

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

MAR 3 1 2014

OFFICE OF  
MANAGING DIRECTOR

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Law Offices of Scott C. Cinnamon, PLLC  
1250 Connecticut Ave., NW, Ste. 200, #144  
Washington, DC 20036

Licensee/Applicants: **Cup O'Dirt, LLC**  
Waiver Request: Late Payment Penalty  
Disposition: Dismissed (47 U.S.C. § 159(c)(1), 31  
U.S.C. § 3717, 47 C.F.R. §§ 1.1164, 1.1910)  
Station: KZOY  
FRN: 0017978016  
Fee: Fiscal Year (FY) 2010 Regulatory Fee and  
Late Fees  
Date Request Filed: Aug. 6, 2013  
Date Regulatory Fees Paid: Not Paid  
Date Regulatory Late Fees Paid: Not Paid  
Fee Control No.: RROG-13-00015319  
Amount Due: *See Fee Filer*

Dear Counsel:

This responds to Licensee's *Request*<sup>1</sup> for waiver of the statutory penalty and the additional charges for interest, penalty, and collection that the law requires us to assess because Licensee failed to pay on time its Fiscal Year (FY) 2010 regulatory fee. For the reasons stated herein, we dismiss the *Request* and demand immediate payment of the delinquent regulatory fee and accrued charges.

Our records show that Licensee failed to pay the required FY 2010 regulatory fee, which was due August 20, 2010.<sup>2</sup> Instead, on August 6, 2013, after receiving the Commission's *Demand Letter*,<sup>3</sup> Licensee submitted its *Request* to "eliminat[e] the penalty, interest and administrative fees" because Licensee was "under the impression that the [prior owner who sold the station to Licensee] would pay the 2010 regulatory fees."<sup>4</sup>

<sup>1</sup>Email from Scott Cinnamon, on behalf of Cup O'Dirt, LLC ([scinnamon2@gmail.com](mailto:scinnamon2@gmail.com)) to ARINQUIRIES ([ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov)) (Aug. 6, 2013) (*Request*).

<sup>2</sup>See FY 2010 Regulatory Fees Due No Later Than August 31, 2010, Eastern Time, *Public Notice*, DA 10-1451 (Aug. 9, 2010).

<sup>3</sup>Demand Letter from FCC, Washington, DC 20554 to Backyard Broadcasting South Dakota Licensee, LLC, 4237 Salisbury Rd., Suite 225, Jacksonville, FL 32216 (5/15/2013)(*Demand Letter*).

<sup>4</sup>*Request*.

License was not explicit in describing the nature of an agreement that is the basis for its asserted "impression" that the Seller would pay the fees, and we will not speculate as to any facts necessary to give it more substance. Even so, if an agreement existed, we do not have the resources or the authority to enforce private party contractual terms. Instead, we have a clearly stated procedure that the licensee or holder on the authorization on the date that the fee payment is due is responsible for paying the fee.<sup>5</sup> Thus, it was Licensee's responsibility to ensure timely and complete payment, and failing that, Licensee became a delinquent debtor subject to certain consequences that we spelled out in our *Demand Letter*, i.e., the unpaid amount is a delinquent debt, and the continued failure to pay in full the delinquent amount will result in withholding action on and dismissal of any pending applications and the continued assessment of interest, penalties, and charges of collection.<sup>6</sup>

Accordingly, under 47 C.F.R. §§ 1.1164(e)<sup>7</sup> and 1.1910, we dismiss the *Request* and demand immediate payment. Moreover, because Licensee did not establish "extraordinary circumstances"<sup>8</sup> for a waiver, even had Licensee first paid the full amount due and then requested a waiver and refund of the statutory penalty for late payment, the accrued interest, penalties, and the charges of collection, we would deny the *Request*.

Refer to the Commission's fee filer website to determine a payoff, and thereafter make full payment without delay. Until Licensee makes full payment of the fee, late payment penalty,<sup>9</sup> and charges of collection, under 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940, we continue to assess interest, penalties, and charges of collection. Also, the Commission will withhold action on and thereafter dismiss any pending application.<sup>10</sup> Any Commission action taken prior to the payment of delinquent non-tax debt owed to the Commission is contingent and subject to rescission. Interest and penalties continue to accrue from the date of delinquency, and under the law,<sup>11</sup> we will apply debt collection procedures,<sup>12</sup> which may result in additional charges for the full cost of collection to the Federal government pursuant to the provisions of the Debt Collection Improvement Act, 31 U.S.C. § 3717. Also, the Commission may collect amounts due by administrative offset.<sup>13</sup>

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<sup>5</sup> Assessment and Collection of Regulatory Fees for Fiscal Year 2010, *Report and Order*, 25 FCC Rcd 9278, 9296, ¶ 53 (2010) ("In instances where a permit or license is transferred or assigned after October 1, 2009, responsibility for payment rests with the holder of the permit or license as of the fee due date.").

<sup>6</sup> *Demand Letter*.

<sup>7</sup> 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 .... The application may be resubmitted only if accompanied by the required regulatory fee and by any assessed penalty payment."), 1.1910.

<sup>8</sup> *McLeodUSA Telecommunications Services, Inc., Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589 (2004) (denying the request for waiver of 25 percent penalty).

<sup>9</sup> 47 U.S.C. § 159(c).

<sup>10</sup> 47 C.F.R. § 1.1910(a)(2) & (3) ("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 ... If a delinquency has not been paid or the debtor has not made other satisfactory arrangements within 30 days of the date of the notice provided pursuant to paragraph (b)(2) of this section, the application or request for authorization will be dismissed.").

<sup>11</sup> See 47 C.F.R. § 1.1901, *et seq.*

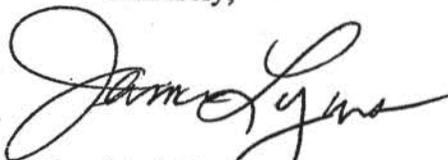
<sup>12</sup> See 31 C.F.R. § 3717.

<sup>13</sup> 47 C.F.R. § 1.1912.

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.

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

Sincerely,

A handwritten signature in cursive script, appearing to read "James Lyons".

FOR: Mark Stephens  
Chief Financial Officer