

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

MAY 2 2014

OFFICE OF
MANAGING DIRECTOR

Mr. David W. Layne
Station WXJK
31 Edgewood Drive
Farmville, VA 23901

Licensee/Applicant/Debtor: **David W. Layne, d/b/a
WXJK**
Waiver Request; Late Payment Penalty
Disposition: Dismissed (47 C.F.R. §§ 1.1164,
1.1910)
Station: WXJK
FRN: 0004994786
Fees: Fiscal Year (FY) 2012 Regulatory Fee and
Late Fee
Date Request Filed: Aug. 9, 2013
Date Regulatory Fee Paid: Not Paid
Date Late Penalty Paid: Not Paid
Fee Control No.: RROG-12-00015321
Amount Due: **See Fee Filer**

Dear Mr. Layne:

This responds to Licensee's *Request*¹ for waiver of the penalties and additional charges imposed on Licensee because it failed to pay the Fiscal Year (FY) 2012 regulatory fees. For the reasons stated below, we dismiss the *Request*.

Our records show that Licensee is delinquent² in paying the required FY 2012 regulatory fee and accrued charges, which include interest, penalties, and charges of collection under 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940. Accordingly, under 47 C.F.R. §§ 1.1164(e)³ and 1.1910,⁴

¹ Email from David Layne (wxjkm@yahoo.com) to ARINQUIRIES (arinquiries@fcc.gov) (Aug. 9, 2013) (*Request*).

² 47 C.F.R. § 1.1901(i).

³ 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.").

⁴ 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

we dismiss the *Request* and demand immediate payment. Further, this notifies Licensee that statutory penalties and charges continue accruing on the delinquent FY 2012 fees and administrative sanctions may be imposed.

As a courtesy, however, we will explain that 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

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 2012, the deadline was September 13, 2012.⁸ Licensee did not pay the full amount by that deadline, and the fee and charges remain unpaid. Thus Licensee remains delinquent in paying the FY 2012 regulatory fees.

Nonetheless, Licensee asks us to waive the statutory penalty and accrued charges by asserting, "the past 18 months ... have been difficult, business has been difficult ... I have the monies to make the fee payment but it would be nice to have that additional \$200 ... to pay toward the [FY 2013 fee]."⁹ That assertion does not establish the existence of bank error or present legal grounds or clear mitigating circumstances to waive collection of the penalty. The delinquent fee plus all accrued charges is due.

To determine the amount owed, go to the Commission's fee filer website. Until Licensee makes full payment of the fees, late payment penalties,¹⁰ and charges of collection under 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940,¹¹ we continue to assess those charges, and we will withhold action on and thereafter dismiss any pending application.¹² Additional charges accrue

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.").

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 2012 Regulatory Fees Due No Later Than September 13, 2012, Eastern Time, *Public Notice*, DA 12-1295 (Aug.13, 2012).

⁹ *Request*.

¹⁰ 47 U.S.C. § 159(c).

¹¹ 31 U.S.C. § 3717; 47 C.F.R. § 1.1940 ("the Commission shall charge interest, penalties, and administrative costs on debts owed to the United States pursuant to 31 U.S.C. 3717 ... These charges shall continue to accrue until the debt is paid in full or otherwise resolved through compromise, termination, or waiver of the charges.").

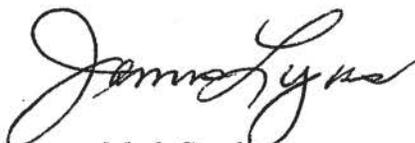
¹² 47 C.F.R. § 1.1910(a)(2) & (3) ("Action will be withheld on applications, including on a petition for reconsideration or any application for review of a fee determination, or requests for authorization by any entity found to be delinquent in its debt to the Commission ... If a delinquency has not 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.").

on debts referred to the Secretary of Treasury.¹³ Furthermore, this notifies Licensee that under 31 U.S.C. § 3711(g), without further notice, and usually within 180 days or less of delinquency, we transfer delinquent debts to Treasury, which initiates collection action and assesses additional charges. In addition, we may refer debts to the Department of Justice, which may result in litigation and additional costs.

Moreover, 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, and under 31 U.S.C. § 3711(e), these debts and Licensee's payment history will be reported to credit reporting information bureaus. Because we furnish notice here, Licensee may not receive another notification of this process. Finally, Licensee will be red lighted¹⁴ until it pays the debts or makes other satisfactory arrangements.¹⁵

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

Sincerely,



For: Mark Stephens
Chief Financial Officer

¹³ Under 31 U.S.C. § 3711(g) and 31 C.F.R. § 285.12, debts delinquent 180 days are transferred to the Secretary of Treasury for collection, and Treasury "may charge fees sufficient to cover the full cost of providing debt collection services ... Fees ... may be added to the debt"

¹⁴ 47 C.F.R. 1.1910(a).

¹⁵ 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.").