

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

NOV 26 2013

OFFICE OF  
MANAGING DIRECTOR

Judy Leech  
Pine Tree Broadcasting  
1214 Route 30 South  
East Poultney, VT 05741

Re: Waiver Request (Financial Hardship; 47 C.F.R.  
§ § 1.1164, 1.1166)  
Licensee/Applicant: Pine Tree Broadcasting  
Stations: WVNR-AM & WNYV-FM  
Fee: Fiscal Year (FY) 2012 Regulatory Fee and  
Late Payment Penalties  
Date Request Filed: Jun. 21, 2013  
Date Regulatory Fees Paid: Not Paid  
Date Late Penalties Paid: Not Paid  
Fee Control No.: RROG-12-00015274  
Current total due: \$1,727.29

Dear Ms. Leech:

This responds to Licensee's *Request*<sup>1</sup> for waiver of the required Fiscal Year (FY) 2012 regulatory fees due for Stations WVNR-AM and WNYV-FRM. Our records reflect that Licensee has not paid the FY 2012 regulatory fees, the late payment penalties, and accrued interest, penalties, and charges for collection. For the reasons stated herein, we dismiss and deny Licensee's *Request*. To avoid additional charges, Licensee must make full payment of the delinquent amounts as shown on the Commission's fee filer website.

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<sup>1</sup> Email from Judy Leech, Pine Tree Broadcasting (wvnrwyyv@gmail.com) to CORES [CORES@fcc.gov](Jun. 21, 2013) (*Request*).

Under our rules,<sup>2</sup> because Licensee is delinquent in paying the FY 2012 regulatory fees, penalties, and charges of collection for the late payment, we must dismiss. In the alternative, if Licensee had paid the fees in full, to include the penalties and charges of collection,<sup>3</sup> we nonetheless would 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,<sup>4</sup> 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."<sup>5</sup> 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."<sup>6</sup>

Each year, the Commission establishes the final day on which payment must be received before it is considered late, *i.e.*, a deadline after which the Commission must assess charges that include the statutory late payment penalty required by 47 U.S.C. § 159(c)(1) and 47 C.F.R. § 1.1164, and additional charges of interest, penalties, and charges of collection required by 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940. For FY 2012, payment was due no later than September 13, 2012.<sup>7</sup> We did not receive Licensee's payment by that deadline, thus we assessed the mandatory penalty, and when the debt remained delinquent, we assessed the additional charges.

Licensee asks us to waive those charges on the assertions that "[i]n late January [and] February [2012, a responsible person in the Licensee's corporate organization] was diagnosed [with an illness], which required hospitali[zation] in March of 2012 and ... January of 2013 ... [t]he disease and treatment ... left [the person] weak and sometimes confused .... This area ... was hit hard by the recession ... [and Licensee] simply did not have the money to pay the fees[, and Licensee was] waiting for something to come to [Licensee] about the regulatory fees so [Licensee] could respond."<sup>8</sup>

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<sup>2</sup> 47 C.F.R. §§ 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."); 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 .... The application may be resubmitted only if accompanied by the required regulatory fee and by any assessed penalty payment."); 1.1167(b) ("The filing of a petition for reconsideration or an application for review of a fee determination will not relieve licensees from the requirement that full and proper payment of the underlying fee payment be submitted ...."); 1.1910(b)(2) ("Action will be withheld on applications, including on a petition for reconsideration or any application for review of a fee determination, or requests for authorization by any entity found to be delinquent in its debt to the Commission ....").

<sup>3</sup> 31 U.S.C. § 3717; 47 C.F.R. §§ 1.1164, 1.1940.

<sup>4</sup> 47 U.S.C. § 159(a)(1); 47 C.F.R. § 1.1151.

<sup>5</sup> 47 U.S.C. § 159(c)(1); 47 C.F.R. § 1.1164.

<sup>6</sup> 47 C.F.R. § 1.1164.

<sup>7</sup> See FY 2012 Regulatory Fees Due No Later Than September 13, 2012, *Public Notice*, DA 12-1295 (Aug. 13, 2012).

<sup>8</sup> *Request*.

When we evaluate such matters, we look to whether the *Request* petitioning for a waiver of the statutory penalty and accrued interest, penalty, and charges of collection presents legal grounds or clear mitigating circumstances to waive collection of the penalty. Licensee's *Request* does not. We are sympathetic to the details of Licensee's disclosure; however, the explanation does not present legal grounds or clear mitigating circumstances to waive collection of the regulatory fees and associated interest and penalties.

First, we considered Licensee's assertions of medical and financial events as grounds for waiver. In such matters, Licensee has the burden<sup>9</sup> of demonstrating that a waiver would override the public interest, as determined by Congress, that the government should be reimbursed for the Commission's regulatory action.<sup>10</sup> For the following reasons, we find that Licensee did not present compelling and extraordinary circumstances.

Licensee did not meet our standard 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."<sup>11</sup>

An employee's inability to perform duties does not alter a licensee's obligation to pay its fees by the deadline.<sup>12</sup> 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.<sup>13</sup> Furthermore, 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 is to be waived, it is "only in the most extraordinary circumstances,"<sup>14</sup> which Licensee did not establish. Thus, on this ground, we deny the *Request*.

Next, we considered Licensee's assertion that it "simply did not have the money to pay the fees" as seeking a waiver of the fee due to financial hardship as set forth in 47 C.F.R. § 1.1166(e). In establishing a regulatory fee program, the Commission recognized that in certain instances, payment of a regulatory fee may 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

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<sup>9</sup> *Id.*; *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971) ("burden is on the applicant seeking waiver of ... rules to plead specific facts and circumstances which would make the general rule inapplicable"); 47 C.F.R. § 1.1166. See *Bartholdi Cable Co., Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997) ("petitioner . . . has the 'burden of clarifying its position' before the agency."). See also 47 C.F.R. § 1.16 (An applicant is responsible for the continuing accuracy and completeness of information furnished.).

<sup>10</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("FCC may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest."); *Tucson Radio, Inc. v. FCC*, *supra*; 47 C.F.R. § 1.3.

<sup>11</sup> 47 C.F.R. § 1.1166.

<sup>12</sup> Licensee did not draw any connection between the fee payment deadline and the defined periods of treatment and hospitalization.

<sup>13</sup> See *XO Communications, LLC* (OMD, Nov. 10, 2010).

<sup>14</sup> *McLeodUSA Telecommunications Services, Inc., Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589 (2004) (denying the request for waiver of 25 percent penalty).

finding that the public interest will be served thereby.<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup> "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."<sup>18</sup> 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.<sup>19</sup>

Next, we considered Licensee's assertion that it did not receive an invoice. 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."<sup>20</sup> 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.

For example, on May 14, 2009, the Commission proposed to mandate electronic filing of regulatory fee information through the agency's Fee Filer system.<sup>21</sup> 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."<sup>22</sup> On July 31, 2009, the Commission released its order adopting these proposals,<sup>23</sup> 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."<sup>24</sup> Thereafter, the Commission issued a public notice informing regulatees

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<sup>15</sup> 47 U.S.C. §159(d); 47 C.F.R. § 1.1166. 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).

<sup>16</sup> 9 FCC Rcd at 5344, ¶ 29.

<sup>17</sup> 10 FCC Rcd at 12761-62, ¶ 13.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> 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).

<sup>21</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Notice of Proposed Rulemaking and Order*, 24 FCC Rcd 5966, 5972, ¶ 16 (2009).

<sup>22</sup> *Id.* at 5973, ¶ 20.

<sup>23</sup> *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*).

<sup>24</sup> *Id.* at 10309, ¶ 26.

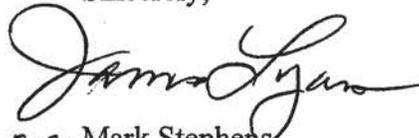
that use of Fee Filer was mandatory in FY 2009 and that “regulatory fee bills will no longer be mailed to the regulatee, but can be viewed by logging on the Fee Filer.”<sup>25</sup> Finally, on September 2, 2009, the Commission released a third public notice that “**HARDCOPY BILLS WILL NO LONGER BE MAILED BY THE FCC.**”<sup>26</sup>

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.”<sup>27</sup> This notification was part of the Commission’s increased effort to notify licensees that hardcopy bills will no longer be mailed.<sup>28</sup> Accordingly, on this ground, we deny the *Request*.

Payment of Licensee’s FY 2012 regulatory fees plus the penalty and all accrued charges is now due, which, as of the date of this letter, is \$1,727.29. That amount must be received, together with a Form 159 (copy enclosed), within 30 days of the date of this letter. Under the law,<sup>29</sup> charges continue to accrue until the debt is paid in full. Furthermore, under 47 C.F.R. § 1.1910(b), Licensee is subject to the Commission’s red light rule, which means that the Commission will withhold action on any application filed or pending, and if the debt is not paid, or other satisfactory arrangements are not made, the Commission may dismiss the application. *See* 47 C.F.R. §§ 1.1108, 1.1109, 1.1116, and 1.1118. Additionally, any Commission action taken prior to the payment of delinquent non-tax debt owed to the Commission is contingent and subject to rescission. Finally, the Commission may collect amounts due by administrative offset.<sup>30</sup>

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

Sincerely,



FIR: Mark Stephens  
Chief Financial Officer

Enclosure

<sup>25</sup> *Fee Filer Mandatory for FY 2009 Regulatory Fees, Public Notice*, 24 FCC Rcd 10893 (Aug. 21, 2009).

<sup>26</sup> *Payment Methods and Procedures for Fiscal Year 2009 Regulatory Fees, Public Notice*, 24 FCC Rcd 11513, 11514 (2009) (emphasis in original).

<sup>27</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2010, Report and Order*, 25 FCC Rcd 9278, 9291, ¶ 37 (2010).

<sup>28</sup> *See Assessment and Collection of Regulatory Fees for Fiscal Year 2010, Notice of Proposed Rulemaking*, 25 FCC Rcd 3918, 3923, ¶ 12 (2010).

<sup>29</sup> 31 U.S.C. § 3717; 47 C.F.R. § 1.1940.

<sup>30</sup> 47 C.F.R. § 1.1912.