

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

MAR 27 2013

OFFICE OF  
MANAGING DIRECTOR

Lee G. Petro, Esq.  
Fletcher, Heald & Hildreth  
1300 North 17<sup>th</sup> Street, 11<sup>th</sup> Floor  
Arlington, VA 22209

Re: Christian Ministries of the Valley, Inc.  
File No. BNPH-20091016ADZ  
BNPH-20091016ADY  
BNPH-20091016AEA  
FRN 0005048699

Dear Mr. Petro:

This responds to your July 29, 2011 request for refund of application fees totaling \$10,095.00 paid by Christian Ministries of the Valley, Inc. (CMV) 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.

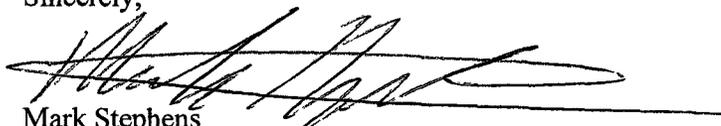
The Commission subsequently adopted service-specific rules for broadcast service auctions in 1998, and stated that those rules would apply to all broadcast service auctions. *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television 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, 11906 (2009) (*Auction 79 Closing Notice*). In compliance with the *Broadcast Auction Report and Order* and the *Auction 79 Closing Notice*, CMV paid the fee at the prescribed time and in the correct amount. This demonstrates that CMV 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 (9<sup>th</sup> Cir. 1978); *United States v. Aarons*, 310 F.2d 341, 348 (2<sup>nd</sup> 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.  
4606 Charleston Terrace, N.W.  
Washington, DC 20007-1911

Re: Chaparral Broadcasting, Inc.  
File No. BNPH-20041222GDN  
FRN 0003782315

Dear Mr. Tillotson:

This responds to your July 22, 2011 request for refund of a \$2,980.00 application fee paid by Chaparral Broadcasting, Inc. (Chaparral) 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*, Chaparral paid the fee at the prescribed time and in the correct amount. This demonstrates that Chaparral 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 (9<sup>th</sup> Cir. 1978); *United States v. Aarons*, 310 F.2d 341, 348 (2<sup>nd</sup> 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 17<sup>th</sup> Street, 11<sup>th</sup> Floor  
Arlington, VA 22209

Re: RadioJones, LLC  
File No. BNPH-20091016ADB

Dear Mr. Johnson:

This responds to your August 31, 2011 request for refund of a \$3,365.00 application fee paid by RadioJones, LLC (RadioJones) 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 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*, 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*, RadioJones paid the fee at the prescribed time and in the correct

amount. This demonstrates that RadioJones 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 (9<sup>th</sup> Cir. 1978); *United States v. Aarons*, 310 F.2d 341, 348 (2<sup>nd</sup> Cir. 1962).

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

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

Sincerely,

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

Mark Stephens  
Chief Financial Officer

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

OFFICE OF  
MANAGING DIRECTOR

~~MAR 27~~ 2013

Raymond J. Quianzon, Esq.  
Fletcher, Heald & Hildreth  
1300 North 17<sup>th</sup> Street, 11<sup>th</sup> 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 (9<sup>th</sup> Cir. 1978); *United States v. Aarons*, 310 F.2d 341, 348 (2<sup>nd</sup> 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

Lee G. Petro, Esq.  
Fletcher, Heald & Hildreth  
1300 North 17<sup>th</sup> Street, 11<sup>th</sup> Floor  
Arlington, VA 22209

Re: Conquering With Christ, LLC  
File No. BNPH-20110627ABK  
FRN 0020583100

Dear Mr. Petro:

This responds to your July 28, 2011 request for refund of a \$3,485.00 application fee paid by Conquering With Christ, LLC (CWC) 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*, CWC paid the fee at the prescribed time and in the correct amount. This

demonstrates that CWC 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 (9<sup>th</sup> Cir. 1978); *United States v. Aarons*, 310 F.2d 341, 348 (2<sup>nd</sup> Cir. 1962).

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

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

Sincerely,

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

Mark Stephens  
Chief Financial Officer

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

MAR 27 2013

OFFICE OF  
MANAGING DIRECTOR

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

Re: Richard Comras  
File No. BNPB-20091019ABO  
FRN 0018893537

Dear Mr. Kelly:

This responds to your July 28, 2011 request for refund of a \$2,980.00 application fee paid by Richard Comras 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.

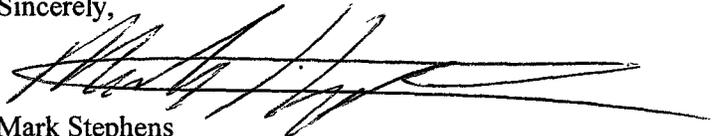
The Public Notice issued after the close of Auction 79 provided that "In accordance with the Commission's rules, electronic filing of FCC Form 301 must be accompanied by the appropriate application filing fee," and referenced the fee requirement contained in Paragraph 164 of the *Broadcast Auction Report 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*, Mr. Comras paid the fee at the prescribed time and in the correct amount. This demonstrates that Mr. Comras 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 (9<sup>th</sup> Cir. 1978); *United States v. Aarons*, 310 F.2d 341, 348 (2<sup>nd</sup> 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

Dan J. Alpert, Esq.  
The Law Office of Dan J. Alpert  
2120 N. 21<sup>st</sup> Road  
Arlington, VA 22201

Re: Georgia-Carolina Wireless, LLC  
File No. BNPH-20070430CDB  
FRN 0015825045

Dear Mr. Alpert:

This responds to your June 2, 2011 request for refund of a \$3,210.00 application fee paid by Georgia-Carolina Wireless, LLC (GCW) 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*, GCW paid the fee at the prescribed time and in the correct amount.

This demonstrates that GCW 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 (9<sup>th</sup> Cir. 1978); *United States v. Aarons*, 310 F.2d 341, 348 (2<sup>nd</sup> Cir. 1962).

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

Sincerely,

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

Mark Stephens  
Chief Financial Officer

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

MAR 27 2013

OFFICE OF  
MANAGING DIRECTOR

Meredith S. Senter, Esq.  
Lerman Senter PLLC  
2000 K Street, NW, Suite 600  
Washington, DC 20006-1809

Re: Hispanic Target Media, Inc.  
File No. BNPB-20091019ADE  
BNPB-20091019ADD  
BNPB-20091019ADC  
BNPB-20091019ADB  
BNPB-20091019ACQ  
BNPB-20091019ACS  
BNPB-20091019ACT  
BNPB-20091019ACY  
BNPB-20091019ACX  
FRN 0004054797

Dear Mr. Senter:

This responds to your July 27, 2011 request for refund of application fees totaling \$30,285.00 paid by Hispanic target Media, Inc. (HTM) 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*, HTM paid the fees at the prescribed time and in the correct amounts. This demonstrates that HTM 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 (9<sup>th</sup> Cir. 1978); *United States v. Aarons*, 310 F.2d 341, 348 (2<sup>nd</sup> Cir. 1962).

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

Sincerely,

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

Mark Stephens  
Chief Financial Officer

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

MAR 27 2013

OFFICE OF  
MANAGING DIRECTOR

Meredith S. Senter, Jr.  
Lerman Senter PLLC.  
2000 K Street, NW, Suite 600  
Washington DC 20006-1809

Re: Hispanic Target Media, Inc.  
FRN 00011335098

Dear Mr. Senter:

This responds to your July 27, 2011 request for refund of a \$2,980.00 application fee paid by Hispanic Target Media (HTM) 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*, HTM paid the fee at the prescribed time and in the correct amount. This demonstrates that HTM 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 (9<sup>th</sup> Cir. 1978); *United States v. Aarons*, 310 F.2d 341, 348 (2<sup>nd</sup> Cir. 1962).

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

Sincerely,

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

Mark Stephens  
Chief financial Officer

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

MAR 27 2013

OFFICE OF  
MANAGING DIRECTOR

Meredith S. Senter, Jr.  
Lerman Senter PLLC  
2000 K Street, NW, Suite 600  
Washington DC 20006-1809

Re: Hispanic Target Media, Inc.  
FRN 0011335098

Dear Mr. Senter:

This responds to your July 27, 2011 request for refund of application fees totaling \$20,860.00 paid by Hispanic Target Media (HTM) 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*, HTM paid the fees at the prescribed time and in the correct amounts. This demonstrates that HTM 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 (9<sup>th</sup> Cir. 1978); *United States v. Aarons*, 310 F.2d 341, 348 (2<sup>nd</sup> Cir. 1962).

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

Sincerely,

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

Mark Stephens  
Chief Financial Officer

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

MAR 27 2013

OFFICE OF  
MANAGING DIRECTOR

Meredith S. Senter, Esq.  
Lerman Senter PLLC  
2000 K Street, NW, Suite 600  
Washington, DC 20006-1809

Re: Hispanic Target Media, Inc.  
FRN 0004054797

Dear Mr. Senter:

This responds to your July 29, 2011 request for refund of application fees totaling \$31,365.00 paid by Hispanic Target Media, Inc. (HTM) ) in conjunction with the filing of long form construction permit applications (FCC Form 301) following the conclusion of Auction No. 91. For the reasons stated below, payment of the fees was correct and no refund is warranted.

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

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

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

demonstrates that HTM 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 (9<sup>th</sup> Cir. 1978); *United States v. Aarons*, 310 F.2d 341, 348 (2<sup>nd</sup> Cir. 1962).

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

Sincerely,

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

Mark Stephens  
Chief financial Officer

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

MAR 27 2013

OFFICE OF  
MANAGING DIRECTOR

Mark Lipp, Esq.  
Wiley Rein LLP  
1776 K Street, NW  
Washington, DC 20006

Re: Valleydale Broadcasting, LLC  
File No. BNPH-20110721AAA  
FRN 0018897223

Dear Mr. Lipp:

This responds to your July 22, 2011 request for refund of a \$3,485.00 application fee paid by Valleydale Broadcasting, LLC (Valleydale) 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*, Valleydale paid the fee at the prescribed time and in the correct amount. This demonstrates that Valleydale 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 (9<sup>th</sup> Cir. 1978); *United States v. Aarons*, 310 F.2d 341, 348 (2<sup>nd</sup> 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

Mark Lipp, Esq.  
Wiley Rein LLP  
1776 K Street, NW  
Washington, DC 20006

Re: Valleydale Broadcasting, LLC  
File No. BNPH-20091019AFW  
FRN 00188897723

Dear Mr. Lipp:

This responds to your July 21, 2011 request for refund of a \$3,365.00 application fee paid by Valleydale Broadcasting, LLC (Valleydale) 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*, Valleydale paid the fee at the prescribed time and in the correct

amount. This demonstrates that Valleydale 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 (9<sup>th</sup> Cir. 1978); *United States v. Aarons*, 310 F.2d 341, 348 (2<sup>nd</sup> 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

Maurice Vargas  
Virtues Communications Network LLC  
Post Office Box 215  
Kings Park, NY 11754

Re: Virtues Communications Network LLC  
File No. BNPH-20110630AJB  
BNPH-20110630AJD  
FRN 0020560488

Dear Mr. Vargas:

This responds to your September 27, 2011 request for refund of application fees totaling \$6,970.00 paid by Virtues Communications Network LLC (Virtues) in conjunction with the filing of a long form construction permit applications (FCC Form 301) following the conclusion of Auction No. 91. For the reasons stated below, payment of the fees was correct and no refund is warranted.

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

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

The Public Notice issued after the close of Auction 91 directed all winning bidders to electronically file Form 301 through the Media Bureau's Consolidated Database System (CDBS) no later than June 30,

2011, and encouraged applicants to pay the FCC Form 301 application filing fee electronically using the CDBS filing system. *Auction of FM Broadcast Construction Permits Closes*, 26 FCC Rcd 7541, 7546 (2011) (*Auction 91 Closing Notice*). In compliance with the *Broadcast Auction Report and Order* and the *Auction 91 Closing Notice*, Virtues paid the fees at the prescribed time and in the correct amount. This demonstrates that Virtues 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 (9<sup>th</sup> Cir. 1978); *United States v. Aarons*, 310 F.2d 341, 348 (2<sup>nd</sup> Cir. 1962).

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

Sincerely,

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

Mark Stephens  
Chief Financial Officer