

public interest in recouping the Commission's regulatory costs.¹³ Fee relief may be granted based on a "sufficient showing of financial hardship."¹⁴ In such matters, however, "[m]ere allegations or documentation of financial loss, standing alone," do not suffice and "it [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public."¹⁵ Thus, in order to establish a basis for waiver predicated on financial need, the regulatee must provide financial documents including, *e.g.*, a licensee's balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. On this information, the Commission considers on a case-by-case basis whether the licensee met the standard to show the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.¹⁶

We consider a licensee's bankruptcy to be a relevant fact,¹⁷ however, "in some circumstances a significant question may exist as to whether bankruptcy represents extraordinary and compelling circumstances justifying a waiver when balanced against the public interest in reimbursing the Commission for its costs as reflected in the statutory fee provisions."¹⁸ The primacy of the standard remains, the applicant must present "extraordinary and compelling circumstances showing that a waiver . . . would override the public interest" in collecting the fee.¹⁹ Thus, even in petitions where a bankruptcy proceeding is asserted as the basis for relief, we analyze the facts of each case to determine whether the applicant has satisfied both prongs of the Commission's standard, financial hardship and extraordinary²⁰ and compelling circumstances²¹ showing waiver is justified.²² In this case, Licensee has not filed for bankruptcy protection.

Licensee failed to establish financial hardship and extraordinary and compelling circumstances that outweigh the public interest in recouping the Commission's regulatory costs. Unfortunately, Licensee failed to provide any documentation supporting its assertion that

¹³ 9 FCC Rcd at 5344 ¶ 29; In *The Matter of Phoenix Broadcasting, Inc. Stations KSWD and KPFN Seward, Alaska, Memorandum Opinion and Order*, 18 FCC Rcd 26464, 26446, ¶¶ 5-6 (2003) ("Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee's ability to serve the public. . . . [I]n the absence of a documented showing of insufficient funds to pay the regulatory fees, [applicant] has not made a compelling showing that overrides the public interest in the Commission's recouping the costs of its regulatory activities.").

¹⁴ Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Memorandum Opinion and Order*, 10 FCC Rcd 12759, 12761-62, ¶ 13 (1995) (*FY 1994 MO&O*).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *See Id.* at 12762, ¶ 14 ("[W]here a bankruptcy trustee, receiver, or debtor in possession is negotiating a possible transfer of a license, the regulatory fee could act as an impediment to the negotiations and the transfer of the station to a new licensee.").

¹⁸ Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Notice of Proposed Rulemaking*, 18 FCC Rcd 6085, 6090, ¶ 11 (2003).

¹⁹ *FY 1994 MO&O*, 10 FCC Rcd at 12761, ¶ 12.

²⁰ Black's Law Dictionary (9th ed. 2009)(extraordinary-"a highly unusual set of facts that are not commonly associated with a particular thing or event").

²¹ *Id.* (compelling-"something so great that irreparable harm or injustice would result if not met").

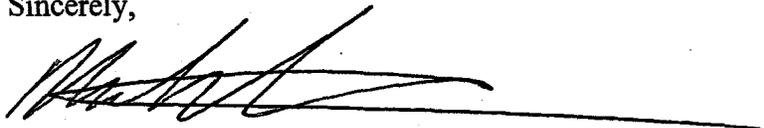
²² In *The Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2003, Report and Order*, 18 FCC Rcd 15985, 15989-90, ¶¶ 11, 13, 14 (2003).

financial hardship exists. In demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner.²³ Here, however, Licensee did not carry its burden as set forth at 47 C.F.R. § 1.1166 to demonstrate that on “a case-by-case” it has shown “good cause” and that the “waiver [of the required fee] would promote the public interest.”²⁴ Unsupported assertions do not demonstrate the existence of financial hardship, establish “the impact of the regulatory fee [on the Licensee’s] ability to serve the public,”²⁵ or show how, in light of the current national financial climate, the public interest will be served by waiving the fee and charges.

Accordingly, without sufficient evidence of financial hardship,²⁶ we deny licensee’s *Request* for a waiver of the required regulatory fees.

Payment of \$6,143.75, which is Licensee’s FY 2012 regulatory fees plus the 25% penalties, accrued interest and penalties, and administrative charges of collection, must be received, together with a Form 159 (copy enclosed), within 30 days of the date of this letter. Moreover, as noted above, because Licensee is delinquent in paying the fees, until the full amount due is paid, we are required to withhold action on any application filed or pending by Licensee.²⁷ If full payment of that amount is not received by that date, additional interest, penalties, and charges required by 31 U.S.C. § 3717(e) will continue to accrue from the date of this letter. Furthermore, under the law,²⁸ the Commission will initiate collection proceedings against Licensee. If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark Stephens
Chief Financial Officer

Enclosure

²³ *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

²⁴ 47 C.F.R. § 1.1166.

²⁵ *FY 1994 MO&O*, 10 FCC Rcd at 12762, ¶ 13.

²⁶ *Id.*

²⁷ 47 C.F.R. § 1.1910.

²⁸ *See* 47 C.F.R. § 1.1901, *et seq.*

Incoming Communication Tracking - Entry Screen

ORIGINAL

Tracking Number	14679	Date Received	9/4/2012	Letters Sent 2 day <input type="checkbox"/> 30 day <input type="checkbox"/> 60 day <input type="checkbox"/> 60 day (2) <input type="checkbox"/>
File Number		Date Filed	9/4/2012	
		Date Completed		

General Information

Source	Letter	Call Sign	KGY AM & KGY FM
Program	Regulatory Fee	FCC Code 1	
Communication Type	Waiver of Rules	FCC Code 2	
Bureau	OMD	Licensing System	
Secondary Bureau		Wavier Amount	\$0.00

Applicant/Contact Information

FRN	0001591999		
Applicant Name	KGY, Inc.		
Address 1	1700 Marine Drive NE		
Address 2			
City, State Zip	Olympia	WA	98507
Contact Name	Jennifer Kerry	Additional FRN	
Contact Phone		Additional Name	

Assignment/Status Information

Assigned To	FO-Financial Operations	Disposition Status	Open
Assigned To POC	Shelia Foster	Outcome	
RE	Jennifer A. Kerry, President/CEO for KGY, Inc.'s request for Waiver	Filer ID	
Date Assigned	9/12/2012	Bill Number	
Reassigned To	Paul Cascio	Fee Control Number	
Date Reassigned			
2nd Reassigned To			
2nd Date Reassigned			
RMA			

Assignment/Status Information

<p>Comments</p> <p>Jennifer A. Kerry, President/CEO for KGY, Inc.'s request for Waiver of FY 2012 Reg. Fees. KGY, Inc. claim they are close to the edge of bankruptcy and request waiver for stations KGY AM & KGY FM.</p>



Jennifer A. Kerry
President/CEO

KGY AM 1240 -- Olympia's News Source
South Sound Country 96.9

September 4, 2012

Mr. David Robbins
Managing Director
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

RE: Request for Waiver of Fiscal Year 2012 Regulatory Fees

Comes now Jennifer Kerry, President of KGY, Inc. and Personal Representative of the Estate of Barbara Olsen Kerry, licensee of KGY (AM) and KGY-FM, residing in St. Petersburg, FL, state under the penalty of perjury the following to be accurate and true, and hereby petition the Commission with request for waiver of Fiscal Year 2012 Regulatory Fees.

Currently, KGY, Inc., operator of KGY (AM) and KGY-FM, is in a very precarious financial position; close to the edge of filing for bankruptcy protection. The stations have been owned by my family for 3 generations, beginning with my grandfather Tom Olsen in 1939, and most recently under the management of my mother Barbara Kerry. Throughout her tenure, and until the time of her death in 2006, the stations posted losses of about, \$50,000.00, annually. After my Mother's death in 2006, losses increased to, \$100,000.00, annually; the result of very poor management. In January, 2011, I reassigned the General Manager, who later resigned, and terminated the Sales Manager, as both were directly responsible for accelerating the company's financial decline.

Furthermore, under the leadership of these managers, the company became indebted to creditors for about \$225,000.00. In order to continue broadcasting, I've personally loaned, \$250,000.00, to KGY, Inc., while reducing staff and non-essential expenses. Loaning this significant amount of money to the stations has been very detrimental to my personal finances as well, considering the penalties I've incurred by essentially "robbing" retirement investments. After exhausting all resources available, I am now unable to provide any further assistance to the company.

FO WAIVER TRACKING SYSTEM
CONTROL # 14679

KGY AM 1240 / South Sound County 96.9
1700 Marine Drive NE
Olympia, WA 98507
Phone (360) 943-1240 Fax (360) 352-1222



Jennifer A. Kerry
President/CEO

KGY AM 1240 -- Olympia's News Source
South Sound Country 96.9

Mr. David Robbins
Page Two

September 4, 2012

In addition, the Estate of my Mother, Barbara Olsen Kerry, licensee of the stations, is now completely out of money, and its only assets are the radio stations and two undeveloped parcels of land. Unfortunately, the Executrix of the Estate, Anne Marie Hauschild, I believe, did not fulfill her obligations to the heirs, my siblings, nephew, and me included. Without question, Ms. Hauschild has failed to properly oversee the Estate, and is unable to readily provide necessary records, from 2006 to present, making settlement of the Estate extremely difficult. As well, Ms. Hauschild has failed in her role as company bookkeeper, not filing corporate tax returns for 2010 and 2011. She is now in very poor health, living with a chronic non-curable condition. These factors have resulted in me having to take on the role of Personal Representative of the Estate from, Ms. Hauschild in order to remedy this situation.

Lastly, I would like to highlight, the significance of the stations for the respective communities they serve. This year, KGY (AM) celebrates its 90th year of broadcasting in Olympia / Thurston County and 72 years being locally-owned by the same family. Needless to say, preserving this longstanding heritage, and significant position KGY has in the community, remain my foremost priority. KGY (AM) is the station to which listeners' tune-to, to hear about school closings, road conditions, power restorations, etc, during inclement weather. The Thurston County area has experienced significant weather events throughout our history. During significant weather events, our staff makes camp at the station to ensure 24-hour coverage and constant updates for our listeners.

Furthermore, many of our listeners' only access to media is through radio, making the news, and information we provide even more significant in their daily lives. In spite of our financial struggles, the stations continued commitment to our community's non-profit organizations remain strong. These organizations have the unique opportunity to disseminate information to the public daily, through both the PSAs we provide, as well as the "Community Connection" feature on KGY AM 1240. This program is a 15 minute interview on the Morning Show, which runs Monday – Friday at 8:15am, as it has for many decades. Many local community organizations and political candidates utilize this program, as well.



Jennifer A. Kerry
President/CEO
KGY AM 1240 -- Olympia's News Source
South Sound Country 96.9

Mr. David Robbins
Page Three

September 4, 2012

While it is evident that the stations have experienced significant financial challenges, it is my sincere belief that the progress the company has made in the last seven (7) months, with new management, will result in a continued and much improved operation of KGY (AM) and KGY-FM, effectively preserving the stations for future generations of listeners in the community we serve.

Taking this into consideration, I, Jennifer Kerry, state under the penalty of perjury, the above information provided to be accurate and true, and respectfully request the Commission to defer this obligation, pending your consideration, for waiver of Fiscal Year 2012 Regulatory Fees for stations KGY (AM) and KGY-FM.

Sincerely,

Jennifer Kerry
President/CEO KGY, Inc.
Personal Representative, Estate of Barbara Olsen Kerry

Adama J.

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAY 6 2013

OFFICE OF
MANAGING DIRECTOR

Brian Rudolph
CEO/COO
Krush Communications, LLC
1064 E. Brandon Blvd., Ste. A
Brandon, FL 33511

Re: Waiver Request (Late Payment Penalty; 47
U.S.C. § 159(c)(1); 47 C.F.R. §§ 1.1164(c), 1.1914)
Licensee/Applicant: Krush Communications, LLC
Station: N/A

Fee: Fiscal Year (FY) 2010 and FY 2012

Regulatory Fees and Late Fees

Date Request Filed: Mar. 19, 2013

Date Regulatory Fees Paid: Not paid

Date Regulatory Late Penalties Paid: Not paid

Fee Control No.: RROG-12-00015031

FY 2010 Regulatory Fees

Regulatory Fee \$ 27,134.00

Penalty (25%) \$ 6,783.50

Collection Fee \$ 50.00

DCIA Interest/Penalty \$ 5,154.33

FY 2012 Regulatory Fees

Regulatory Fee \$ 49,546.00

Penalty (25%) \$ 12,386.50

Collection Fee \$ 50.00

DCIA Interest/Penalty \$ 2,890.18

Total Amount Due \$ 103,994.51

Dear Mr. Rudolph:

This responds to Licensee's *Request*¹ that sought waiver of the penalties for late payment of Fiscal Year (FY) 2012 regulatory fees and a separate installment plan. For the reasons stated herein, we must deny the waiver, but grant Licensee's separate request to pay the delinquent fees in installments.

¹ Letter from Kimberly Williams, Krush Communications, 1064 E. Brandon Blvd., Ste A, Brandon, FL 33511 to Marlene H. Dortch, Secretary, FCC, Office of Secretary, 9300 East Hampton Drive, Capitol Heights, MD 20743 (Mar. 20, 2013)(*rec'd* Mar. 29, 2013)(*Letter*), Emails from Kimberly Williams [kim@krushcom.com] and Brian Rudolph [brian@krushcom.com] to ARINQUIRIES (ARINQUIRIES@fcc.gov) (Mar. 19, 2013) (*Email*) (collectively, *Request*).

Under 47 U.S.C. § 159 and the Commission's implementing rules, we are required to "assess and collect regulatory fees" to recover the costs of the Commission's regulatory activities,² and when the required payment is received late or it is incomplete, to assess a penalty equal to "25 percent of the amount of the fee which was not paid in a timely manner."³ Specifically, "[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee ... which was not paid in a timely manner."⁴

Each year, the Commission establishes the final day on which payment may be made before it is late, *i.e.*, a deadline, after which the statutory late payment penalty required by 47 U.S.C. § 159(c)(1) and 47 C.F.R. § 1.1164 will be imposed, and interest, penalties, and charges of collection will accrue under 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940. FY 2010, payment was due no later than August 31, 2010,⁵ and for FY 2012, payment was due no later than September 13, 2012.⁶ Licensee's payments were not received, thus Licensee failed to meet this obligation. Licensee asserts, "We were not aware of the invoices due because the person who had access to the site is no longer with the company."⁷ This is not a legal ground or clear mitigating circumstance to waive collection of the penalties. The Commission has repeatedly held that "[l]icensees are expected to know and comply with the Commission's rules and regulations and will not be excused for violations thereof, absent clear mitigating circumstances."⁸ The absence of a reminder notice is not an excuse. Indeed, beginning in 2009, the Commission provided ample notice that it would not be sending paper pre-bills to regulatees.

On May 14, 2009, the Commission proposed to mandate electronic filing of regulatory fee information through the agency's Fee Filer system.⁹ The Commission explained that, "[c]onsistent with [its] proposal to require mandatory use of Fee Filer ... pre-bill information would be loaded into Fee Filer for viewing, but would not be mailed directly to the licensee via surface mail."¹⁰ On July 31, 2009, the Commission released its order adopting these proposals,¹¹ and notifying regulatees that "because all pre-bills will be loaded into Fee Filer, once Fee Filer becomes operational, this will be the signal by which licensees can view their pre-bill information online."¹² Thereafter, the Commission issued a public notice informing regulatees that use of Fee Filer was mandatory in FY 2009 and that "regulatory fee bills will no longer be

² 47 U.S.C. §159(a)(1); 47 C.F.R. § 1.1151.

³ 47 U.S.C. §159(c)(1); 47 C.F.R. § 1.1164.

⁴ 47 C.F.R. § 1.1164.

⁵ See FY 2010 Regulatory Fees Due No Later Than August 31, 2010, Eastern Time, *Public Notice*, DA 10-1451 (Aug. 9, 2010).

⁶ See FY 2012 Regulatory Fees due No Later Than September 13, 2012, *Public Notice*, DA 12-1295 (Aug. 13, 2012).

⁷ *Letter*.

⁸ See *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), citing *Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970); see also *NextGen Telephone (OMD)*, Apr. 22, 2010; *Istel, Inc. (OMD)*, Apr. 22, 2010).

⁹ *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Notice of Proposed Rulemaking and Order*, 24 FCC Rcd 5966, 5972, ¶ 16 (2009).

¹⁰ *Id.* at 5973, ¶ 20.

¹¹ *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Report and Order*, 24 FCC Rcd 10301, 10307-09, ¶¶ 18-26 (2009) (*FY 2009 Regulatory Fees NPRM*).

¹² *Id.* at 10309, ¶ 26.

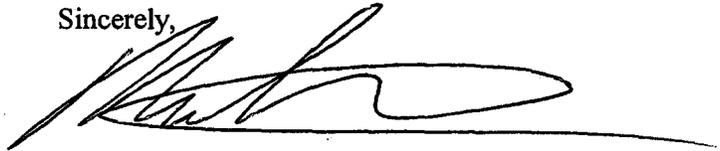
mailed to the regulatee, but can be viewed by logging on the Fee Filer.”¹³ Finally, on September 2, 2009, the Commission released a third public notice that “**HARDCOPY BILLS WILL NO LONGER BE MAILED BY THE FCC.**”¹⁴

Similarly, in 2010, the Commission’s final order on the FY 2010 regulatory fees reaffirmed that regulatees should “check[] the Commission’s website periodically beginning in July” in order to “ascertain the fee due date, and receive instructions on how to access Fee Filer, view their bill, and make a fee payment.”¹⁵ This notification was part of the Commission’s increased effort to notify licensees that hardcopy bills will no longer be mailed.¹⁶

Every licensee is obliged to make the fee payment by the deadline. Although the Commission has waived late fees on a showing of good cause, neither the statute nor the Commission’s regulations contemplates a waiver of or reduction in the late payment penalty based on the amount of time after the deadline within which the regulatee satisfies its payment obligations; indeed, the penalty for late payment applies even to situations where the deadline is missed by a short period of time.¹⁷ The penalty required by 47 U.S.C. § 159(c)(1) and charges required by 31 U.S.C. § 3717 are not limited to situations where the failure to pay was knowing or willful. If the penalty it is to be waived, it is “only in the most extraordinary circumstances,”¹⁸ which Licensee did not establish. Thus, we must deny the *Request*.

We are providing a separate installment payment plan for Licensee. If Licensee has any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark Stephens
Chief Financial Officer

¹³ *Fee Filer Mandatory for FY 2009 Regulatory Fees, Public Notice*, 24 FCC Rcd 10893 (Aug. 21, 2009).

¹⁴ *Payment Methods and Procedures for Fiscal Year 2009 Regulatory Fees, Public Notice*, 24 FCC Rcd 11513, 11514 (2009) (emphasis in original).

¹⁵ *Assessment and Collection of Regulatory Fees for Fiscal Year 2010, Report and Order*, 25 FCC Rcd 9278, 9291, ¶ 37 (2010).

¹⁶ *See Assessment and Collection of Regulatory Fees for Fiscal Year 2010, Notice of Proposed Rulemaking*, 25 FCC Rcd 3918, 3923, ¶ 12 (2010).

¹⁷ *See XO Communications, LLC* (OMD, Nov. 10, 2010).

¹⁸ *McLeodUSA Telecommunications Services, Inc., Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589 (2004) (denying the request for waiver of 25 percent penalty).

3/19/2013 10:51 AM Current Status for FRN 0017067042

STATUS: REG

Status Summary

You have 2 delinquent bills which are restricting you from doing business with the FCC.

Pay Delinquent Bills				
Select to Pay	Bill Number	Original Amount	Amount Paid	Balance Due
<input type="checkbox"/> Lockbox 979084				
Debtor: Krush Communications LLC (FRN: 0017067042)				
<input type="checkbox"/>	R12P826853	\$61,982.50	\$0.00	\$61,982.50
<input type="checkbox"/> Lockbox 979086				
Debtor: Krush Communications LLC (FRN: 0017067042)				
<input type="checkbox"/>	10RE009888	\$39,121.83	\$0.00	\$39,121.83

Stephen M. French
 OMD-Financial Operations
 Office: 1-B512
 Direct Line: 202-418-1878
 Fax: 202-418-7869

From: Kim Williams [mailto:kim@krushcom.com]
Sent: Tuesday, March 19, 2013 9:50 AM
To: ARINQUIRIES
Subject: Acct #0017067042, Bill #10RE009888

I received a demand letter in the mail for \$39,121.83. I was hoping to setup some type of payment plan. I would appreciate it if someone would get back to me as soon as possible.

Thanks,

--
 Kimberly Williams
 Krush Communications
 1064 E. Brandon Blvd.
 Suite 'A'
 Brandon, FL 33511

Adams

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAY 6 2013

OFFICE OF
MANAGING DIRECTOR

Juan Carlos Canto
LD TeleCom
5757 Blue Lagoon Drive
Suite 190
Miami, FL 33126

Re: Waiver Request (Late Payment Penalty; 47
U.S.C. § 159(c)(1); 47 C.F.R. §§ 1.1164(c), 1.1914)
Licensee/Applicant: LD Telecommunications, Inc.
Station: N/A
Fee: Fiscal Year (FY) 2010, FY 2011, and FY 2012
Regulatory Fees and Late Payment Penalties
Date Request Filed: Mar. 29, 2012
Date Regulatory Fees Paid: Not paid
Date Regulatory Late Penalties Paid: Not paid
Fee Control No.: RROG-12-00014285

FY 2010 Regulatory Fees

Regulatory Fee	\$ 16,705.00
Penalty (25%)	\$ 4,176.25
Collection Fee	\$ 50.00
DCIA Interest/Penalty	\$ 2,769.55

FY 2011 Regulatory Fees

Regulatory Fee	\$ 24,595.00
Penalty (25%)	\$ 6,148.75
Collection Fee	\$ 50.00
DCIA Interest/Penalty	\$ 1,797.48

FY 2012 Regulatory Fees

Regulatory Fee	\$ 22,003.00
Penalty (25%)	\$ 5,500.75
Collection Fee	\$ 50.00
DCIA Interest/Penalty	\$ 710.50
Total:	\$ 84,556.28

Dear Mr. Canto:

This responds to Licensee's *Request*¹ for waiver of the penalties for late payment of Fiscal year (FY) 2011 regulatory fees. For the reasons stated herein, we must deny the *Request*, but grant Licensee's separate *Installment Plan Request*² to pay the delinquent debts.

¹ Letter from Juan Carlos Canto, LDTeleCom, 5757 Blue Lagoon Dr., Ste 190, Miami, FL 33126 to Federal Communications Commission, Regulatory Fees, P.O. Box 979084, St. Louis, MO 63197 (Mar. 8, 2012)(rec'd Mar. 29, 2012)(*Request*).

Under 47 U.S.C. § 159 and the Commission's implementing rules, we are required to "assess and collect regulatory fees" to recover the costs of the Commission's regulatory activities,³ and when the required payment is received late or it is incomplete, to assess a penalty equal to "25 percent of the amount of the fee which was not paid in a timely manner."⁴ Specifically, "[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee ... which was not paid in a timely manner."⁵

Each year, the Commission establishes the final day on which payment may be made before it is late, *i.e.*, a deadline, after which the statutory late payment penalty required by 47 U.S.C. § 159(c)(1) and 47 C.F.R. § 1.1164 will be imposed, and interest, penalties, and charges of collection will accrue under 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940. For FY 2010, the deadline for paying the regulatory fees was August 31, 2010,⁶ for FY 2011, the deadline for paying regulatory fees was September 16, 2011,⁷ and for FY 2012, the deadline for paying regulatory fees was September 13, 2012.⁸ Licensee's payments were not received, thus Licensee failed to meet this obligation. Licensee asserts [t]hat "never received notice of any amount due or owing until your (FCC) letter."⁹ These are not legal grounds or clear mitigating circumstances to waive collection of the penalty. The Commission has repeatedly held that "[l]icensees are expected to know and comply with the Commission's rules and regulations and will not be excused for violations thereof, absent clear mitigating circumstances."¹⁰ The absence of a reminder notice is not an excuse. Indeed, beginning in 2009, the Commission provided ample notice that it would not be sending paper pre-bills to regulatees.

On May 14, 2009, the Commission proposed to mandate electronic filing of regulatory fee information through the agency's Fee Filer system.¹¹ The Commission explained that, "[c]onsistent with [its] proposal to require mandatory use of Fee Filer ... pre-bill information would be loaded into Fee Filer for viewing, but would not be mailed directly to the licensee via surface mail."¹² On July 31, 2009, the Commission released its order adopting these proposals,¹³

² *Id.* Letter from Juan Carlos Canto, LDTeleCom, 5757 Blue Lagoon Dr., Ste 190, Miami, FL 33126 to FCC, Attn.: Revenue and Receivables Operations Group, 445-12th Street, SW, Room 1-A821, Washington, DC 20554 (Dec. 14, 2012) (*Installment Plan Request*).

³ 47 U.S.C. §159(a)(1); 47 C.F.R. § 1.1151.

⁴ 47 U.S.C. §159(c)(1); 47 C.F.R. § 1.1164.

⁵ 47 C.F.R. § 1.1164.

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

⁷ See FY 2011 Regulatory Fees Due No Later Than September 14, 2011, Eastern Time, *Public Notice*, DA 11-1420 (Aug. 17, 2011); FY 2011 Regulatory Fee Deadline Is Extended To 11:59 PM ET, September 16, 2011, *Public Notice*, DA 11-1559 (Sep. 15, 2011).

⁸ See FY 2012 Regulatory Fees due No Later Than September 13, 2012, *Public Notice*, DA 12-1295 (Aug. 13, 2012).

⁹ *Request*.

¹⁰ See *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), citing *Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970); see also *NextGen Telephone (OMD)*, Apr. 22, 2010); *Istel, Inc. (OMD)*, Apr. 22, 2010).

¹¹ *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Notice of Proposed Rulemaking and Order*, 24 FCC Rcd 5966, 5972, ¶ 16 (2009).

¹² *Id.* at 5973 ¶ 20.

and notifying regulatees that “because all pre-bills will be loaded into Fee Filer, once Fee Filer becomes operational, this will be the signal by which licensees can view their pre-bill information online.”¹⁴ Thereafter, the Commission issued a public notice informing regulatees that use of Fee Filer was mandatory in FY 2009 and that “regulatory fee bills will no longer be mailed to the regulatee, but can be viewed by logging on the Fee Filer.”¹⁵ Finally, on September 2, 2009, the Commission released a third public notice that “**HARDCOPY BILLS WILL NO LONGER BE MAILED BY THE FCC.**”¹⁶

Similarly, the Commission’s final order on the FY 2010 regulatory fees reaffirmed that regulatees should “check[] the Commission’s website periodically beginning in July” in order to “ascertain the fee due date, and receive instructions on how to access Fee Filer, view their bill, and make a fee payment.”¹⁷ This notification was part of the Commission’s increased effort to notify licensees that hardcopy bills will no longer be mailed.¹⁸

Every licensee is obliged to make the fee payment by the deadline. Although the Commission has waived late fees on a showing of good cause, neither the statute nor the Commission’s regulations contemplates a waiver of or reduction in the late payment penalty based on the amount of time after the deadline within which the regulatee satisfies its payment obligations; indeed, the penalty for late payment applies even to situations where the deadline is missed by a short period of time.¹⁹ The penalty required by 47 U.S.C. § 159(c)(1) and charges required by 31 U.S.C. § 3717 are not limited to situations where the failure to pay was knowing or willful. If the penalty it is to be waived, it is “only in the most extraordinary circumstances,”²⁰ which Licensee did not establish. Thus, we must deny the *Request*.

We are providing a separate installment payment plan for Licensee. If Licensee has any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark Stephens
Chief Financial Officer

¹³ *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Report and Order*, 24 FCC Rcd 10301, 10307-09, ¶¶ 18-27 (2009) (*FY 2009 Regulatory Fees NPRM*).

¹⁴ *Id.* at 10309, ¶ 26.

¹⁵ *Fee Filer Mandatory for FY 2009 Regulatory Fees, Public Notice*, 24 FCC Rcd 10893 (Aug. 21, 2009).

¹⁶ *Payment Methods and Procedures for Fiscal Year 2009 Regulatory Fees, Public Notice*, 24 FCC Rcd 11513, 11514 (2009) (emphasis in original).

¹⁷ *Assessment and Collection of Regulatory Fees for Fiscal Year 2010, Report and Order*, 25 FCC Rcd 9278, 9291, ¶ 37 (2010).

¹⁸ *See Assessment and Collection of Regulatory Fees for Fiscal Year 2010, Notice of Proposed Rulemaking*, 25 FCC Rcd 3918, 3923, ¶ 12 (2010).

¹⁹ *See XO Communications, LLC* (OMD, Nov. 10, 2010).

²⁰ *McLeodUSA Telecommunications Services, Inc., Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589 (2004) (denying the request for waiver of 25 percent penalty).

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAY 6 2013

OFFICE OF
MANAGING DIRECTOR

Juan Carlos Canto
LD TeleCom
5757 Blue Lagoon Dr., Ste. 190
Miami, FL 33126

Re: Payment Plan Request (47 C.F.R. §1.1914)
Debtor Name: LD Telecommunications, Inc.
FRN: 000853506
Debt Amount: \$84,556.28
Basis of Debt: Fiscal Year (FY) 2010, FY
2011, and FY 2012 Regulatory Fees¹
Fee Control No.: RROG-12-000-14285

DO NOT DISCARD
NOTICE OF TERMS TO OBTAIN INSTALLMENT PAYMENT PLAN,
ACKNOWLEDGEMENT OF DEBT, AND
PROMISSORY NOTE
YOUR RESPONSE IS DUE WITHIN 20 DAYS

Dear Mr. Canto:

This is in response to Your² request to pay in installments the above described debt owed to the Federal Communications Commission (FCC)(Request).³ Under 47 C.F.R. § 1.1914, the FCC may accept such a Request when the Debtor provides verified financial information demonstrating it lacks the financial ability to pay the debt in one lump sum. This Notice provides

¹ See FY 2010 Regulatory Fees Due No Later Than August 31, 2010, Eastern Time (ET), *Public Notice*, DA 10-1451 (Aug. 9, 2010); FY 2011 Regulatory Fees Due No Later Than September 14, 2011, Eastern Time (ET), *Public Notice*, DA 11-1420 (Aug. 17, 2011); FY 2011 Regulatory Fee Deadline is Extended to 11:59 PM, ET, September 16, 2011, *Public Notice*, DA 11-1559 (Sep. 15, 2011); FY 2012 Regulatory Fees due No Later Than September 13, 2012, *Public Notice*, DA 12-1295 (Aug. 13, 2012). Licensee is delinquent \$23,700.80 (including the accrued statutory penalty, interest and penalties, and charges for collection) for non-payment of the FY 2010 Regulatory Fee and the statutory penalty, and \$32,591.23 (including the accrued statutory penalty, interest and penalties, and charges for collection) for non-payment of the FY 2011 Regulatory Fee and the statutory penalty, and \$28,264.25 (including the accrued statutory penalty, and charges for collection) for non-payment of the FY 2012 Regulatory Fee. The total is \$84,556.28.

² The term, Your, as used in this document is intended to mean the Licensee or Regulatee, as that term is used in the Commission's rules, and it includes in meaning the pronoun, You, and noun, Debtor, all of which are intended to mean and include both the business entity and the entity's officer or principal or the proprietor who is authorized and empowered to represent and bind the Debtor.

³ Letter from Juan Carlos Canto, LDTeleCom, 5757 Blue Lagoon Dr., Ste 190, Miami, FL 33126 to Federal Communications Commission, Attn.: Revenue and Receivables Operations Group, 445-12th Street, SW, Room 1-A821, Washington, DC 20554 (Dec. 14, 2012) (Request).

You with our requirements and procedures for You to complete the Request, obtain *conditional acceptance* into a payment plan, and begin making payments. The requirements to complete the Request, which are explained in detail below, include:

- (a) signing legal documents, including a legally enforceable Promissory Note (Note),
- (b) paying immediately **both a \$1,000.00 nonrefundable Processing Fee and \$8,455.62**, which is a ten percent (10%) Good Faith Payment that reduces the Principal Amount,
- (c) providing specific detailed financial records, and
- (d) returning the completed Request with all information to the Commission within 20 days from the date of this Notice.

When we receive the required payments, Your complete Request, and all required documents, You will be *conditionally accepted* into the installment payment program, and we will review your financial records to determine whether You meet the standard in our rule for formal acceptance. Our acceptance is made in good faith, but it is conditional, which means, if you (a) fail to pay the Processing Fee and the Good Faith Payment, (b) fail to provide the complete required financial information, or (c) cannot demonstrate financial inability to pay, we will notify You that Your Request was denied, and You must pay the full unpaid balance within 30 days. Thus, without further notice or demand, the Maturity Date of the Promissory Note will be accelerated, and the unpaid Principal Amount and all accrued but unpaid interest will be immediately due.

Requirements and Procedures for an Installment Plan

This section provides You with the requirements and procedures to complete a request for an installment payment plan. First, You must sign the legal documents that are part of this Notice, provide the required information, and return the entire package along with the \$1,000.00 Processing Fee and the ten percent (10%) Good Faith Payment to the FCC. Second, when we receive this Notice and Your financial information, we will (a) review the information and determine whether You lack adequate finances to pay the debt in a lump sum, (b) confirm that You are not delinquent in any other debts owed to the FCC, and (c) monitor Your compliance with the terms of the Note. You must meet all requirements stated in the terms of the Note. You must make Your first payment on the first day of the second month following the Effective Date of the Note (e.g., if the Note is effective any day in May, the first payment is due the first day of July). Thereafter, each payment must be received on the first day of each successive month, except that if that day is not a business day, then payment is due on the prior business day. We will not send you reminder notices or invoices. You are responsible for paying on time, and if You fail to meet a requirement, You will be in default, and the full unpaid amount owed, plus any accrued but unpaid interest and/or penalties is immediately due. If You do not make the full payment at that time, the FCC will initiate debt collection action.

We prepared the documents in this Notice in good faith to reflect (a) the Debt Amount and (b) the Principal Amount. The Debt Amount may be greater because it has been calculated to include as of the date of this Notice any applicable accrued but unpaid interest, penalties, and/or charges of collection that may have accrued. The Principal Amount (stated in the Note) is the Debt Amount minus the amount equal to the 10% Good Faith Payment. Thus, the

Acknowledgement of Debt pertains to the Debt Amount, and the Promissory Note pertains to the Principal Amount to be paid in installments.

In order to complete Your Request and make installment payments, You (or the person authorized and empowered to bind the Debtor) must within twenty (20) days of the date of this Notice:

- (a) affix the initials of the person authorized and empowered to represent and bind the Debtor and insert the date of execution on each page of this Notice;
- (b) sign and date the Acknowledgement of Debt, which is at Appendix A;
- (c) sign and date the Promissory Note, which is at Appendix B;
- (d) submit both the \$1,000.00 nonrefundable processing fee and \$8,455.62, which is the Good Faith Payment equal to 10% of the Debt Amount in accordance with the Payment Instructions described below;
- (e) provide the Required Financial Information described below; and
- (f) deliver the original of this Notice to the Commission at the Mail Address described below.

This installment plan must be paid in full within **6 months**. We impose interest at the rate of **eleven and one-quarter percent (11.25%)** per year, and we require payment of an **administrative charge of \$25.00 per month**. We will notify You of our decision on your Request; however, we will not send You reminder notices when payment is due. You are responsible for making all payments on time, and if we do not receive your monthly payment on or before the date that it is due, You will be in default.

After we receive Your complete Request and the Good Faith Payment, we will notify You of our decision by mail or email (if you provide the email account address).

Option to Pay in Full Within 30 Days

This section provides You with an alternative to paying the amount in installments. If You do not deliver to the FCC a complete Request with the required documents and Good Faith Payment within twenty (20) days, then within thirty (30) days of the date of this Notice, You must pay the full Debt Amount to the FCC to avoid accruing additional interest or other charges of collection. Under 31 U.S.C. § 3717, if You do not pay the full Debt Amount within 30 days, You will incur additional interest, penalties or charges of collection, and the Commission will take steps to collect any amount unpaid.

**Important Notice Information Concerning
the Debt Collection Improvement Act (DCIA)**

This section notifies You of the procedures and information required by the DCIA. The basis for the Debt owed to the United States is stated above. If You want further information about the Debt, within fifteen (15) days of the date of this Notice, call 1-877-480-3201 or send an email to ARINQUIRIES@fcc.gov. A request for further information will not stop accrual of interest, penalties, or other charges of collection, which are described below. This Notice does

not apply to any other amounts Debtor may owe to the United States, and the Promissory Note does not include any other debt. Under 31 U.S.C. § 3717, we must assess and collect interest and penalties on delinquent Debts, and we will collect the administrative costs of collection. Any portion of the Debt that is not paid on the due date is delinquent, and a delinquent debtor is subject to the Commission's procedures at 47 C.F.R. § 1.1910. If the full Debt is paid within thirty (30) days from the date it was due, we will waive the interest that accrued to that date. If, however, the Debt payment is received more than thirty (30) days after it was due, interest accrues from the due date. And if the debt is delinquent ninety (90) or more days, a penalty (currently six percent (6%) per annum) accrues from the due date. In this instance, we are permitting You to complete and submit a request to enter into a written agreement to pay the Debt in installments. By making the Request to pay in installments, You are waiving any further review of the basis for the Debt. If You fail to return the completed Notice and all required documents within the allowed time, we may take immediate action to start collection action on a delinquent Debt. We are not required to provide you with an additional notification or a demand letter. Collection action may include among other steps, administrative offset, mandatory centralized administrative offset, referral of debt and payment information to credit bureaus, withhold of action on applications at the Commission, and referral of the Debt to the United States Treasury or the Department of Justice for further collection action. If the Debt is referred to the United States Treasury, under 31 U.S.C. §§ 3711(g), 3716, and 3717, Treasury will impose an additional administrative collection charge, and it may commence administrative offset. Finally, under 28 U.S.C. § 3011, an additional surcharge may be imposed in connection with certain judicial actions to recover judgment.

Mail Address for Documents and Point of Contact Information
(Do Not Send Payments to this Address)

This section provides you with our mailing address. Return this Notice, the required Financial Information, and other correspondence to the Commission concerning this Debt by mail addressed to:

Federal Communications Commission
Office of the Chief Financial Officer
Federal Communications Commission
445 12th Street, S.W. (Attn: Ch. RROG, Rm 1A724)
Washington, D.C. 20554

In addition, you may call 1-877-480-3201 or send an email to ARINQUIRIES@fcc.gov. Because the mail can be delayed by weather or other unforeseen matters, notify us by email or telephone when you mailed the documents.

Payment Instructions
(Do Not Send Correspondence to These Addresses)

This section provides payment instructions. The required \$1,000.00 nonrefundable Processing Fee and Good Faith payment (or, in the alternative, Lump Sum/Full payment) may be made by (a) Cashier's Check, Certified Check, Money Order or (b) by Wire Transfer. Monthly

payments may be made in the same manner. If the first day of the month is a non-business day (i.e., Saturday, Sunday, or federal holiday), payment must be received on the prior business day. Payment by a Check or Money Order must include a Form 159⁴ Remittance Advice. That form of payment may be mailed to the Federal Communications Commission at the following address:

Federal Communications Commission
U.S. Bank
P.O. Box 979088
St. Louis, MO 63197-9000

It may also be delivered by an overnight or expedited delivery service to:
U.S. Bank, Government Lockbox # 979088,
SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

If you submit payment via Wire Transfer, you must follow these instructions to assure proper credit:

One hour before initiating the instructions, fax a copy of the completed FCC Form 159, Remittance Advice Form, to U.S. Bank at (314) 418-4232. Next, provide your bank with the following information:

ABA Routing Number 021030004
Receiving Bank: TREAS NYC
33 Liberty St., New York 10045
BNF: FCC/ACCT #: 27000001
OBI Field: (Skip one space between each information item)
"PAYPLAN"
PAYER FRN (Exactly as on remittance instrument)
PAYER NAME (Exactly as on remittance instrument)
Phone: (Daytime Phone #, exactly as on remittance instrument)
LOCKBOX 979088 (If filing the Form 159)

Required Financial Information

This section provides information about the required financial information. Within twenty (20) days of the date of this Notice, You must provide the Commission with two copies of your financial statements, which are current within 90 days of the date of this Notice, and that include: the balance sheet; profit and loss and cash flow statements for the past 12 months; and the revenue and cash flow projections for the next 12 months. Financial statements must include assets of the Debtor's parent, sister, or subsidiary companies. Also, include the name and address of all creditors and a narrative statement explaining the source of funds available to make installment payments. An officer or principal of the Debtor business entity must attest to this financial information

⁴ You may find the Form 159, with complete instructions at: <http://www.fcc.gov/fees/form159.html>.

with a sworn affidavit or, in lieu of an affidavit, a declaration in the form as provided for in the Commission's rule at 47 C.F.R. § 1.16.⁵ Deliver this Financial Information to the Commission at the Mail Address provided above.

Sincerely,



Mark Stephens
Chief Financial Officer

[Important Documents Follow]

⁵ You may use the format from 47 C.F.R. § 1.16, which provides:

Such declaration shall be subscribed by the declarant as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States:

"I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).

(Signature)".

(2) If executed within the United States, its territories, possessions, or commonwealths:

"I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)".



Received & inspected

MAR 29 2012

FCC Mail Room

March 8, 2012

Via US and Certified Mail

Federal Communications Commission
Regulatory Fees
P.O. Box 979084
St. Louis, MO 63197-9000

Re: LD Telecommunications, Inc. - BRF R11P823468 1/ Account No.:0008538506

Dear Sir or Madam:

This letter serves as a response to the Federal Communications Commission letter dated March 1, 2012.

LD Telecommunications, Inc. hereby agrees to pay the principal amount claimed of \$24,595.00, plus interest (\$854.68) and administrative charges (\$50) for a total amount of \$25,499.68. LD Telecommunications, Inc. is willing to remit payment in the total amount of \$25,499.68. However, LD Telecommunications, Inc. never received notice of any amount due and owing until your letter dated March 1, 2012. As such, we would kindly requests (1) that the excess amount charged in penalties in the amount of \$6,148.75 be waived as a result of this lack of notice and (2) confirmation of same by written correspondence.

If you have any further questions, please feel free to contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "Juan Carlos Canto", written over a horizontal line.

Juan Carlos Canto

MAR 29 2012

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554
APR 4 2013

Adama

OFFICE OF
MANAGING DIRECTOR

Larry Steckline
LS Media, Inc.
6600 West Kellogg Dr., Ste. 101
Wichita, KS 67209

Re: (Late Payment Penalty; 47 U.S.C. § 159(c)(1), 31
U.S.C. § 3717, 47 C.F.R. § 1.1166)
Licensee/Applicant: LS Media, Inc.
Stations: KWLS
Fee: FY 2011 Regulatory Fee Late Fee
Date Request Filed: Jul. 24, 2012
Date Regulatory Fee Paid: Aug. 1, 2012
Date Regulatory Late Penalty Paid: Jan. 14, 2013
Fee Control No.: RROG-11-00014667

Dear Mr. Steckline:

This responds to Licensee's *Request*¹ for a waiver of the penalties and charges for late payment of the Fiscal Year (FY) 2011 regulatory fees. For the reasons stated herein, we must deny Licensee's *Request*.

The Commission's records show that Licensee failed to pay the FY 2011 regulatory fee on or before September 16, 2011, the payment deadline.² Thereafter, on July 18, 2012, the Commission informed Licensee that it was delinquent in paying the fee and accrued charges, and we provided notice to Licensee of the consequences of failing to pay the total amount owed.³ On August 1, 2012, Licensee made a partial payment of its delinquent debt, intending to avoid paying the 25% late payment penalty required by 47 U.S.C. § 159(c) and the interest, penalty, and charges of collection required by 31 U.S.C. § 3717. Licensee's partial payment was applied in the manner set forth in the Commission's rule,⁴ *i.e.*, first to outstanding penalties and administrative cost charges, second to accrued interest, and third to the outstanding principal. Thus, after applying Licensee's partial payment, \$515.25 remained as the unpaid principal of the FY 2011 regulatory fee. In that situation, under 31 U.S.C. § 3717, we are required to assess additional charges until the debt is paid in full, and as long as the debt remains delinquent, to

¹ Letter from Larry Steckline, LS Media, Inc., 660 W. Kellogg Dr., Ste 101, Wichita, KS 67209 to FCC, Regulatory Fees, P.O. Box 979084, St. Louis, MO 63197-9000 (Jul. 24, 2012)(*Request*). Follow-up email from Larry Steckline [mailto:larry@lsmedia.co] to ARINQUIRIES, (ARINQUIRIES@fcc.gov) (rec'd Sep. 10, 2012).

² See FY 2011 Regulatory Fees Due No Later Than September 14, 2011, Eastern Time, *Public Notice*, DA 11-1420 (Aug. 17, 2011); FY 2011 Regulatory Fee Deadline Is Extended To 11:59 PM ET, September 16, 2011, *Public Notice*, DA 11-1559 (Sep. 15, 2011).

³ Demand Letter from FC FCC, Washington, DC 20554 to LS Media, Inc., 6600 West Kellogg, Wichita, KS 67209 (Jul. 18, 2012) (Demand Letter).

⁴ 47 C.F.R. § 1.1940(f).

dismiss a *Request* such as this, and to apply other sanctions provided for by the law.⁵ However, on January 14, 2013, Licensee resolved the outstanding balance owed leaving us to decide the *Request*, which we must deny.

Under 47 U.S.C. § 159 and the Commission's implementing rules, we are required to "assess and collect regulatory fees" to recover the costs of the Commission's regulatory activities,⁶ and when the required payment is received late or it is incomplete, and it is "not excused by bank error,"⁷ then to assess a penalty equal to "25 percent of the amount of the fee which was not paid in a timely manner."⁸ Thereafter, as may be appropriate, from the date of delinquency, as required by the law,⁹ we assess interest, penalties, and administrative charges for collection.

Licensee's assertions that it "did not receive the original billing when it was mailed last year,"¹⁰ that it "was caught completely unaware," and that it requested the "penalty be waived because there was not an intentional refusal to pay the 2011 fee" are not a legal grounds or clear mitigating circumstances to waive collection of the penalty or charges. The Commission has repeatedly held that "[l]icensees are expected to know and comply with the Commission's rules and regulations and will not be excused for violations thereof, absent clear mitigating circumstances."¹¹

Every licensee is obliged to make the fee payment by the deadline. In such cases, neither the statute nor the Commission's regulations contemplates a waiver of or reduction in the late payment penalty based on the amount of time after the deadline within which the regulatee satisfies its payment obligations; indeed, the penalty for late payment applies even to situations where the deadline is missed by a short period of time.¹² Further, although the Commission has

⁵ See e.g., 47 U.S.C. § 159(c)(2), 47 C.F.R. §§ 1.1164, 1.1166, and 1.1910.

⁶ 47 U.S.C. § 159(a)(1); 47 C.F.R. § 1.1151.

⁷ 47 C.F.R. § 1.1164.

⁸ 47 U.S.C. § 159(c)(1); 47 C.F.R. § 1.1164.

⁹ 31 U.S.C. §3717; 47 C.F.R. §§ 1.1164(f)(4), 1.1940; In *The Matter of Implementation of Section 9 of The Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, Report and Order*, 9 FCC Rcd 5333, 5354, ¶ 65 (1994) ("Included in the recovery of any delinquent fee will be an assessment of interest on the debt due, a penalty for nonpayment, and the allowable cost incurred due to the federal government in the collection process."); In *The Matter Of Assessment And Collection Of Regulatory Fees For Fiscal Year 2010, Report and Order*, 25 FCC Rcd 9278, 9297-98 ¶ 54 (2010) ("A late payment penalty of 25 percent of the unpaid amount of the required regulatory fee will be assessed on the first day following the deadline date for filing of these fees. Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including those set forth in section 1.1910 of the Commission's Rules and in the Debt Collection Improvement Act of 1996 ("DCIA"). We also assess administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the related debt pursuant to the DCIA and section 1.1940(d) of the Commission's rules. These administrative processing charges will be assessed on any delinquent regulatory fee, in addition to the 25 percent late charge penalty. In case of partial payments (underpayments) of regulatory fees, the licensee will be given credit for the amount paid, but if it is later determined that the fee paid is incorrect or not timely paid, then the 25 percent late charge penalty (and other charges and/or sanctions, as appropriate) will be assessed on the portion that is not paid in a timely manner.").

¹⁰ *Id.*

¹¹ See *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), citing *Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970); see also *NextGen Telephone* (OMD, Apr. 22, 2010); *Istel, Inc.* (OMD, Apr. 22, 2010).

¹² See *XO Communications, LLC* (OMD, Nov. 10, 2010).

waived late fees on a showing of good cause, neither the statute nor the Commission's regulations contemplates a waiver of or reduction in the late payment penalty based on the amount of time after the deadline within which the regulatee satisfies its payment obligations. As we explained, the penalty required by 47 U.S.C. § 159(c)(1) is not limited to situations where the failure to pay was knowing or willful. If it is to be waived, it is "only in the most extraordinary circumstances,"¹³ which are not described by Licensee's situation. Thus, we must deny the *Request*.

If Licensee has any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,

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

Mark Stephens
Chief Financial Officer

¹³ *McLeodUSA Telecommunications Services, Inc., Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589 (2004) (denying the request for waiver of 25 percent penalty).

Stephen French

From: Kathy Berube [kberube@lsmedia.co]
Sent: Monday, September 10, 2012 4:59 PM
To: ARINQUIRIES
Cc: Larry Steckline
Subject: RE: FRN 0013652565
Attachments: FCC - 7-24-12 letter & enclosures.pdf

Mr. French,

I am attaching a copy of the letter as you have requested. Along with the copy of the letter, please find a copy of the check, the demand letter and Billing form that were also enclosed when the letter was mailed.
Thank you very much for your assistance.

Kathy Berube

Assistant to Larry Steckline
6600 W. Kellogg Drive, Ste 101
Wichita, KS 67209
ph: 316-945-1079
fax: 316-945-7011
kberube@lsmedia.co

From: ARINQUIRIES [mailto:ARINQUIRIES@fcc.gov]
Sent: Monday, September 10, 2012 3:13 PM
To: Larry Steckline
Cc: Kathy Berube
Subject: RE: FRN 0013652565

Please provide a copy of the letter that was sent so I determine if it was ever entered into our system.

Stephen M. French
VMD Systems Integrators
OMD-Financial Operations
Office: 2-A629
Direct Line: 202-418-1878
Fax: 202-418-7869

From: Larry Steckline [mailto:larry@lsmedia.co]
Sent: Monday, September 10, 2012 4:07 PM
To: ARINQUIRIES
Cc: Kathy Berube; Larry Steckline
Subject: FRN 0013652565

FCC staff -

I own an FM radio station in Winfield, Kansas (KWLS-FM). In July 2012 we received a notice that we owed \$1500 to the FCC for

9/10/2012

the 2011 license fee that we had failed to pay in a timely fashion. A penalty of \$515.25 was tacked onto the amount the notice indicated we owed, for a total of \$2,015.15.

I was caught completely unaware by your notice, never imagining that I owed anything to the FCC. During my career, I have owned upwards of 25 radio stations and always was prompt with my license fees. We did not receive a bill for the 2011 license fee – we only received the July 2012 late notice.

After receiving the notice that we had not yet paid the 2011 fee, I instructed my staff to cut a check for the \$1500 fee. I also instructed them to write a letter to accompany the check asking that the \$515.25 penalty be waived because there was not an intentional refusal to pay the 2011 fee. We never got the bill to pay!

We have not received a response from the FCC regarding our July request for waiver of the penalty and I am emailing now to, again, make that request. I am thanking you, in advance, for your courtesies in promptly addressing this matter.

Larry Steckline

9/10/2012

Adama

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAR 27 2013

OFFICE OF
MANAGING DIRECTOR

Ms. Karen Nguyen
Lunex Telecom, Inc.
3805 Crestwood Parkway, NW
Suite 350
Duluth, GA 30096

Re: Waiver Request (Late Payment Penalty; 47
U.S.C. § 159(c)(1); 47 C.F.R. § 1.1164)
Licensee/Applicant: Lunex Telecom, Inc.
Station: N/A
Fee: Fiscal Year (FY) 2010 Regulatory Fee Late
Payment Penalty
Date Request Filed: Jan. 30, 2013
Date Regulatory Fees Paid: Nov. 26, 2012
Date Late Penalty Paid: Nov. 26, 2012
Fee: FY 2011 Regulatory Fee Late Fees
Date Request Filed: Jan. 30, 2013
Date Regulatory Fees Paid: Apr. 30, 2012
Date Late Penalty Paid: Apr. 30, 2012
Fee: FY 2012 Regulatory Fee Late Payment Penalty
Date Request Filed: Jan. 30, 2013
Date Regulatory Fees Paid: Nov. 21, 2012
Date Late Penalty Paid: Nov. 21, 2012
Fee Control No.: RROG-12-00014984

Dear Ms. Nguyen:

This responds to Licensee's *Request*¹ for waiver of the penalties for late payment of Fiscal Year (FY) 2010, FY 2011, and FY 2012 regulatory fees. For the reasons stated herein, we must deny the *Request*.

Under 47 U.S.C. § 159 and the Commission's implementing rules, we are required to "assess and collect regulatory fees" to recover the costs of the Commission's regulatory activities,² and when the required payment is received late or it is incomplete, to assess a penalty equal to "25 percent of the amount of the fee which was not paid in a timely manner."³ Specifically, "[a]ny late payment or insufficient payment of a regulatory fee, not excused by

¹ Email from Karen Nguyen [karennguyen@lunextelecom.com], to ARINQUIRIES, (ARINQUIRIES@fcc.gov) (Jan. 30, 2013)(*Request*).

² 47 U.S.C. §159(a)(1); 47 C.F.R. § 1.1151.

³ 47 U.S.C. §159(c)(1); 47 C.F.R. § 1.1164.

bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee ... which was not paid in a timely manner.”⁴

Each year, the Commission establishes the final day on which payment may be made before it is late, *i.e.*, a deadline, after which the statutory late payment penalty required by 47 U.S.C. § 159(c)(1) and 47 C.F.R. § 1.1164 will be imposed, and interest, penalties, and charges of collection will accrue under 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940. For FY 2010, the deadline for paying the regulatory fees was August 31, 2010,⁵ for FY 2011, the deadline for paying regulatory fees was September 16, 2011,⁶ and for FY 2012, the deadline for paying regulatory fees was September 13, 2012.⁷ Licensee’s payments for FY 2010, FY 2011, and FY 2012, were not received and credited until November 26, 2012, April 30, 2012, and November 21, 2012, respectively, thus Licensee failed to meet its obligations to pay each year’s fee before the deadline passed. Licensee asserts it “received a demand letter from the FCC printed on 3/01/2012 [mailed to Licensee’s old address], which [Licensee] should have updated [but did not]. ... Due to relocation and record keeping mismanagement, [Licensee] had thought there was no outstanding bill.”⁸ These are not legal grounds or clear mitigating circumstances to waive collection of the penalty. The Commission has repeatedly held that “[l]icensees are expected to know and comply with the Commission’s rules and regulations and will not be excused for violations thereof, absent clear mitigating circumstances.”⁹ The absence of a reminder notice is not an excuse. Indeed, beginning in 2009, the Commission provided ample notice that it would not be sending paper pre-bills to regulatees.

On May 14, 2009, the Commission proposed to mandate electronic filing of regulatory fee information through the agency’s Fee Filer system.¹⁰ The Commission explained that, “[c]onsistent with [its] proposal to require mandatory use of Fee Filer ... pre-bill information would be loaded into Fee Filer for viewing, but would not be mailed directly to the licensee via surface mail.”¹¹ On July 31, 2009, the Commission released its order adopting these proposals,¹² and notifying regulatees that “because all pre-bills will be loaded into Fee Filer, once Fee Filer becomes operational, this will be the signal by which licensees can view their pre-bill information online.”¹³ Thereafter, the Commission issued a public notice informing regulatees

⁴ 47 C.F.R. § 1.1164.

⁵ See FY 2010 Regulatory Fees Due No Later Than August 31, 2010, Eastern Time, *Public Notice*, DA 10-1451 (Aug. 9, 2010).

⁶ See FY 2011 Regulatory Fees Due No Later Than September 14, 2011, Eastern Time, *Public Notice*, DA 11-1420 (Aug. 17, 2011); FY 2011 Regulatory Fee Deadline Is Extended To 11:59 PM ET, September 16, 2011, *Public Notice*, DA 11-1559 (Sep. 15, 2011).

⁷ See FY 2012 Regulatory Fees due No Later Than September 13, 2012, *Public Notice*, DA 12-1295 (Aug. 13, 2012).

⁸ *Request*.

⁹ See *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), citing *Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970); see also *NextGen Telephone* (OMD, Apr. 22, 2010); *Istel, Inc.* (OMD, Apr. 22, 2010).

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

¹¹ *Id.* at 5973 ¶ 20.

¹² *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Report and Order*, 24 FCC Rcd 10301, 10307-09 ¶¶ 18-27 (2009) (*FY 2009 Regulatory Fees NPRM*).

¹³ *Id.* at 10309 ¶ 26.

that use of Fee Filer was mandatory in FY 2009 and that “regulatory fee bills will no longer be mailed to the regulatee, but can be viewed by logging on the Fee Filer.”¹⁴ Finally, on September 2, 2009, the Commission released a third public notice that “**HARDCOPY BILLS WILL NO LONGER BE MAILED BY THE FCC.**”¹⁵

Similarly, the Commission’s final order on the FY 2010 regulatory fees reaffirmed that regulatees should “check[] the Commission’s website periodically beginning in July” in order to “ascertain the fee due date, and receive instructions on how to access Fee Filer, view their bill, and make a fee payment.”¹⁶ This notification was part of the Commission’s increased effort to notify licensees that hardcopy bills will no longer be mailed.¹⁷

Every licensee is obliged to make the fee payment by the deadline. Although the Commission has waived late fees on a showing of good cause, neither the statute nor the Commission’s regulations contemplates a waiver of or reduction in the late payment penalty based on the amount of time after the deadline within which the regulatee satisfies its payment obligations; indeed, the penalty for late payment applies even to situations where the deadline is missed by a short period of time.¹⁸ The penalty required by 47 U.S.C. § 159(c)(1) and charges required by 31 U.S.C. § 3717 are not limited to situations where the failure to pay was knowing or willful. If the penalty it is to be waived, it is “only in the most extraordinary circumstances,”¹⁹ which Licensee did not establish. Thus, we must deny the *Request*.

If Licensee has any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark Stephens
Chief Financial Officer

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

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

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

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

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

¹⁹ *McLeodUSA Telecommunications Services, Inc., Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589 (2004) (denying the request for waiver of 25 percent penalty).

Stephen French

From: Karen Nguyen [karennguyen@lunextelecom.com]
Sent: Wednesday, January 30, 2013 4:32 PM
To: ARINQUIRIES
Subject: FCC Refund Check & Penalty and Interest Waived Request
Attachments: FCC Refund Check.pdf; FCC Demand Letter.pdf

Dear AR Inquirer,

As discussed over the phone, Lunex Telecom, Inc. (Account# 0012190294) received a refund check from FCC. The check in question is attached. Thank you in advance for your help.

Also, if you please consider our request for waiving our penalty and interest.

We received a demand letter from the FCC printed on 03/01/2012 for 2011 bill to our old address 3100 Five Forks Trickum SW Ste 30 Lilburn, GA 30047. We have moved our office to 3805 Crestwood Parkway Ste 350 SW, Duluth, GA 30096 since May, 2011, which we should have updated FCC record. Fortunately, we got this mail and paid it on 03/20/2012.

Due to relocation and record keeping misplacement, we had thought there was no outstanding bill except the one we paid on March 2012. We were waiting for 2012 bill. Until November, we learned that FCC no longer sent invoices through mail. By talking the AR representative, we knew that we had 2010 and 2012 bills unpaid. We questioned whether we should have received 2010 bill included in the demand letter sent to us previously, or we again missed the mail. Disregard no bills received, we made two payments upon acknowledging our outstanding through FCC website.

We have learned the FCC website features, so there would be no problem in receiving and paying our bills in the future. Here is the summary of all the charges breaking down that we made in 2012. Could you please consider waiving the penalty and interest since we have been acting on our good faith. Thank you for your consideration.

The demand letter and the summary is attached for your review. Thank you.

	Principal	Admin Charges	Penalty	Interest	Total	Due Date
2010	\$25,720.00	\$ 50.00	\$6,430.00	\$4,264.16	\$36,464.16	9/1/2
2011	\$27,636.00	\$ 50.00	\$6,909.00	\$ 960.35	\$35,555.35	9/16/2
2012	\$27,636.00	\$ 50.00	\$6,909.00	\$ -	\$34,595.00	9/13/2

Regards,

Karen Nguyen
Accounting Manager

Toll: 1.888.755.3535 x8721

Direct: 1.678.487.2198

Fax: 1.678.868.2921



3805 Crestwood Parkway NW
Suite 350
Duluth, GA 30096

1/30/2013

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FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

FEB 01 2013

OFFICE OF
MANAGING DIRECTOR

James R. Livesay II
President and General Manager
Mattoon Broadcasting Company
Post Office Box 322
Mattoon, IL 61938

Re: Waiver Request (Financial Hardship; 47 U.S.C.
§ 159(c)(1), 31 U.S.C. § 3717, 47 C.F.R. § 1.1166)
Licensee/Applicant: Mattoon Broadcasting
Company
Stations: WLBH, WLBH-FM
Fees: Fiscal Year (FY) 2012 Regulatory Fees
Date Request Filed: Sep. 17, 2012
Fee Control No.: RROG 11-00014742
Total Fees Due as of Jan. 14, 2012: \$4,991.70¹

Dear Mr. Livesay:

This responds to Licensee's *Request*² for a waiver of the required Fiscal Year (FY) 2012 regulatory fees on the grounds of financial hardship. Licensee's *Request* was received on September 17, 2012,³ after the last date for timely payment of the fees. Because the Fiscal Year (FY) 2012 regulatory fees for Stations WLBH and WLBH-FM were delinquent at the time of filing (and Licensee did not petition to defer payment), under 47 C.F.R. § 1.1166(c),⁴ we are required to dismiss the *Request* and assess a 25% penalty.⁵ Furthermore, from September 14, 2012, the date on which the unpaid fees and statutory penalties became delinquent,⁶ interest, penalties, and the administrative charge for collection accrued.⁷

¹ The total includes the regulatory fees due for WLBH and WLBH-FM for FY 2012 (\$950.00 and \$2,875.00, respectively), the 25% penalty required by 47 U.S.C. § 159, plus interest, penalties, and the charges of collection required by 31 U.S.C. § 3717.

² Letter from James Livesay, President and General Manager, Mattoon Broadcasting Company, P. O. Box 322, Mattoon, IL 61938 to Marlene H. Dortch, Secretary, FCC, 445 12th St. S.W., Rm 1-A625, Washington, DC 20554 (dated Sep. 8, 2012, rec'd Sep. 17, 2012) (*Request*) (Licensee attached the single page of IRS Form 1120S, U.S. Income Tax return for an S Corporation, 2009, 2010, and 2011 (*Forms 1120S*)).

³ 47 C.F.R. § 1.7 ("Unless otherwise provided ... pleadings and other documents are considered to be filed with the Commission upon their receipt at the location designated by the Commission.")

⁴ 47 C.F.R. § 1.1166(c) provides, "Petitions for waiver of a regulatory fee must be accompanied by the required fee and FCC Form 159. Submitted fees will be returned if a waiver is granted. Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship."

⁵ 47 U.S.C. § 159(c)(1), 47 C.F.R. § 1.1164.

⁶ See 47 C.F.R. §§ 1.1164, 1.1901, *et seq.*

⁷ 31 U.S.C. § 3717, 47 C.F.R. § 1.1940.

Failure to pay the required regulatory fee and any late penalty subjects the licensee to sanctions, including those set forth at 47 U.S.C. §159(c)(2),⁸ 47 C.F.R. §§ 1.1164, 1.1166,⁹ and 1.1910 (the Commission's red light rule), and the Debt Collection Improvement Act of 1996 (DCIA).¹⁰ Thus, we are required to dismiss, and on separate grounds discussed below, deny Licensee's *Request*.

In establishing a regulatory fee program, the Commission recognized that in certain instances, payment of a regulatory fee might impose an undue financial hardship upon a licensee. Such fees may be waived, reduced or deferred, but only upon a showing of good cause and a finding that the public interest will be served thereby.¹¹ The Commission has narrowly interpreted its waiver authority to require a showing of compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.¹² Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely affect the licensee's ability to serve the public.¹³ "Mere allegations or documentation of financial loss, standing alone," do not suffice and "it [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public."¹⁴ In reviewing a showing of financial hardship, the Commission relies on a range of financial documents including a licensee's balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. It is on this information that the Commission considers on a case-by-case basis whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.¹⁵ Thus, for example, even if a station loses money, any funds paid to principals and deductions for depreciation or amortization are considered funds available to pay the fees.

Licensee does not present compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs. First, the *Forms 1120S* do not provide the range of financial information required to fully document its financial position and

⁸ 47 U.S.C. § 159(c)(2) ("The Commission may dismiss any application or other filing for failure to pay in a timely manner any fee or penalty under this section.")

⁹ 47 C.F.R. §§ 1.1164(e) ("Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment."), 1.1166(c) ("Petitions for waiver of a regulatory fee must be accompanied by the required fee and FCC Form 159. Submitted fees will be returned if a waiver is granted. Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship."), and 1.1910.

¹⁰ Public Law 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

¹¹ 47 U.S.C. §159(d); 47 C.F.R. § 1.1166 ("The fee . . . may be waived . . . in specific instances, on a case-by-case basis, where good cause is shown and where waiver . . . of the fee would promote the public interest."). *See also* Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for Fiscal Year 1994, *Report and Order*, 9 FCC Rcd 5333, 5344 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995).

¹² 9 FCC Rcd at 5344 ¶ 29.

¹³ 10 FCC Rcd at 12761-62 ¶ 13.

¹⁴ *Id.*

¹⁵ *Id.*

show how payment of the FY 2012 regulatory fees will adversely affect Licensee's ability to serve the public. Instead of only the *Forms 1120S*, Licensee should have provided additional relevant information for 2011, 2012, and later, *e.g.*, a balance sheet, cash flow projection for the next twelve months (with an explanation of how calculated), a list of the partners and/or corporate officers and their individual compensation, together with a list of the entity's highest paid employees, other than officers, and the amount of their compensation, and similar information.¹⁶ Second, Licensee's documentation is incomplete. The *Forms 1120S* include partial federal income tax return information for the years 2009, 2010, and 2011 to report Licensee's business losses based, in part, on deductions for taxes and licenses and other unspecified business deductions. We note the downward trend in deductions, *e.g.*, compensation of officers, salaries, depreciation, but without the referenced Statement 1 on the *Forms 1120S* and other explanatory information, the *Forms 1120S* are incomplete. Moreover, Licensee did not include any information to support its assertions. Finally, Licensee has not established how the public interest is served by waiving collection of the fees. This information is relevant to our decision, and when a licensee fails to clarify its position with the Commission¹⁷ and to maintain the accuracy and completeness of its application,¹⁸ the Commission will not speculate on the content of missing information.

Payment of \$4,991.70, Licensee's FY 2012 regulatory fees and accrued penalties, interest and charges of collection, is now due. Because Licensee is delinquent in paying its fees, we are required to withhold action on any application filed or pending by Licensee.¹⁹ If full payment of that amount is not received within 30 days, additional interest, penalties, and charges required by 31 U.S.C. § 3717(e) will accrue from the date of this letter. Furthermore, under the law,²⁰ the Commission will initiate collection proceedings against Licensee. If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark Stephens
Chief Financial Officer

¹⁶ We will not speculate as to Licensee's business activities, the content of its balance sheet, or the content of its cash flow.

¹⁷ *Bartholdi Cable Co. Inc. v FCC*, 114 F3d 274, 280 (DC Cir. 1997)(The Commission "'need not sift pleadings and documents' to identify arguments that are not 'stated with clarity' by a petitioner. It is the petitioner that has the burden of clarifying its petition before the agency.").

¹⁸ 47 C.F.R. § 1.65 ("Each applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application ... whenever the information furnished ... is no longer substantially accurate and complete in all significant respects, the applicant shall as promptly as possible and in any event within 30 days, unless good cause is shown, amend or request the amendment of the application so as to furnish such additional or corrected information as may be appropriate.).

¹⁹ 47 C.F.R. § 1.1910.

²⁰ See 47 C.F.R. § 1.1901, *et seq.*

Received & Inspected

SEP 17 2012

FCC Mail Room

September 8, 2012

Marlene H. Dortch, Secretary
Federal Communications Commission
Attn: Office of the Managing Director, Regulatory Fee Waiver/Reduction Request
445 12th Street, S.W., Room TW-B204
Washington, D.C. 20554

RE: Petition for Waiver of a Regulatory Fee

In the Matter of Mattoon Broadcasting Company – Licensee of Stations WLBH and WLBH-FM
Mattoon, Illinois – FRN: 0003773595 – Facility ID #40702 and #40703

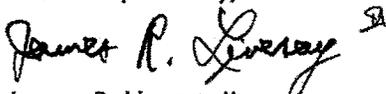
Dear Madam Secretary:

Under 47 U.S.C. 159(d) and 47 C.F.R. 1.1166, it is respectfully requested that consideration be given to the waiver of Fiscal Year 2012 Regulatory Fees for Mattoon Broadcasting Company (Licensee of Stations WLBH and WLBH-FM in Mattoon, Illinois) due to financial hardship.

To document our precarious financial situation and lack of monetary resources, please find enclosed copies of federal tax return information for the most recent three-year period for Mattoon Broadcasting Company. These financial statements were prepared according to generally accepted accounting practices (“GAAP”) by certified public accountants of a local professional firm. This documentation reflects the extremely difficult and challenging financial straits in which we find ourselves mired and our inability to pay.

We sincerely hope to continue our efforts in serving the public’s interest, convenience and necessity in the East-Central Illinois area and pray the Commission will approve this petition which humbly requests a waiver of the 2012 regulatory fee.

Most respectfully,



James R. Livesay II
President and General Manager
Mattoon Broadcasting Company

P. O. Box 322
Mattoon, IL 61938-0322

Direct Phone: 217-419-4928
Email: JRLivesay@hotmail.com

Enclosures: Exhibit I, II and III – 2009, 2010 and 2011 federal tax return documentation

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

JAN 29 2013

OFFICE OF
MANAGING DIRECTOR

Suzanne E. Rogers, President
Meridian Communications of Idaho, Inc.
455 Capitol Mall, Suite 210
Sacramento, CA 95814

Re: Waiver and Refund of regulatory fees (Construction Permit (unlicensed) Station, 47 C.F.R. §§ 1.1160(a)(3), 1.1166, 73.3598(b)(2))
Licensee/Applicant: Meridian Communications of Idaho, Inc.
Station: 950306KF
Fiscal Year (FY) 2011 Regulatory Fee
Date Filed: Sep. 15, 2011
Date Received: Sep. 19, 2011
Fee Control No.: RROG-11-00013881
Regulatory Fee Amount: \$ 3,275.00
Date Regulatory Fee Paid: Sep. 14, 2011

Dear Ms. Rogers:

This letter responds to Licensee's *Request*¹ for a waiver and refund of the \$3,275.00 Fiscal Year (FY) 2011 regulatory fee. For the reasons that follow, we grant Licensee's request.

Licensee asserts that it holds a construction permit granted on July 22, 2003, authorizing Channel 20 to serve the community of Idaho Falls, Idaho; however, on August 21, 2003, the Post Company (Post) filed a petition for reconsideration of the decision.² During the period it was pending, "the status of the [s]tation [was] uncertain and [the proceeding] resulted in tolling the construction period on the permit."³ On July 21, 2005, the Commission's Media Bureau denied Post's petition for reconsideration, however, on August 22, 2005, the successor to Post, NPG of Idaho, Inc. (NPG), filed an application for review, which Licensee opposed.⁴ Licensee asserts that the continuing administrative proceedings "resulted in the continued tolled status of the Permit through all of 2010[, and as a result of] the Commission releas[ing] its decision denying NPG's Application for Review ... the Station's three year construction period began to run on

¹ In the Matter of Meridian Communications of Idaho, Permittee of UHF Television Station Chanel 20, Idaho Falls, Idaho, Facility ID 41238, Petition for Waiver of Regulatory Fee (Sep. 15, 2011) (*Request*).

² *Request* at 2.

³ *Id.*

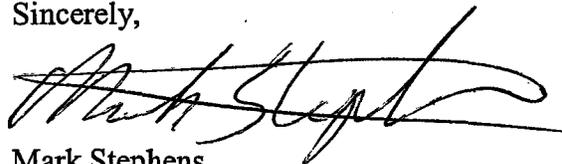
⁴ *Id.*

February 11, 2011.”⁵ Consequently, Licensee “was not been in possession of a functional Commission license or permit on October 1, 2010, the relevant date for determining license or permit status for regulatory purposes.”⁶

We agree that the permit was encumbered on October 1, 2010, because of the administrative proceedings that tolled the expiration date of the construction permit⁷ pursuant to 47 C.F.R. § 73.3598(b)(2).⁸ Moreover, it appears that the permit was encumbered by causes outside Licensee’s control, *i.e.*, the pendency of Post’s petition for reconsideration and NPG’s application for review. Under these circumstances, we find good cause for a waiver of the FY 2011 regulatory fee and, accordingly, we grant Licensee’s request for a refund of the fee.⁹

A check, made payable to the maker of the original check, and drawn in the amount of \$3,275.00, will be sent to the payor of record at the earliest practicable time. If you have any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark Stephens
Chief Financial Officer

⁵ Request at 2-3.

⁶ Request at 3.

⁷ Letter from Clay C. Pendarvis, Assoc. Chief, Video Div., Media Bureau, FCC to Meridian Communications of Idaho, Inc. c/o Dorann Bunkin, Esq., Wiley Rein & Fielding LLP, 1776 K St., N.W., Washington, DC 20006 (Dec. 7, 2006).

⁸ 47 C.F.R. §73.3598(b)(2) provides, in part, “The period of construction for an original construction permit shall toll when construction is prevented by the following causes not under the control of the permittee: * * * (2) The grant of the permit is the subject of administrative or judicial review (*i.e.* , petitions for reconsideration and applications for review of the grant of a construction permit pending before the Commission and any judicial appeal of any Commission action thereon) ...”

⁹ We note that the Commission granted Licensee’s requests for a waiver and refund of regulatory fees for FYs 2004, 2005, 2006, 2007, 2008, 2009, and 2010 for the same reasons asserted herein. *See* Letters from Mark A. Reger, Chief Financial Office (CFO), OMD, FCC, to Suzanne E. Rogers (Jan. 4, 2005, and Jan. 6, 2006) and Letters from Mark Stephens, CFO, OMD, FCC, to Suzanne E. Rogers (Dec. 5, 2006, Dec. 20, 2007, Feb 12, 2009, Nov. 5, 2009, and Mar. 31, 2011).

Received & Inspected

SEP 19 2011

FCC Mail Room

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)
)
Meridian Communications of Idaho)
) Permit File No. BPCT-19950306KF
Permittee of UHF Television Station)
Channel 20)
Idaho Falls, Idaho)
Facility ID 41238)

To Managing Director, Office of Managing Director

PETITION FOR WAIVER OF REGULATORY FEE

Meridian Communications of Idaho ("MCID"), permittee of commercial television station Channel 20, Idaho Falls, Idaho, Facility ID 41238 ("Station"), hereby petitions the Commission for a waiver and refund of the Station's 2011 regulatory fee due to the tolled status of its construction permit at the October 1, 2010 status determination date for 2011 fees.¹ In support of its Petition, MCID submits that the "good cause" standard of Section 1.1166 of the Commission's Rules has been met, and, specifically, that "extraordinary and compelling circumstances" exist which "override

¹See Letters dated January 4, 2005, and January 6, 2006, from Mark A. Reger, Chief Financial Officer, Office of Managing Director, FCC, to Suzanne E. Rogers, President, MCID, and Letters dated December 5, 2006, December 20, 2007, February 12, 2009, November 5, 2009, and March 31, 2011, from Mark Stephens, Chief Financial Officer, Office of Managing Director, FCC, to Suzanne E. Rogers, President, MCID, granting waivers of the 2004, 2005, 2006, 2007, 2008, 2009 and 2010 regulatory fees, respectively, based on the tolled status of the Channel 20 construction permit pursuant to Section 73.3598(b)(ii) of the Commission's Rules (copies of which are attached hereto at Exhibit A).

the public interest in reimbursing the Commission for its regulatory costs.”² MCID declares the following in support of this submission.

1. The original Station construction permit, which authorizes Channel 20 to serve the community of Idaho Falls, Idaho (“Permit”), was granted on July 22, 2003, by letter decision from Barbara A. Kreisman, Chief, Video Division, Media Bureau, to J. Dominic Monahan, Esq., following a protracted application, settlement and petition to deny process which began in March of 1995 (*see* Application File No. BPCT-19950306KF).

2. On August 21, 2003, The Post Company (“Post”), then licensee of station KIFI-TV, Idaho Falls, Idaho, filed a Petition for Reconsideration of the July 22, 2003 Permit grant (followed by responsive pleadings by both parties), which made the status of the Station uncertain and resulted in tolling of the construction period on the Permit.³ While the Commission again denied Post’s claims in its July 21, 2005 letter decision from Barbara A. Kreisman, Chief, Video Division, Media Bureau, to J. Dominic Monahan (“*2005 Letter Decision*”), NPG of Idaho, Inc., the transferee owner of KIFI-TV, filed an Application for Review thereof (which MCID opposed in a responsive pleading) on August 22, 2005. The pending Application for Review resulted in the continued tolled status of the Permit through all of 2010.

²*See In Re* Implementation of Section 9 of the Communications Act, 59 F.R. 30984 (June 16, 1994), 9 FCC Rcd 5333 ¶ 29 (1994) (hereinafter “FY 1994 *Report and Order*”); and *In Re* Implementation of Section 9 of the Commissions Act Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Memorandum Opinion and Order*, FCC 95-257, 10 FCC Rcd. 12759, ¶ 12 (1995) (hereinafter “FY 1994 *Memorandum Opinion and Order*”).

³ *See* 74 C.F.R. 73.3598(b)(ii). *See* at Exhibit B hereto the December 7, 2006 letter to Meridian Communications of Idaho, Inc., c/o Dorann Bunkin, Esquire, from Clay C. Pendarvis, Associate Chief, Video Division, Media Bureau, FCC, granting tolling of the Channel 20 construction permit “for a time period of three years from the date on which the permit is no longer the subject of judicial review.”

3. On January 11, 2011, the Commission released its decision denying NPG's Application for Review and affirming the *2005 Letter Decision*.⁴ No appeal was filed to the *2011 Letter Decision*, and the Station's three year construction period began to run on February 11, 2011, the date on which the Permit was no longer the subject of judicial review.⁵ However, due to the pending administrative review proceedings still ongoing last year, MCID was not in possession of a functional Commission license or permit on October 1, 2010, the relevant date for determining license or permit status for regulatory fee purposes. On that date, given the outstanding Application for Review and the tolled status of the Permit, MCID was unable to generate any cash flow, let alone make projections of cash flow.

4. For these reasons, MCID believes that good cause exists for waiver of the \$3,275 2011 regulatory fee (PTC Code 1164) for its tolled television construction permit with respect to the Station, and that indeed, "extraordinary and compelling circumstances" exist which "override the public interest in reimbursing the Commission for its regulatory costs."⁶ Specifically, MCID asserts that the Commission's levy of a regulatory fee on the Station is not in the public interest, as no regulated interest was vested in MCID as of October 1, 2010.

5. MCID has timely remitted the full \$3,275 regulatory fee due (*see* copy of electronic File Copy of FCC Online Payment Receipt, FCC Form 159, attached hereto at Exhibit C), and

⁴ *In Re Meridian Communications of Idaho, Inc., Application for Construction Permit for New Television Station on Channel 20, Idaho Falls, Idaho, Memorandum Opinion and Order*, FCC 11-1, 26 FCC Rcd. 678 (2011) ("*2011 Letter Decision*").

⁵ *See* Construction Permit File No. BPCDT-20080215AJF.

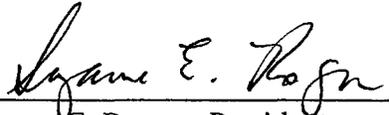
⁶ *See* FY 1994 *Report and Order* and FY 1994 *Memorandum Opinion and Order*, *supra* note 2.

submits in connection with such payment this Petition for Waiver of Regulatory Fee. MCID does so having made no income to date, as it has not been able to build or operate the Station.

Pursuant to the facts set forth above and in accordance with the policy stated in the FY 1994 *Report and Order* and the FY 1994 *Memorandum Opinion and Order*, MCID requests a waiver and refund of its regulatory fees for fiscal year 2011. MCID requests that this refund be tendered at the earliest possible date.

Respectfully submitted,

Meridian Communications of Idaho, Inc.

By: 
Suzanne E. Rogers, President

Dated: September 15, 2011

EXHIBIT A

Letters dated January 4, 2005, and January 6, 2006,
From Mark A. Reger, Chief Financial Officer, Office of Managing Director, FCC,
To Suzanne E. Rogers, President, Meridian Communications of Idaho, Inc.

Letters dated December 5, 2006, December 20, 2007, February 12, 2009,
November 5, 2009 and March 31, 2010
From Mark Stephens, Chief Financial Officer, Office of Managing Director, FCC,
To Suzanne E. Rogers, President, Meridian Communications of Idaho, Inc.

Adana

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

JAN 15 2013

OFFICE OF
MANAGING DIRECTOR

Mr. Marcelo Krikler
Oak Grove Holdings Corp.
Post Office Box 191560
Miami Beach, FL 33119

Re: Waiver Request (Late Payment Penalty; 47 U.S.C. § 159(c)(1), 31 U.S.C. § 3717, 47 C.F.R. § 1.1166)
Licensee/Applicant: Oak Grove Holdings Corp.
Station: N/A
Fees: Fiscal Year (FY) 2010, FY 2011, and FY 2012 Regulatory Fees
Date Request Filed: Mar. 12, 2012
Date Regulatory Fees Paid: Not Paid
Fee Control No.: RROG-11-00014189
Regulatory Fees: (FY 2010, FY 2011 & FY 2012): \$55,146.40

Dear Mr. Krikler:

This responds to Licensee's *Request*¹ that seeks (a) a waiver of the statutory penalty, interest and penalty charges, and collection charges (*penalties*) that accrued because Licensee did not pay its Fiscal Year (FY) 2011 regulatory fees, and (b) an installment plan to pay the amount owed in monthly installments. For the reasons stated herein, we must dismiss and deny that portion of the *Request* for a waiver of the penalties, and conditionally allow Licensee to pay the debt in monthly payments.

Failure to pay the required regulatory fee and any late penalty subjects the licensee to sanctions, including those set forth at 47 U.S.C. §159(c)(2), 47 C.F.R. §§ 1.1164, 1.1166, and 1.1910 (the Commission's red light rule), and the Debt Collection Improvement Act of 1996 (DCIA).² The Commission's records show that in addition to the unpaid FY 2011 regulatory fee, which is the subject of the *Request*, Licensee is delinquent in paying the FY 2010 and FY 2012 regulatory fees and contributions due the Administrator of the Telecommunications Relay Service (TRS) Fund,³ thus under 47 U.S.C. § 159(c)(2)⁴ and sections 1.1164, 1.1166, and 1.1910 of our rules⁵ we dismiss, and on separate grounds, deny Licensee's *Request*. In this case,

¹ Email from Marcelo Krikler [marcelok@uniontelecomuse.com] to ARINQUIRIES, (ARINQUIRES@fcc.gov) (Mar. 12, 2012)(*Request*).

² Public Law 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

³ Licensee is delinquent approximately \$34,000.00 to the TRS Fund.

⁴ 47 U.S.C. § 159(c)(2) ("The Commission may dismiss any application or other filing for failure to pay in a timely manner any fee or penalty under this section.").

⁵ 47 C.F.R. §§ 1.1164(e) ("Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment."),

however, because of the time, and Licensee's request for an installment plan, we will bring this matter to a conclusion. We turn now to the content of Licensee's *Request*.

Under 47 U.S.C. § 159 and the Commission's implementing rules, we are required to "assess and collect regulatory fees" to recover the costs of the Commission's regulatory activities,⁶ and when the required payment is received late or it is incomplete, to assess a penalty equal to "25 percent of the amount of the fee which was not paid in a timely manner."⁷ Specifically, "[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee ... which was not paid in a timely manner."⁸

Licensee failed to meet its obligations to pay each year's fee when it was due. For FY 2010, the deadline for paying regulatory fees was August 31, 2010,⁹ for FY 2011, the deadline for paying regulatory fees was September 16, 2011,¹⁰ and for FY 2012, the deadline for paying regulatory fees was September 13, 2012.¹¹ Licensee's assertion that "[it] wasn't aware of the non-paper billing system[, and] from now on [it] won't wait for any paper billing"¹² is not a legal ground or clear mitigating circumstance to waive collection of the penalty. The Commission has repeatedly held that "[l]icensees are expected to know and comply with the Commission's rules and regulations and will not be excused for violations thereof, absent clear mitigating circumstances."¹³ The absence of a reminder notice is not an excuse. Indeed, beginning in 2009, the Commission provided ample notice that it would not be sending paper pre-bills to regulatees.

On May 14, 2009, the Commission proposed to mandate electronic filing of regulatory fee information through the agency's Fee Filer system.¹⁴ The Commission explained that, "[c]onsistent with [its] proposal to require mandatory use of Fee Filer ... pre-bill information would be loaded into Fee Filer for viewing, but would not be mailed directly to the licensee via surface mail."¹⁵ On July 31, 2009, the Commission released its order adopting these proposals.¹⁶

1.1166(c) ("Petitions for waiver of a regulatory fee must be accompanied by the required fee and FCC Form 159. Submitted fees will be returned if a waiver is granted. Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship."), and 1.1910.

⁶ 47 U.S.C. § 159(a)(1); 47 C.F.R. § 1.1151.

⁷ 47 U.S.C. § 159(c)(1); 47 C.F.R. § 1.1164.

⁸ 47 C.F.R. § 1.1164.

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

¹⁰ See FY 2011 Regulatory Fees Due No Later Than September 14, 2011, Eastern Time, *Public Notice*, DA 11-1420 (Aug. 17, 2011); FY 2011 Regulatory Fee Deadline Is Extended To 11:59 PM ET, September 16, 2011, *Public Notice*, DA 11-1559 (Sep. 15, 2011).

¹¹ See FY 2012 Regulatory Fees due No Later Than September 13, 2012, *Public Notice*, DA 12-1295 (Aug. 13, 2012).

¹² *Request*.

¹³ See *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), citing *Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970); see also *NextGen Telephone (OMD)*, Apr. 22, 2010); *Istel, Inc. (OMD)*, Apr. 22, 2010).

¹⁴ Assessment and Collection of Regulatory Fees for Fiscal Year 2009, *Notice of Proposed Rulemaking and Order*, 24 FCC Rcd 5966, 5972 ¶ 16 (2009).

¹⁵ *Id.* at 5973 ¶ 20.

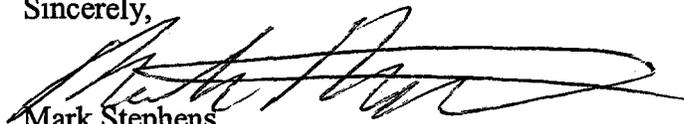
In that order, the Commission advised regulatees that “because all pre-bills will be loaded into Fee Filer, once Fee Filer becomes operational, this will be the signal by which licensees can view their pre-bill information online.”¹⁷ The Commission issued a public notice informing regulatees that use of Fee Filer was mandatory in FY 2009 and that “regulatory fee bills will no longer be mailed to the regulatee, but can be viewed by logging on the Fee Filer.”¹⁸ On September 2, 2009, the Commission released a third public notice reiterating that “**HARDCOPY BILLS WILL NO LONGER BE MAILED BY THE FCC.**”¹⁹

Similarly, the Commission’s final order on the FY 2010 regulatory fees reaffirmed that regulatees should “check[] the Commission’s website periodically beginning in July” in order to “ascertain the fee due date, and receive instructions on how to access Fee Filer, view their bill, and make a fee payment.”²⁰ This notification was part of the Commission’s increased effort to notify licensees that hardcopy bills will no longer be mailed.²¹

Every licensee is obliged to make the fee payment by the deadline. Although the Commission has waived late fees on a showing of good cause, neither the statute nor the Commission’s regulations contemplates a waiver of or reduction in the late payment penalty based on the amount of time after the deadline within which the regulatee satisfies its payment obligations; indeed, the penalty for late payment applies even to situations where the deadline is missed by a short period of time.²² The penalty required by 47 U.S.C. § 159(c)(1) and charges required by 31 U.S.C. § 3717 are not limited to situations where the failure to pay was knowing or willful. If the penalty it is to be waived, it is “only in the most extraordinary circumstances,”²³ which Licensee did not establish. Thus, we must deny the *Request*.

We are providing a separate installment payment plan for Licensee. If Licensee has any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark Stephens
Chief Financial Officer

¹⁶ Assessment and Collection of Regulatory Fees for Fiscal Year 2009, *Report and Order*, 24 FCC Rcd 10301, 10307-09 ¶¶ 18-27 (2009) (*FY 2009 Regulatory Fees NPRM*).

¹⁷ *Id.* at 10309 ¶ 26.

¹⁸ *Fee Filer Mandatory for FY 2009 Regulatory Fees, Public Notice*, 24 FCC Rcd 10893 (Aug. 21, 2009).

¹⁹ Payment Methods and Procedures for Fiscal Year 2009 Regulatory Fees, *Public Notice*, 24 FCC Rcd 11513, 11514 (2009) (emphasis in original).

²⁰ Assessment and Collection of Regulatory Fees for Fiscal Year 2010, *Report and Order*, 25 FCC Rcd 9278, 9291 ¶ 37 (2010).

²¹ See Assessment and Collection of Regulatory Fees for Fiscal Year 2010, *Notice of Proposed Rulemaking*, 25 FCC Rcd 3918, 3923 ¶ 12 (2010).

²² See *XO Communications, LLC* (OMD, Nov. 10, 2010).

²³ *McLeodUSA Telecommunications Services, Inc., Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589 (2004) (denying the request for waiver of 25 percent penalty).

Stephen French

From: Marcelo [marcelok@uniontelecomusa.com]
Sent: Monday, March 12, 2012 1:13 PM
To: ARINQUIRIES
Subject: Attn: Office of the Managing Director, Regulatory Fee Waiver/Reduction Request
Attachments: fcc letter.PDF

RE: Account 0014497549

Dear Mr. Stephen M. French
c/o
Marlene H. Dortch, Secretary
Federal Communications Commission
Attn: Office of the Managing Director, Regulatory Fee Waiver/Reduction Request

Please consider this email as a formal request to waive the late fee imposed \$3,596.75 (attached letter); I wasn't aware of the non-paper billing system and that all filings & fees should be done directly at www.fcc.gov/fees/feefiler.html - from now on we won't wait for any paper billing as was done on the past.

Also, please take in consideration an installment plan of 4 monthly payments of \$3,596.75 (total of \$14,387) – Please confirm ASAP so we can prepare and send the first payment.

Thank you very much for your consideration,

Marcelo Krikler
Oak Grove Holdings

3/12/2012

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

Adams Jr

MAR 20 2013

OFFICE OF
MANAGING DIRECTOR

Steve Dacek
Spiderphone.com, Inc.
64 Beaver Street, Suite 416
New York, NY 10004

Re: Waiver Request (Late Payment Penalty; 47
U.S.C. § 159(c)(1), 31 U.S.C. § 3717, 47 C.F.R. §§
1.1164, 1.1166)
Licensee/Applicant: Spiderphone.com, Inc.
FRN: 0018624098
Station: N/A
Fees: Fiscal Year (FY) 2010, FY 2011 and FY 2012
Regulatory Fees and Late Fees
Date Request Filed: April 19, 2012
Date Regulatory Fees Paid: Not paid
Date Regulatory Late Penalties Paid: Not paid
Fee Control No.: RROG-11-00014297

FY 2010 Regulatory Fees

Regulatory Fee	\$	3,573.00
Penalty (25%)	\$	893.25
Collection Fee	\$	50.00
DCIA Interest/Penalty	\$	592.37

FY 2011 Regulatory Fees

Regulatory Fee	\$	2,944.00
Penalty (25%)	\$	736.00
Collection Fee	\$	50.00
DCIA Interest/Penalty	\$	215.16

FY 2012 Regulatory Fees

Regulatory Fee	\$	2,606.00
Penalty (25%)	\$	651.50
Collection Fee	\$	50.00
DCIA Interest/Penalty	\$	0.00
Total:	\$	12,361.28

Dear Mr. Canto:

This responds to Licensee's *Request*¹ for waiver of the penalties for late payment of the Fiscal Year (FY) 2010 and FY 2011 regulatory fees. For the reasons stated herein, we dismiss and deny the *Request*.

¹ Email from Steve Dacek, [dacek@spiderphone.com] to ARINQUIRIES, [arinquiries@fcc.gov] (Apr. 19, 2012)(*Request*).

Failure to pay the required regulatory fee and any late penalty subjects the licensee to sanctions, including those set forth at 47 U.S.C. §159(c)(2), 47 C.F.R. §§ 1.1164, 1.1166, and 1.1910 (the Commission's red light rule), and the Debt Collection Improvement Act of 1996 (DCIA).² The Commission's records show that Licensee is delinquent in paying the FY 2010, FY 2011, and FY 2012 regulatory fees, thus under 47 U.S.C. § 159(c)(2)³ and sections 1.1164, 1.1166, and 1.1910 of our rules⁴ we dismiss, and on separate grounds, deny Licensee's *Request*.

Under 47 U.S.C. § 159 and the Commission's implementing rules, we are required to "assess and collect regulatory fees" to recover the costs of the Commission's regulatory activities,⁵ and when the required payment is received late or it is incomplete, to assess a penalty equal to "25 percent of the amount of the fee which was not paid in a timely manner."⁶ Specifically, "[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee ... which was not paid in a timely manner."⁷

For FY 2010, payment was due no later than August 31, 2010,⁸ for FY 2011, the deadline for paying regulatory fees was September 16, 2011,⁹ and for FY 2012, payment was due no later than September 13, 2012.¹⁰ Licensee's payments were not received on time, thus Licensee failed to meet these obligations. Licensee's assertion that "[t]he FCC used to send ... bills for fees due[, but changed the procedure to] a website that where [Licensee is] required to visit each year sometime in August to find [its] bills"¹¹ does not present a legal ground or clear mitigating circumstance to waive collection of the penalties. The Commission has repeatedly held that "[l]icensees are expected to know and comply with the Commission's rules and regulations and will not be excused for violations thereof, absent clear mitigating circumstances."¹²

² Public Law 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

³ 47 U.S.C. § 159(c)(2) ("The Commission may dismiss any application or other filing for failure to pay in a timely manner any fee or penalty under this section.")

⁴ 47 C.F.R. §§ 1.1164(e) ("Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment.") and 1.1910.

⁵ 47 U.S.C. §159(a)(1); 47 C.F.R. § 1.1151.

⁶ 47 U.S.C. §159(c)(1); 47 C.F.R. § 1.1164.

⁷ 47 C.F.R. § 1.1164.

⁸ See FY 2010 Regulatory Fees Due No Later Than August 31, 2010, Eastern Time, *Public Notice*, DA 10-1451 (Aug. 9, 2010).

⁹ See FY 2011 Regulatory Fees Due No Later Than September 14, 2011, Eastern Time, *Public Notice*, DA 11-1420 (Aug. 17, 2011); FY 2011 Regulatory Fee Deadline Is Extended To 11:59 PM ET, September 16, 2011, *Public Notice*, DA 11-1559 (Sep. 15, 2011).

¹⁰ See FY 2012 Regulatory Fees due No Later Than September 13, 2012, *Public Notice*, DA 12-1295 (Aug. 13, 2012).

¹¹ *Request*.

¹² See *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), citing *Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970); see also *NextGen Telephone* (OMD, Apr. 22, 2010); *Istel, Inc.* (OMD, Apr. 22, 2010).

The Commission provided extensive guidance on the changes in billing. For example, on May 14, 2009, the Commission proposed to mandate electronic filing of regulatory fee information through the agency's Fee Filer system.¹³ The Commission explained that, "[c]onsistent with [its] proposal to require mandatory use of Fee Filer ... pre-bill information would be loaded into Fee Filer for viewing, but would not be mailed directly to the licensee via surface mail."¹⁴ On July 31, 2009, the Commission released its order adopting these proposals,¹⁵ and notifying regulatees that "because all pre-bills will be loaded into Fee Filer, once Fee Filer becomes operational, this will be the signal by which licensees can view their pre-bill information online."¹⁶ Thereafter, the Commission issued a public notice informing regulatees that use of Fee Filer was mandatory in FY 2009 and that "regulatory fee bills will no longer be mailed to the regulatee, but can be viewed by logging on the Fee Filer."¹⁷ Finally, on September 2, 2009, the Commission released a third public notice that "**HARDCOPY BILLS WILL NO LONGER BE MAILED BY THE FCC.**"¹⁸

Similarly, in 2010, the Commission's final order on the FY 2010 regulatory fees reaffirmed that regulatees should "check[] the Commission's website periodically beginning in July" in order to "ascertain the fee due date, and receive instructions on how to access Fee Filer, view their bill, and make a fee payment."¹⁹ This notification was part of the Commission's increased effort to notify licensees that hardcopy bills will no longer be mailed.²⁰

Every licensee is obliged to make the fee payment by the deadline. In such cases, neither the statute nor the Commission's regulations contemplates a waiver of or reduction in the late payment penalty based on the amount of time after the deadline within which the regulatee satisfies its payment obligations; indeed, the penalty for late payment applies even to situations where the deadline is missed by a short period of time.²¹ Further, although the Commission has waived late fees on a showing of good cause, neither the statute nor the Commission's regulations contemplates a waiver of or reduction in the late payment penalty based on the amount of time after the deadline within which the regulatee made payment. As we explained, the penalty required by 47 U.S.C. § 159(c)(1) is not limited to situations where the failure to pay was knowing or willful. If it is to be waived, it is "only in the most extraordinary circumstances,"²² which are not described in Licensee's situation. Thus, under the law, we must deny Licensee's Request.

¹³ *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Notice of Proposed Rulemaking and Order*, 24 FCC Rcd 5966, 5972 ¶ 16 (2009).

¹⁴ *Id.* at 5973 ¶ 20.

¹⁵ *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Report and Order*, 24 FCC Rcd 10301, 10307-09 ¶¶ 18-27 (2009) (*FY 2009 Regulatory Fees NPRM*).

¹⁶ *Id.* at 10309 ¶ 26.

¹⁷ *Fee Filer Mandatory for FY 2009 Regulatory Fees, Public Notice*, 24 FCC Rcd 10893 (Aug. 21, 2009).

¹⁸ *Payment Methods and Procedures for Fiscal Year 2009 Regulatory Fees, Public Notice*, 24 FCC Rcd 11513, 11514 (2009) (emphasis in original).

¹⁹ *Assessment and Collection of Regulatory Fees for Fiscal Year 2010, Report and Order*, 25 FCC Rcd 9278, 9291 ¶ 37 (2010).

²⁰ *See Assessment and Collection of Regulatory Fees for Fiscal Year 2010, Notice of Proposed Rulemaking*, 25 FCC Rcd 3918, 3923 ¶ 12 (2010).

²¹ *See XO Communications, LLC (OMD)*, Nov. 10, 2010).

²² *McLeodUSA Telecommunications Services, Inc., Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589 (2004) (denying the request for waiver of 25 percent penalty).

Licensee is delinquent in paying the FY 2010, FY 2011, and FY 2012 regulatory fees, the penalties, and accrued charges. To avoid accruing additional charges, the \$12,361.28 for regulatory fees and charges must be received, together with a Form 159 (copy enclosed), within 30 days of the date of this letter. If we do not receive payment within 30 days, additional interest and penalties will accrue from the date of this letter, and under the law,²³ the Commission will initiate collection proceedings. Furthermore, under 47 C.F.R. § 1.1910, until the debts are paid, the Commission will withhold action on any of Licensee's applications or requests. If you have any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

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

Mark Stephens
Chief Financial Officer

Enclosure

²³ See 47 C.F.R. § 1.1901, *et seq.*

Stephen French

From: Steve Dacek [dacek@spiderphone.com]
Sent: Thursday, April 19, 2012 3:29 PM
To: ARINQUIRIES
Subject: Bill R11P827651
Attachments: FccFees2010.pdf; FccFees2011.pdf

Hello. I am a partner at a small conferencing company. It recently came to my attention that we are behind on fees owed to you. The FCC used to send us bills for fees due, but I discovered that there is now a website where we are required to visit each year sometime in August to find our bills. Its tough for a company with 2 employees to keep away of these types of changes, but we now understand the procedure. I have attached the two notes from the web site, but they don't break down the fees, interest and penalties. The demand letter we just received this year does. I am happy to pay the fees we owe and even any interest due, but ask that you waive the penalties as this was primarily due to a change in FCC procedure.

Thank you for your kind consideration.

Most Respectfully,

Steve Dacek
Spiderphone

4/19/2012