

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

OCT 24 2013

OFFICE OF
MANAGING DIRECTOR

Benjamin Perez
Abacus Television
514 Chautauqua Street
Pittsburgh, PA 15214

Re: (Petition for Reconsideration of Denial of
Waiver Request; 47 U.S.C. § 159(c); 47 C.F.R. §§
1.4(b)(5); 1.106(n) & (p); 1.1164(c) & (e); 1.1910)
Licensee/Applicant: Abacus Television
Stations: WIIC-LP; WPTG-LP; WWBP-LP;
WWAT-CA; WQVC-CA; WBYD-CA; WBOA-LP;
WWVW-LP; WTOO-CA; WSSS-LP; and WJKF-
CA
Date of Petition: Sep. 15, 2011
Date Received: Sep. 22, 2011
Fee: Fiscal Year (FY) 2010 Regulatory Fees
Fee Control No: RROG-11-00013900

Dear Mr. Perez:

This responds to Licensee's Petition for Reconsideration of Denial of Petitioner's Regulatory Fee Waiver Request for 2010 (*Petition*)¹ pertaining to the Commission's dismissal and denial of Licensee's request to waive the Fiscal Year (FY) 2010 regulatory fees (*Dismissal*).² As we discuss below, we dismiss because Licensee failed to comply with the Commission's procedural requirements for filing the *Petition* and Licensee is delinquent in paying its debts. Accordingly, we need not discuss the merits of the *Petition*.

Briefly, as background, on August 28, 2010, Licensee requested a waiver the FY 2010 regulatory fees;³ however, Licensee failed either to pay the required fees or to petition the Commission to defer payment supported with documentation of financial hardship. Hence, on May 17, 2011, we dismissed and, in the alternative, denied⁴ Licensee's *Request* explaining that under 47 C.F.R. § 1.1164, we dismissed because Licensee failed to include either the full amount of the fee or a properly supported petition to defer payment, and, in the alternative, we denied the *Request* because Licensee failed to present a compelling case of financial hardship. Our *Dismissal* included notice that the total regulatory fees plus the required twenty-five percent

¹ In the matter of: Petition for Deferral of Payment of Regulatory Fees Until After a Ruling on Petitioner's Regulatory Fee Waiver Request for 2010 (sic) WIIC-LP, Fac. ID 68411, *et al.* (Sep. 15, 2011) (*Petition*).

² Letter from Mark Stephens, Chief Financial Officer, FCC, Washington, DC 20554 to Mr. Benjamin Perez, Abacus Television, 514 Chautauqua St., Pittsburgh, PA 15214 (May 17, 2011) (*Dismissal*).

³ In the matter of: Waiver of Regulatory Fee for FY 2009 (sic) of Abacus Television, 1801 Columbia Road, N.W., Suite 101, Washington, DC 20009, Licensee of WIIC-LP, *et al.* (Aug. 28, 2010) (*Request*).

⁴ *Id.*

penalty⁵ were due, and to avoid additional charges, Licensee had to make payment within 30 days. We have no record of payment, thus the debts remain delinquent, and additional charges accrue.⁶ On September 22, 2011, we received Licensee's *Petition*. We now turn to the Commission's procedures governing such filings.

Under 47 C.F.R. § 0.445(a) & (e), adjudicatory opinions and orders of the Commission, or its staff acting on delegated authority are mailed or delivered by electronic means, and because they are not published in the Federal Register, the FCC Record, FCC Reports, or Pike and Fischer Communications Regulation, they may not be relied upon, used or cited as precedent, except against persons who have actual notice of the document in question or by such persons against the Commission. Furthermore, as set forth in 47 C.F.R. § 1.4(b), for purposes of computing time within which to file a timely petition for reconsideration or an application for review,⁷ a decision under delegated authority is effective upon release, which date commences the period.⁸ Accordingly, any person desiring Commission consideration of a final action taken pursuant to delegated authority shall file either a petition for reconsideration or an application for review (but not both) within 30 days from the date of the action as defined in § 1.4(b) of our rules.⁹ If the petition is not filed in a timely manner, it may be dismissed or denied.¹⁰ For purposes of determining the filing date, the petition for reconsideration is not filed until its receipt at the location designated by the Commission.¹¹ Moreover, the "the filing of a petition for reconsideration shall not excuse any person from complying with or obeying any decision, order, or requirement of the Commission, or operate in any manner to stay or postpone the enforcement thereof."¹²

Licensee's *Petition*, dated September 15, 2011, was received at the Commission's Financial Operations office on September 22, 2011. As such, there are two procedural problems. First, the *Petition* was not properly filed,¹³ because Licensee submitted it to the Commission staff instead of through the Office of the Secretary, and it was untimely, because it was received more

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

⁶ 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940.

⁷ See 47 C.F.R. § 1.104.

⁸ 47 C.F.R. § 1.4(b)(5) ("Unless otherwise provided, the first day begins with an action taken by ... staff pursuant to delegated authority is the *day after the day* on which public notice of that action is given. See § 1.4(b) (1)-(5) of this section. ... For purposes of this section, the term *public notice* means the date of any of the following events. ... (5) If a document is neither published in the FEDERAL REGISTER nor released, and if a descriptive document entitled 'Public Notice' is not released, the date appearing on the document sent (e.g., mailed, telegraphed, etc.) to persons affected by the action."). See 47 C.F.R. § 1.102(b) (1) ("Non-hearing or interlocutory actions taken pursuant to delegated authority shall, unless otherwise ordered by the designated authority, be effective upon release of the document containing the full text of such action, or in the event such a document is not released, upon release of a public notice announcing the action in question.")

⁹ 47 C.F.R. § 1.104(b).

¹⁰ 47 C.F.R. §§ 1.106(f) & (p)(7) & (9).

¹¹ 47 C.F.R. § 1.7.

¹² 47 C.F.R. § 1.106(n).

¹³ 47 C.F.R. § 1.106(i) ("Petitions for reconsideration, oppositions, and replies shall conform to the requirements of §§ 1.49, 1.51, and 1.52 and shall be submitted to the Secretary, Federal Communications Commission, Washington, DC 20554, by mail, by commercial courier, by hand, or by electronic submission through the Commission's Electronic Comment Filing System or other electronic filing system (such as ULS). Petitions submitted only by electronic mail and petitions submitted directly to staff without submission to the Secretary shall not be considered to have been properly filed."); see also 47 C.F.R. § 1.1159(b).

than 30 days after its release.¹⁴ Under 47 C.F.R. § 1.106(p)(7) & (9),¹⁵ these procedural failures are grounds for dismissal. We note, in addition to these procedural errors, Licensee's delinquency is another ground for dismissal. The filing of a petition for reconsideration "will not relieve licensees from the requirement that full and proper payment of the underlying fee payment be submitted, as required by the Commission's action, or delegated action, on a request for waiver, reduction or deferment."¹⁶ Licensee failed to pay the amounts due.¹⁷ Accordingly, under 47 C.F.R. §§ 1.1164(e) - (f)(5) and 1.1910,¹⁸ we dismiss, and as such we do not discuss the merits of the *Petition*.

Because Licensee is delinquent, under 47 C.F.R. § 1.1910, Licensee is subject to the Commission red-light rule, and the Commission will withhold action on any application filed or pending and dismiss. *See* 47 C.F.R. §§ 1.1108, 1.1109, 1.1116, and 1.1118. Any Commission action taken prior to the payment of delinquent non-tax debt owed to the Commission is contingent and subject to rescission. Failure to make payment on any delinquent debt is subject to collection of the debt, including interest thereon, any associated penalties, and the full cost of collection to the Federal government pursuant to the provisions of the Debt Collection Improvement Act, 31 U.S.C. § 3717. Moreover, the Commission may collect amounts due by administrative offset.¹⁹

Licensee should confirm a payoff amount by going to the Commission's Fee Filer website or, if the debts have been transferred to the United States Treasury, contact that office for a payoff amount.²⁰ Interest and penalties continue to accrue from the date of delinquency, and under the law,²¹ we will apply debt collection procedures.²²

¹⁴ 47 C.F.R. § 1.106(f) ("The petition for reconsideration and any supplement thereto shall be filed within 30 days from the date of public notice of the final Commission action, as that date is defined in § 1.4(b) of these rules ...").

¹⁵ 47 C.F.R. § 1.106(p) ("Petitions for reconsideration of a Commission action that plainly do not warrant consideration by the Commission may be dismissed or denied by the relevant bureau(s) or office(s). Examples include, but are not limited to, petitions that: * * * (7) Fail to comply with the procedural requirements set forth in paragraphs (f) and (i) of this section; * * * (9) Are untimely.").

¹⁶ 47 C.F.R. § 1.1167(b)(2) ("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, as required by the Commission's action, or delegated action, on a request for waiver, reduction or deferment. ... If the fee payment should fail while the Commission is considering the matter, the petition for reconsideration or application for review will be dismissed.").

¹⁷ *See* 47 C.F.R. § 1.1159(b) (b) ("Petitions for reconsideration ... of fee decisions submitted with a standard regulatory fee payment pursuant to §§ 1.1152 through 1.1156 of the rules are to be filed with the Commission's lockbox bank in the manner set forth in §§ 1.1152 through 1.1156 for payment of the fee subject to the petition for reconsideration or the application for review. Petitions for reconsideration and applications for review that are submitted with no accompanying payment should be filed with the Secretary, Federal Communications Commission, Attention: Managing Director, Washington, D.C. 20554.").

¹⁸ 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. The application may be resubmitted only if accompanied by the required regulatory fee and by any assessed penalty payment."); § 1.1164(f)(5) ("An application or filing by a regulatee that is delinquent in its debt to the Commission is also subject to dismissal under 47 CFR 1.1910.").

¹⁹ 47 C.F.R. § 1.1912.

²⁰ *See* 47 C.F.R. § 1.1914 ("If a debtor is financially unable to pay a debt in one lump sum, the Commission, in its sole discretion, may accept payment in regular installments.").

²¹ *See* 47 C.F.R. § 1.1901, *et seq.*

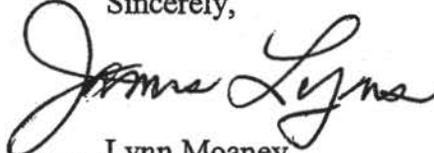
²² *See* 31 C.F.R. § 3717.

Moreover, under 31 U.S.C. § 3711(g), without further notice, and usually within 180 days or less of delinquency, we will transfer the delinquent debt to Treasury, which will initiate collection action through private collection activities and assess additional charges. In addition, we may refer the debt to the Department of Justice, which may result in litigation and additional costs.

Furthermore, under 31 U.S.C. § 3716, 31 C.F.R. § 285.5, and 47 C.F.R. § 1.1912, some or all of the debt may be collected by non-centralized or centralized administrative offset. Also, under 31 U.S.C. § 3711(e), this debt and Licensee's payment history will be reported to credit reporting information bureaus. Because we have furnished notice here, Licensee may not receive another notification of this process.

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Lynn Moaney".

FOR: Lynn Moaney
Acting Chief Financial Officer