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: File No. BNPH-20060310ACN
FRN 0008555310

Dear Ms. Pyeatt:

This responds to your July 18, 2011 request for refund of a $2,980.00 application fee paid in conjunction with the filing of a long form construction permit application (FCC Form 301) following the conclusion of Auction No. 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*, 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).

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

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

Re: Stroh Communications Corporation
File No. BNPH-20070419AAJ
BNPH-20070427AAS

Dear Mr. Johnson:

This responds to your July 21, 2011 request for refund of application fees totaling $6,420.00 paid by Stroh Communications Corporation (Stroh) in conjunction with the filing of long form construction permit applications (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 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 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 6326, 6327 (2007) (*Auction 70 Closing Notice*). In compliance with the *Broadcast Auction Report and Order* and the *Auction 70 Closing Notice*, Stroh paid the fees at the prescribed time and in the correct amounts. This demonstrates that Stroh 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

Dennis J. Kelly, Esq.
Post Office Box 41177
Washington, DC 20018

Re: Gary Katz
File No. BNPH-20041230AAI
FRN 0011348018

Dear Mr. Kelly:

This responds to your July 28, 2011 request for refund of a $2,980.00 application fee paid by Gary Katz 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*, Mr. Katz paid the fee at the prescribed time and in the correct amount. This demonstrates that Mr. Katz 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

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

Re: Keystone Broadcasting Corporation
File No. BNPH-20091016ADW

Dear Mr. Johnson:

This responds to your July 27, 2011 request for refund of a $3,365.00 application fee paid by Keystone Broadcasting Corporation (Keystone) 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*, Keystone paid the fee at the prescribed time and in the correct amount.

This demonstrates that Keystone 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

David Tillotson, Esq.
4606 Charleston Terrace, NW
Washington, DC 20007-1911

Re: Frank Neely
File No. BNPH-20060324AFR

Dear Mr. Tillotson:

This responds to your July 22, 2011 request for refund of a $2,980.00 application fee paid by Frank Neely 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*, Mr. Neely paid the fee at the prescribed time and in the correct

amount. This demonstrates that Mr. Neely 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

Ms. Janet Jensen
801B North Garfield
Marion IL 62959

Re: File No. BNPH-20050103AEZ
FRN 0011351517

Dear Ms. Jensen:

This responds to your July 28, 2011 request for refund of a $2,980.00 application fee paid in conjunction with the filing of a long form construction permit application (FCC Form 301) following the conclusion of Auction No. 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*, 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).

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

Aaron P. Shainis, Esq.
Shainis & Peltzman, Chartered
1850 M Street NW, Suite 240
Washington, DC 20036

Re: College Creek Broadcasting, Inc.
FRN 0011304029

File No. BNPH-20041223ACA
BNPH-20041223ABR
BNPH-20041223ACB

BNPH-20041227ACN
BNPH-20041227 ACP
BNPH-20041227ACJ
BNPH-20041227ACI

BNPH-20041228ABE
BNPH-20041228ABC
BNPH-20041228ABB
BNPH-20041228ABA
BNPH-20041228AAX
BNPH-20041228AAU
BNPH-20041228AAT
BNPH-20041228AAS
BNPH-20041228AAC
BNPH-20041228AAB
BNPH-20041228ABD
BNPH-20041228ABK

BNPH-20041229ACC
BNPH-20041229ADZ
BNPH-20041229AEA
BNPH-20041229ABR
BNPH-20041229ABS

BNPH-20041230ADB
BNPH-20041230ACU
BNPH-20041230ACS
BNPH-20041230ACQ
BNPH-20041230ACV
BNPH-20041230ACY
BNPH-20041230ACZ

BNPH-20050103AAN
BNPH-20050103AAA
BNPH-20050103AAB
BNPH-20050103AFI
BNPH-20050103AAC
BNPH-20050103AAD
BNPH-20050103AIK

Dear Mr. Shainis:

This responds to your July 19, 2011 request for refund of application fees totaling $108,870.00 paid by College Creek Broadcasting, Inc. (College Creek) 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*, College Creek paid the fees at the prescribed time and in the correct amounts. This demonstrates that College Creek 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 fees is denied.

Sincerely,

Mark Stephens
Chief Financial Officer

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

MAR 27 2013

OFFICE OF
MANAGING DIRECTOR

Raymond J. Quianzon, Esq.
Fletcher, Heald & Hildreth
1300 North 17th Street, 11th Floor
Arlington VA 22209

Re: Cochise Media Licensees, LLC
File No. BNPH-20091016ADO
BNPH-20090929AMO
BNPH-20091015ADI
FRN 0018222695

Dear Mr. Quianzon:

This responds to your July 20, 2011 request for refunds of application fees totaling $10,095.00 paid by Cochise Media Licensees, LLC (Cochise) in conjunction with the filing of long form construction permit applications (FCC Form 301) following the conclusion of Auction No. 79. 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 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*, Cochise paid the fees at the prescribed time and in the correct amounts. This demonstrates that Cochise 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

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

Re: Western Pacific Broadcast LLC
File No. BNPCDT-20110330AAY
BNPCDT-20110330AAX

Dear Mr. Johnson:

This responds to your July 21, 2011 request for refund of application fees totaling $8,410.00 paid by Western Pacific Broadcast LLC (Western Pacific) in conjunction with the filing of a long form construction permit applications (FCC Form 301) following the conclusion of Auction No. 90. 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 90 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,* 26 FCC Rcd 1916,

1920 (2011) (*Auction 90 Closing Notice*). In compliance with the *Broadcast Auction Report and Order* and the *Auction 90 Closing Notice*, Western Pacific paid the fee at the prescribed time and in the correct amount. This demonstrates that Western Pacific 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

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

Re: Williston Community Broadcasting Corporation
File No. BNPH-20110629BVE

Dear Mr. Johnson:

This responds to your July 27, 2011 request for refund of a $3,485.00 application fee paid by Williston Community Broadcasting Corporation (Williston)) 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 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*, Williston paid the fee at the prescribed time and in the correct amount. This demonstrates that Williston 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

David Tillotson, Esq.
4606 Charleston Terrace, NW
Washington, DC 20007-1911

Re: WGHN, Inc.
File No. BNPH-20110526AEK
FRN 0003762200

Dear Mr. Tillotson:

This responds to your December 1, 2011 request for refund of a $3,365 application fee paid by WGHN, Inc. (WGHN) in conjunction with the filing of a long form construction permit application (FCC Form 301) following the conclusion of Auction 91. For the reasons stated below, payment of the fee was correct and no refund is warranted.

You contend that no application 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 91directed 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). In compliance with the *Broadcast Auction Report and Order* and the Auction 91 Public Notice, WGHN paid the fee at the prescribed time and in the correct amount. This demonstrates that WGHN had actual knowledge of and understood 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. For these reasons your request for refund of the application fee is denied.

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

Scott Woodworth, Esq.
Edinger Associates
1875 I Street, NW, Suite 500
Washington, DC 20006

Re: CSI Media Research
File No. BNPH-20110620AHX
FRN 0020575023

Dear Mr. Woodworth:

This responds to your July 8, 2011 request for refund of a $3,365.00 application fee paid by CSI Media Research (CSI) 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 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*, CSI paid the fee at the prescribed time and in the correct amount. This demonstrates that CSI 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

Bryan A. King
1809 Lightsey Road
Austin TX 78704

Re: Permit No. MM-FM710-A
MM-FM716-C2
MM-FM717-A
MM-FM718-A
MM-FM729-A
MM-FM732-A
FRN 0010692556

Dear Mr. King:

This responds to your June 28, 2011 request for refund of application fees totaling $20,190.00 paid in conjunction with the filing of long form construction permit applications (FCC Form 301) following the conclusion of Auction No. 79. 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 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*, 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).

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

David M. Wang, President
LiveAir Communications, Inc.
339 North Street
Medfield, MA 02052

Re: LiveAir Communications, Inc.
FRN 0005008073

Dear Mr. Wang:

This responds to your August 4, 2011 request for refunds of application fees totaling $9,675.00 which you paid in conjunction with the filing of long form construction permit applications (FCC Form 301) following the conclusion of Auction Nos. 62, 70, and 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 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). 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 62, 70 and 91 Closing Notices*, you paid the fees at the prescribed times 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 fee is denied.

Sincerely,

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: Mount Wilson FM Broadcasters, Inc.
File No. BNPH-20091019ABE
BNPH-20091019ABH
FRN 0001530187

Dear Mr. Helmick:

This responds to your July 11, 2011 request for refund of application fees totaling $6,730.00 paid by Mount Wilson FM Broadcasters, Inc. (Mount Wilson) in conjunction with the filing of long form construction permit applications (FCC Form 301) following the conclusion of Auction No. 79. 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 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*, Mount Wilson paid the fees at the prescribed time and in the correct amount. This demonstrates that Mount Wilson 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 fees is denied.

Sincerely,

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: Grenax Broadcasting III, LLC
File No. BNPH-20070430ACI

Dear Mr. Johnson:

This responds to your July 27, 2011 request for refund of a $3,210.00 application fee paid by Grenax Broadcasting II, LLC (Grenax) 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.

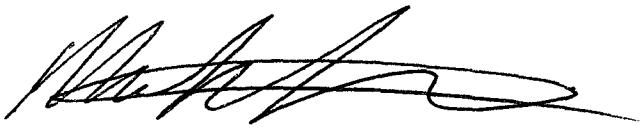
The Public Notice issued after the close of Auction 70 provided that "In accordance with the Commission's rules, electronic filing of FCC Form 301 must be accompanied by the appropriate application filing fee," and referenced the fee requirement contained in Paragraph 164 of the *Broadcast Auction Report 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*, Grenax paid the fee at the prescribed time and in the correct amount. This demonstrates that Grenax 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

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

Re: Edward De La Hunt
File No. BNPH-20060308AIA
FRN 0013829429

Dear Ms. Sciarrino:

This responds to your June 6, 2011 request for refund of a $2,980.00 application fee paid by Edward De La Hunt 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).

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

Richard F. Swift, Esq.
Fletcher, Heald & Hildreth
1300 North 17th Street, 11th Floor
Arlington, VA 22209

Re: William C. Doleman
File No. BNPH-20050103AGB
BNPH-20051013AGD

Dear Mr. Swift:

This responds to your August 9, 2011 request for refund of application fees totaling $5,960.00 paid by William C. Doleman 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*, Mr. Doleman paid the fees at the prescribed time and in the correct amounts. This demonstrates that Mr. Doleman 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

OFFICE OF
MANAGING DIRECTOR

MAR 27 2013

David Tillotson, Esq.
1606 Charleston Terrace, N.W.
Washington, DC 20007-1911

Re: Stephen T. Butler
File No. BNPH-20070502ABL

Dear Mr. Tillotson:

This responds to your July 22, 2011 request for refund of a $3,210.00 application fee paid by Stephen T. Butler 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 6323, 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,

Mark Stephens
Chief Financial Officer