules would apply to all broadcast service auctions. *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234, First Report and Order*, 13 FCC Rcd 15920, 15923 (1998) ("*Broadcast Auction Report and Order*"). At paragraph 164 of the *Broadcast Auction Report and Order* the Commission stated that winning bidders' Form 301 applications should be filed pursuant to the rules governing the relevant broadcast service and according to any procedures set out by public notice, and specifically stated that the statutorily established application fees would apply to the long-form applications filed by winning bidders. *Id.* at 15984.

The Public Notice issued after the close of Auction 88 provided that "In accordance with the Commission's rules, electronic filing of FCC Form 301 must be accompanied by the appropriate application filing fee," and referenced the fee requirement contained in Paragraph 164 of the *Broadcast Auction Report and Order. Auction of FM Broadcast Construction Permits Closes*, 25 FCC Rcd 10071, 10076 (2010) (*Auction 88 Closing Notice*). In compliance with the *Broadcast Auction Report and Order*

and the *Auction 88 Closing Notice*, Ramar paid the fee at the prescribed time and in the correct amount. This demonstrates that Ramar had actual and timely knowledge of the requirement that winning bidders in media service auctions must pay the prescribed application fee when filing a Form 301 long-form construction permit application. A party with actual and timely notice of a requirement is bound by its terms. See *United States v. Mowat*, 582 F.2d 1194, 1201-02 (9th Cir. 1978); *United States v. Aarons*, 310 F.2d 341, 348 (2nd Cir. 1962).

For these reasons your request for refund of the application fee is denied.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Stephens', with a long horizontal flourish extending to the right.

Mark Stephens
Chief Financial Officer

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAR 27 2013

OFFICE OF
MANAGING DIRECTOR

M. Scott Johnson, Esq.
Fletcher, Heald & Hildreth
1300 North 17th Street, 11th Floor
Arlington, VA 22209

Re: Richland Reserve, LLC
File No. BNPH-20060421AAO

Dear Mr. Johnson:

This responds to your July 21, 2011 request for refund of a \$3,720.00 application fee paid by Richland Reserve, LLC (Richland) in conjunction with the filing of a long form construction permit application (FCC Form 301) following the conclusion of Auction No. 64. For the reasons stated below, payment of the fee was correct and no refund is warranted.

You contend that no filing fee was required pursuant to section 1.2107(c) of the rules, which states that high bidders in spectrum auctions need not submit an additional application fee notwithstanding any other provision of our rules. Section 1.2107(c) is one of the uniform competitive bidding rules that the Commission adopted in 1997 for non-broadcast spectrum auctions. *Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures, Third Report and Order and Second Further Notice of Proposed Rulemaking in WT Docket No. 97-82 and ET Docket No. 94-32*, 13 FCC Rcd 374 (1997) (*Third Report and Order*). The Commission stated that the rules adopted in the *Third Report and Order* would apply to all auctionable services, unless the Commission determined that with regard to particular matters the adoption of service-specific rules was warranted. *Id.* at 382.

The Commission subsequently adopted service-specific rules for broadcast service auctions in 1998, and stated that those rules would apply to all broadcast service auctions. *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234, First Report and Order*, 13 FCC Rcd 15920, 15923 (1998) ("*Broadcast Auction Report and Order*"). At paragraph 164 of the *Broadcast Auction Report and Order* the Commission stated that winning bidders' Form 301 applications should be filed pursuant to the rules governing the relevant broadcast service and according to any procedures set out by public notice, and specifically stated that the statutorily established application fees would apply to the long-form applications filed by winning bidders. *Id.* at 15984.

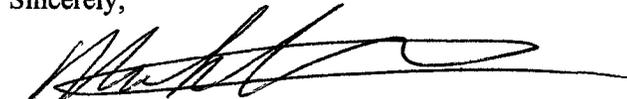
The Public Notice issued after the close of Auction 64 provided that "In accordance with the Commission's rules, electronic filing of FCC Form 301 must be accompanied by the appropriate application filing fee," and referenced the fee requirement contained in Paragraph 164 of the *Broadcast Auction Report and Order. Auction of FM Broadcast Construction Permits Closes*, 21 FCC Rcd 3010, 3014 (2006) (*Auction 64 Closing Notice*). In compliance with the *Broadcast Auction Report and Order*

and the *Auction 64 Closing Notice*, Richland paid the fee at the prescribed time and in the correct amount. This demonstrates that Richland had actual and timely knowledge of the requirement that winning bidders in media service auctions must pay the prescribed application fee when filing a Form 301 long-form construction permit application. A party with actual and timely notice of a requirement is bound by its terms. See *United States v. Mowat*, 582 F.2d 1194, 1201-02 (9th Cir. 1978); *United States v. Aarons*, 310 F.2d 341, 348 (2nd Cir. 1962).

We also note your reference to the fact that a refund of a Form 301 application fee had previously been made to a winning bidder in a media service auction and your argument that such refund constitutes a direct precedent for granting this refund request. The refund you cite was made in error and the Commission is seeking return of the refunded amounts to assure that all winning bidders in broadcast auctions comply with the fee payment requirement adopted in the Broadcast Auction Report and Order and promulgated in the auctions' closing Public Notices. Absent a statutory barrier, not present here, the Government must recover funds which its agents have wrongfully, erroneously, or illegally paid. *United States v. Wurts*, 303 U.S. 414, 415-16 (1938); *Amtec Corp. v. United States*, 69 Fed. Cl. 79, 88 (2005), *aff'd*, 239 Fed. Appx. 585 (Fed. Cir. 2007); *Aetna Casualty and Surety Co. v. United States*, 208 Ct. Cl. 515, 526 F.2d 1127 (Fed. Cir. 1975), *citing Fansteel Metallurgical Corp. v. United States*, 172 F.Supp. 268, 270 (Ct. Cl. 1959) ("When a payment is erroneously or illegally made...it is not only lawful but the duty of the Government to sue for a refund thereof..."). Moreover, the erroneous refund made in this case neither binds the Commission in this matter nor requires it to make further refunds. *Office of Personnel Management v. Richmond*, 496 U.S. 414, 428 (1990); *Vernal Enterprises, Inc. v. FCC*, 335 F.3d 650, 665 (D.C. Cir. 2004); *and see WLOS TV, Inc. v. FCC*, 932 F.2d 993, 995 (D.C. Cir. 1991) (Commission may depart from policy set in a previous adjudication if it provides a reasoned analysis showing that a prior policy is being deliberately changed, not casually ignored).

For these reasons your request for refund of the application fee is denied.

Sincerely,



Mark Stephens
Chief Financial Officer

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

MAR 27 2013

Charles Crawford
2215 Cedar Springs Road, #1605
Dallas, TX 75201

Re: File No. BNPH-20070502ADP
FRN 0008628612

Dear Mr. Crawford:

This responds to your July 18, 2011 request for refund of a \$3,210.00 application fee paid in conjunction with the filing of a long form construction permit application (FCC Form 301) following the conclusion of Auction No. 70. For the reasons stated below, payment of the fee was correct and no refund is warranted.

You contend that no filing fee was required pursuant to section 1.2107(c) of the rules, which states that high bidders in spectrum auctions need not submit an additional application fee notwithstanding any other provision of our rules. Section 1.2107(c) is one of the uniform competitive bidding rules that the Commission adopted in 1997 for non-broadcast spectrum auctions. *Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures, Third Report and Order and Second Further Notice of Proposed Rulemaking in WT Docket No. 97-82 and ET Docket No. 94-32*, 13 FCC Rcd 374 (1997) (*Third Report and Order*). The Commission stated that the rules adopted in the *Third Report and Order* would apply to all auctionable services, unless the Commission determined that with regard to particular matters the adoption of service-specific rules was warranted. *Id.* at 382.

The Commission subsequently adopted service-specific rules for broadcast service auctions in 1998, and stated that those rules would apply to all broadcast service auctions. *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234, First Report and Order*, 13 FCC Rcd 15920, 15923 (1998) ("*Broadcast Auction Report and Order*"). At paragraph 164 of the *Broadcast Auction Report and Order* the Commission stated that winning bidders' Form 301 applications should be filed pursuant to the rules governing the relevant broadcast service and according to any procedures set out by public notice, and specifically stated that the statutorily established application fees would apply to the long-form applications filed by winning bidders. *Id.* at 15984.

The Public Notice issued after the close of Auction 62 provided that "In accordance with the Commission's rules, electronic filing of FCC Form 301 must be accompanied by the appropriate application filing fee," and referenced the fee requirement contained in Paragraph 164 of the *Broadcast Auction Report and Order. Auction of FM Broadcast Construction Permits Closes*, 22 FCC Rcd 6323, 6327 (2007) (*Auction 70 Closing Notice*). In compliance with the *Broadcast Auction Report and Order* and the *Auction 70 Closing Notice*, you paid the fee at the prescribed time and in the correct amount. This demonstrates that you had actual and timely knowledge of the requirement that winning bidders in media

service auctions must pay the prescribed application fee when filing a Form 301 long-form construction permit application. A party with actual and timely notice of a requirement is bound by its terms. *See United States v. Mowat*, 582 F.2d 1194, 1201-02 (9th Cir. 1978); *United States v. Aarons*, 310 F.2d 341, 348 (2nd Cir. 1962).

For these reasons your request for refund of the application fee is denied.

Sincerely,

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

Mark Stephens
Chief financial Officer

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

MAR 27 2013

OFFICE OF
MANAGING DIRECTOR

Richard A. Helmick, Esq.
Cohn and Marks LLP
1920 N Street, NW, Suite 300
Washington DC 20036-1622

Re: Red Peach LLC
CDBS No. 20110624ABB

Dear Mr. Helmick:

This responds to your July 11, 2011 request for refund of a \$3,485.00 application fee paid by Red Peach LLC (Red Peach) in conjunction with the filing of a long form construction permit application (FCC Form 301) following the conclusion of Auction No. 91. For the reasons stated below, payment of the fee was correct and no refund is warranted.

You contend that no filing fee was required pursuant to section 1.2107(c) of the rules, which states that high bidders in spectrum auctions need not submit an additional application fee notwithstanding any other provision of our rules. Section 1.2107(c) is one of the uniform competitive bidding rules that the Commission adopted in 1997 for non-broadcast spectrum auctions. *Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures, Third Report and Order and Second Further Notice of Proposed Rulemaking in WT Docket No. 97-82 and ET Docket No. 94-32*, 13 FCC Rcd 374 (1997) (*Third Report and Order*). The Commission stated that the rules adopted in the *Third Report and Order* would apply to all auctionable services, unless the Commission determined that with regard to particular matters the adoption of service-specific rules was warranted. *Id.* at 382.

The Commission subsequently adopted service-specific rules for broadcast service auctions in 1998, and stated that those rules would apply to all broadcast service auctions. *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234, First Report and Order*, 13 FCC Rcd 15920, 15923 (1998) ("*Broadcast Auction Report and Order*"). At paragraph 164 of the *Broadcast Auction Report and Order* the Commission stated that winning bidders' Form 301 applications should be filed pursuant to the rules governing the relevant broadcast service and according to any procedures set out by public notice, and specifically stated that the statutorily established application fees would apply to the long-form applications filed by winning bidders. *Id.* at 15984.

The Public Notice issued after the close of Auction 91 directed all winning bidders to electronically file Form 301 through the Media Bureau's Consolidated Database System (CDBS) no later than June 30, 2011, and encouraged all applicants to pay the FCC Form 301 application filing fee electronically using the CDBS filing system. *Auction of FM Broadcast Construction Permits Closes*, 26 FCC Rcd 7541, 7546 (2011) (*Auction 91 Closing Notice*). In compliance with the *Broadcast Auction Report and Order* and the *Auction 91 Closing Notice*, Red Peach paid the fee at the prescribed time and in the correct amount. This

demonstrates that Red Peach had actual and timely knowledge of the requirement that winning bidders in media service auctions must pay the prescribed application fee when filing a Form 301 long-form construction permit application. A party with actual and timely notice of a requirement is bound by its terms. See *United States v. Mowat*, 582 F.2d 1194, 1201-02 (9th Cir. 1978); *United States v. Aarons*, 310 F.2d 341, 348 (2nd Cir. 1962).

For these reasons your request for refund of the application fee is denied.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Stephens', with a long horizontal flourish extending to the right.

Mark Stephens
Chief Financial Officer

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

MAR 27 2013

Katherine Pyeatt
2215 Cedar Springs Road, #1605
Dallas, TX 75201

Re: Request for Refund of Application Fees
CDBS20110622AAD
CDBS20110622AAE
CDBS20110621ACL
FRN 0008555310

Dear Ms. Pyeatt:

This responds to your July 18, 2011 request for refunds of application fees totaling \$10,455.00 which you paid in conjunction with the filing of long form construction permit applications (FCC Form 301) following the conclusion of Auction No. 91. For the reasons stated below, payment of the fees was correct and no refund is warranted.

You contend that no filing fees were required pursuant to section 1.2107(c) of the rules, which states that high bidders in spectrum auctions need not submit an additional application fee notwithstanding any other provision of our rules. Section 1.2107(c) is one of the uniform competitive bidding rules that the Commission adopted in 1997 for non-broadcast spectrum auctions. *Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures, Third Report and Order and Second Further Notice of Proposed Rulemaking in WT Docket No. 97-82 and ET Docket No. 94-32*, 13 FCC Rcd 374 (1997) (*Third Report and Order*). The Commission stated that the rules adopted in the *Third Report and Order* would apply to all auctionable services, unless the Commission determined that with regard to particular matters the adoption of service-specific rules was warranted. *Id.* at 382.

The Commission subsequently adopted service-specific rules for broadcast service auctions in 1998, and stated that those rules would apply to all broadcast service auctions. *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234, First Report and Order*, 13 FCC Rcd 15920, 15923 (1998) ("*Broadcast Auction Report and Order*"). At paragraph 164 of the *Broadcast Auction Report and Order* the Commission stated that winning bidders' Form 301 applications should be filed pursuant to the rules governing the relevant broadcast service and according to any procedures set out by public notice, and specifically stated that the statutorily established application fees would apply to the long-form applications filed by winning bidders. *Id.* at 15984.

The Public Notice issued after the close of Auction 91 directed all winning bidders to electronically file Form 301 through the Media Bureau's Consolidated Database System (CDBS) no later than June 30, 2011, and encouraged applicants to pay the FCC Form 301 application filing fee electronically using the CDBS filing system. *Auction of FM Broadcast Construction Permits Closes*, 26 FCC Rcd 7541, 7546 (2011) (*Auction 91 Closing Notice*). In compliance with the *Broadcast Auction Report and Order* and the *Auction 91 Closing Notice*, you paid the fees at the prescribed time and in the correct amounts. This demonstrates that you had actual and timely knowledge of the requirement that winning bidders in media service auctions must pay the prescribed application fee when filing a Form 301 long-form construction permit application. A party with actual and timely notice of a requirement is bound by its terms. See *United States v. Mowat*, 582 F.2d 1194, 1201-02 (9th Cir. 1978); *United States v. Aarons*, 310 F.2d 341, 348 (2nd Cir. 1962).

We also note your reference to the fact that a refund of a Form 301 application fee had previously been made to a winning bidder in a media service auction and your argument that such refund constitutes a direct precedent for granting this refund request. The refund you cite was made in error and the Commission is seeking return of the refunded amounts to assure that all winning bidders in broadcast auctions comply with the fee payment requirement adopted in the Broadcast Auction Report and Order and promulgated in the auctions' closing Public Notices. Absent a statutory barrier, not present here, the Government must recover funds which its agents have wrongfully, erroneously, or illegally paid. *United States v. Wurts*, 303 U.S. 414, 415-16 (1938); *Amtec Corp. v. United States*, 69 Fed. Cl. 79, 88 (2005), *aff'd*, 239 Fed. Appx. 585 (Fed. Cir. 2007); *Aetna Casualty and Surety Co. v. United States*, 208 Ct. Cl. 515, 526 F.2d 1127 (Fed. Cir. 1975), *citing Fansteel Metallurgical Corp. v. United States*, 172 F.Supp. 268, 270 (Ct. Cl. 1959) ("When a payment is erroneously or illegally made... it is not only lawful but the duty of the Government to sue for a refund thereof..."). Moreover, the erroneous refund made in this case neither binds the Commission in this matter nor requires it to make further refunds. *Office of Personnel Management v. Richmond*, 496 U.S. 414, 428 (1990); *Vernal Enterprises, Inc. v. FCC*, 335 F.3d 650, 665 (D.C. Cir. 2004); *and see WLOS TV, Inc. v. FCC*, 932 F.2d 993, 995 (D.C. Cir. 1991) (Commission may depart from policy set in a previous adjudication if it provides a reasoned analysis showing that a prior policy is being deliberately changed, not casually ignored).

For these reasons your request for refund of the application fees is denied.

Sincerely,

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

Mark Stephens
Chief Financial Officer

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

MAR 27 2013

Kathleen Victory, Esq.
Fletcher, Heald & Hildreth
1300 North 17th Street, 11th Floor
Arlington, VA 22209

Re: Porter Hogan Charitable Trust #1
File No. BNPH-20060306AQE
FRN 0013867965

Dear Ms. Victory:

This responds to your August 2, 2011 request for refund of a \$2,980.00 application fee paid by Porter Hogan Charitable Trust #1 (PHCT) in conjunction with the filing of a long form construction permit application (FCC Form 301) following the conclusion of Auction No. 62. For the reasons stated below, payment of the fee was correct and no refund is warranted.

You contend that no filing fee was required pursuant to section 1.2107(c) of the rules, which states that high bidders in spectrum auctions need not submit an additional application fee notwithstanding any other provision of our rules. Section 1.2107(c) is one of the uniform competitive bidding rules that the Commission adopted in 1997 for non-broadcast spectrum auctions. *Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures, Third Report and Order and Second Further Notice of Proposed Rulemaking in WT Docket No. 97-82 and ET Docket No. 94-32*, 13 FCC Rcd 374 (1997) (*Third Report and Order*). The Commission stated that the rules adopted in the *Third Report and Order* would apply to all auctionable services, unless the Commission determined that with regard to particular matters the adoption of service-specific rules was warranted. *Id.* at 382.

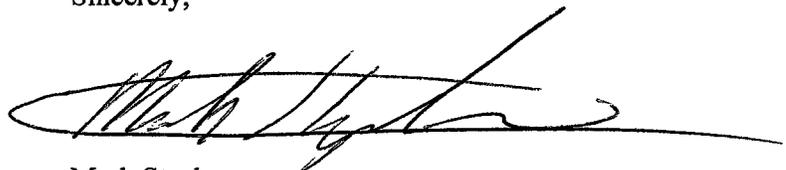
The Commission subsequently adopted service-specific rules for broadcast service auctions in 1998, and stated that those rules would apply to all broadcast service auctions. *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234, First Report and Order*, 13 FCC Rcd 15920, 15923 (1998) ("*Broadcast Auction Report and Order*"). At paragraph 164 of the *Broadcast Auction Report and Order* the Commission stated that winning bidders' Form 301 applications should be filed pursuant to the rules governing the relevant broadcast service and according to any procedures set out by public notice, and specifically stated that the statutorily established application fees would apply to the long-form applications filed by winning bidders. *Id.* at 15984.

The Public Notice issued after the close of Auction 62 provided that "In accordance with the Commission's rules, electronic filing of FCC Form 301 must be accompanied by the appropriate application filing fee," and referenced the fee requirement contained in Paragraph 164 of the *Broadcast Auction Report and Order. Auction of FM Broadcast Construction Permits Closes*, 21 FCC Rcd 1071, 1076 (2006) (*Auction 62 Closing Notice*). In compliance with the *Broadcast Auction Report and Order* and the *Auction 62 Closing Notice*, PHCT paid the fee at the prescribed time and in the correct amount. This demonstrates that PHCT had actual and timely knowledge of the requirement that winning bidders in media service auctions must pay the prescribed application fee when filing a Form 301 long-form construction permit application. A party with actual and timely notice of a requirement is bound by its terms. See *United States v. Mowat*, 582 F.2d 1194, 1201-02 (9th Cir. 1978); *United States v. Aarons*, 310 F.2d 341, 348 (2nd Cir. 1962).

We also note your reference to the fact that a refund of a Form 301 application fee had previously been made to a winning bidder in a media service auction and your argument that such refund constitutes a direct precedent for granting this refund request. The refund you cite was made in error and the Commission is seeking return of the refunded amounts to assure that all winning bidders in broadcast auctions comply with the fee payment requirement adopted in the Broadcast Auction Report and Order and promulgated in the auctions' closing Public Notices. Absent a statutory barrier, not present here, the Government must recover funds which its agents have wrongfully, erroneously, or illegally paid. *United States v. Wurts*, 303 U.S. 414, 415-16 (1938); *Amtec Corp. v. United States*, 69 Fed. Cl. 79, 88 (2005), *aff'd*, 239 Fed. Appx. 585 (Fed. Cir. 2007); *Aetna Casualty and Surety Co. v. United States*, 208 Ct. Cl. 515, 526 F.2d 1127 (Fed. Cir. 1975), *citing Fansteel Metallurgical Corp. v. United States*, 172 F.Supp. 268, 270 (Ct. Cl. 1959) ("When a payment is erroneously or illegally made...it is not only lawful but the duty of the Government to sue for a refund thereof..."). Moreover, the erroneous refund made in this case neither binds the Commission in this matter nor requires it to make further refunds. *Office of Personnel Management v. Richmond*, 496 U.S. 414, 428 (1990); *Vernal Enterprises, Inc. v. FCC*, 335 F.3d 650, 665 (D.C. Cir. 2004); *and see WLOS TV, Inc. v. FCC*, 932 F.2d 993, 995 (D.C. Cir. 1991) (Commission may depart from policy set in a previous adjudication if it provides a reasoned analysis showing that a prior policy is being deliberately changed, not casually ignored).

For these reasons your request for refund of the application fee is denied.

Sincerely,

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

Mark Stephens
Chief Financial Officer

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

MAR 27 2013

OFFICE OF
MANAGING DIRECTOR

Dawn Sciarrino, Esq.
Sciarrino & Shubert, PLLC
5425 Tree Line Drive
Centreville, VA 20120-1676

Re: James River Broadcasting Company,
Inc.
File No. BNPH-20041223ABL
FRN 0002428506

Dear Ms. Sciarrino:

This responds to your June 9, 2011 request for refund of a \$2,980.00 application fee paid by James River Broadcasting Company, Inc. (James River) in conjunction with the filing of a long form construction permit application (FCC Form 301) following the conclusion of Auction No. 37. For the reasons stated below, payment of the fee was correct and no refund is warranted.

You contend that no filing fee was required pursuant to section 1.2107(c) of the rules, which states that high bidders in spectrum auctions need not submit an additional application fee notwithstanding any other provision of our rules. Section 1.2107(c) is one of the uniform competitive bidding rules that the Commission adopted in 1997 for non-broadcast spectrum auctions. *Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures, Third Report and Order and Second Further Notice of Proposed Rulemaking in WT Docket No. 97-82 and ET Docket No. 94-32*, 13 FCC Rcd 374 (1997) (*Third Report and Order*). The Commission stated that the rules adopted in the *Third Report and Order* would apply to all auctionable services, unless the Commission determined that with regard to particular matters the adoption of service-specific rules was warranted. *Id.* at 382.

The Commission subsequently adopted service-specific rules for broadcast service auctions in 1998, and stated that those rules would apply to all broadcast service auctions. *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234, First Report and Order*, 13 FCC Rcd 15920, 15923 (1998) ("*Broadcast Auction Report and Order*"). At paragraph 164 of the *Broadcast Auction Report and Order* the Commission stated that winning bidders' Form 301 applications should be filed pursuant to the rules governing the relevant broadcast service and according to any procedures set out by public notice, and specifically stated that the statutorily established application fees would apply to the long-form applications filed by winning bidders. *Id.* at 15984.

The Public Notice issued after the close of Auction 372 provided that “In accordance with the Commission’s rules, electronic filing of FCC Form 301 must be accompanied by the appropriate application filing fee,” and referenced the fee requirement contained in Paragraph 164 of the *Broadcast Auction Report and Order. Auction of FM Broadcast Construction Permits Closes*, 20 FCC Rcd 1021, 1025 (2004) (*Auction 37 Closing Notice*). In compliance with the *Broadcast Auction Report and Order* and the *Auction 37 Closing Notice*, James River paid the fee at the prescribed time and in the correct amount. This demonstrates that James River had actual and timely knowledge of the requirement that winning bidders in media service auctions must pay the prescribed application fee when filing a Form 301 long-form construction permit application. A party with actual and timely notice of a requirement is bound by its terms. See *United States v. Mowat*, 582 F.2d 1194, 1201-02 (9th Cir. 1978); *United States v. Aarons*, 310 F.2d 341, 348 (2nd Cir. 1962).

For these reasons your request for refund of the application fee is denied.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Stephens', with a long horizontal flourish extending to the right.

Mark Stephens
Chief Financial Officer

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

MAR 27 2013

OFFICE OF
MANAGING DIRECTOR

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

Re: Pampa Broadcasters, Inc.
File No. BNPH-20091007AAN
FRN 0003740479

Dear Mr. McCormick:

This responds to your July 6, 2011 request for refund of a \$3,365.00 application fee paid by Pampa Broadcasters, Inc. (PBI) in conjunction with the filing of a long form construction permit application (FCC Form 301) following the conclusion of Auction No. 79. For the reasons stated below, payment of the fee was correct and no refund is warranted.

You contend that no filing fee was required pursuant to section 1.2107(c) of the rules, which states that high bidders in spectrum auctions need not submit an additional application fee notwithstanding any other provision of our rules. Section 1.2107(c) is one of the uniform competitive bidding rules that the Commission adopted in 1997 for non-broadcast spectrum auctions. *Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures, Third Report and Order and Second Further Notice of Proposed Rulemaking in WT Docket No. 97-82 and ET Docket No. 94-32*, 13 FCC Rcd 374 (1997) (*Third Report and Order*). The Commission stated that the rules adopted in the *Third Report and Order* would apply to all auctionable services, unless the Commission determined that with regard to particular matters the adoption of service-specific rules was warranted. *Id.* at 382.

The Commission subsequently adopted service-specific rules for broadcast service auctions in 1998, and stated that those rules would apply to all broadcast service auctions. *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234, First Report and Order*, 13 FCC Rcd 15920, 15923 (1998) ("*Broadcast Auction Report and Order*"). At paragraph 164 of the *Broadcast Auction Report and Order* the Commission stated that winning bidders' Form 301 applications should be filed pursuant to the rules governing the relevant broadcast service and according to any procedures set out by public notice, and specifically stated that the statutorily established application fees would apply to the long-form applications filed by winning bidders. *Id.* at 15984.

The Public Notice issued after the close of Auction 79 provided that "In accordance with the Commission's rules, electronic filing of FCC Form 301 must be accompanied by the appropriate application filing fee," and referenced the fee requirement contained in Paragraph 164 of the *Broadcast Auction Report and Order. Auction of FM Broadcast Construction Permits Closes*, 24 FCC Rcd 11903, 11908 (2009) (*Auction 79 Closing Notice*). In compliance with the *Broadcast Auction Report and Order*

and the *Auction 79 Closing Notice*, PBI paid the fee at the prescribed time and in the correct amount. This demonstrates that PBI had actual and timely knowledge of the requirement that winning bidders in media service auctions must pay the prescribed application fee when filing a Form 301 long-form construction permit application. A party with actual and timely notice of a requirement is bound by its terms. See *United States v. Mowat*, 582 F.2d 1194, 1201-02 (9th Cir. 1978); *United States v. Aarons*, 310 F.2d 341, 348 (2nd Cir. 1962).

We also note your reference to the fact that a refund of a Form 301 application fee had previously been made to a winning bidder in a media service auction and your argument that such refund constitutes a direct precedent for granting this refund request. The refund you cite was made in error and the Commission is seeking return of the refunded amounts to assure that all winning bidders in broadcast auctions comply with the fee payment requirement adopted in the Broadcast Auction Report and Order and promulgated in the auctions' closing Public Notices. Absent a statutory barrier, not present here, the Government must recover funds which its agents have wrongfully, erroneously, or illegally paid. *United States v. Wurts*, 303 U.S. 414, 415-16 (1938); *Amtec Corp. v. United States*, 69 Fed. Cl. 79, 88 (2005), *aff'd*, 239 Fed. Appx. 585 (Fed. Cir. 2007); *Aetna Casualty and Surety Co. v. United States*, 208 Ct. Cl. 515, 526 F.2d 1127 (Fed. Cir. 1975), *citing Fansteel Metallurgical Corp. v. United States*, 172 F.Supp. 268, 270 (Ct. Cl. 1959) ("When a payment is erroneously or illegally made...it is not only lawful but the duty of the Government to sue for a refund thereof..."). Moreover, the erroneous refund made in this case neither binds the Commission in this matter nor requires it to make further refunds. *Office of Personnel Management v. Richmond*, 496 U.S. 414, 428 (1990); *Vernal Enterprises, Inc. v. FCC*, 335 F.3d 650, 665 (D.C. Cir. 2004); *and see WLOS TV, Inc. v. FCC*, 932 F.2d 993, 995 (D.C. Cir. 1991) (Commission may depart from policy set in a previous adjudication if it provides a reasoned analysis showing that a prior policy is being deliberately changed, not casually ignored).

For these reasons your request for refund of the application fee is denied.

Sincerely,



Mark Stephens
Chief Financial Officer