

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

APR 29 2014

OFFICE OF  
MANAGING DIRECTOR

Ron Huntington  
Owner & Managing Partner  
KLAY Radio  
10025 Lakewood Drive, Suite B  
Tacoma, WA 98499

Licensee/Applicant: **Estate of Clay Huntington**  
Waiver Request; Late Payment Penalty  
Disposition: Dismissed (47 C.F.R. §§ 1.1164,  
1.1910)  
Station: KLAY-AM  
Fees: Fiscal Year (FY) 2010 Regulatory Fees and  
Late Fees  
Date Request Filed: May 16, 2013  
Date Regulatory Fees Paid: Not Paid  
Date Late Penalty Fees Paid: Not Paid  
Fee Control No.: RROG-12-00015176

Dear Mr. Huntington:

This responds to Licensee's *Request*<sup>1</sup> for waiver of the penalties and additional charges imposed because the Fiscal Year (FY) 2010 regulatory fees are delinquent. For the reasons stated below, we dismiss the *Request*.

Our records show that Licensee is delinquent<sup>2</sup> in paying the required FY 2010 regulatory fees 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)<sup>3</sup> and 1.1910,<sup>4</sup> we dismiss the *Request* and demand immediate payment. Further, we affirm our notice in the Demand Letter that statutory penalties and charges continue accruing on the delinquent FY 2010 fees and that administrative sanctions may be imposed.

<sup>1</sup> Email from Ron Huntington, on behalf of the Estate of Clay Huntington (ron.huntington@emtconsulting.com) to ARINQUIRIES (ARINQUIRES@fcc.gov) (May 16, 2013)(*Request*).

<sup>2</sup> 47 C.F.R. § 1.1901(i).

<sup>3</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 or an installment payment. The application may be resubmitted only if accompanied by the required regulatory fee and by any assessed penalty payment.").

<sup>4</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.").

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,<sup>5</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>6</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>7</sup>

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 was August 31, 2010.<sup>8</sup> The fees and charges remain unpaid, that Licensee remains delinquent in paying the FY 2010 regulatory fees. Nonetheless, Licensee asks us to waive the statutory penalty and accrued charges by asserting, in part that it has no record that it "ever received ... earlier notice of [the unpaid debt]."<sup>9</sup> Such assertions do not establish the existence of bank error or presents legal grounds or clear mitigating circumstances to waive collection of the penalty.

The Commission repeatedly has held "[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>10</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, and regulatees were informed "regulatory fee bills will no longer be mailed to the regulatee, but can be viewed by logging on the Fee Filer."<sup>11</sup> Similarly, in 2010, the Commission alerted regulatees to use the Commission's website to "ascertain the fee due date, and receive instructions on how to access Fee Filer, view their bill, and make a fee payment."<sup>12</sup> Hardcopy bills are no longer mailed.<sup>13</sup>

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

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

<sup>7</sup> 47 C.F.R. § 1.1164.

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

<sup>9</sup> *Request*.

<sup>10</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>11</sup> *Fee Filer Mandatory for FY 2009 Regulatory Fees*, *Public Notice*, 24 FCC Rcd 10893 (Aug. 21, 2009); *Payment Methods and Procedures for Fiscal Year 2009 Regulatory Fees*, *Public Notice*, 24 FCC Rcd 11513, 11514 (2009) (third public notice that "HARDCOPY BILLS WILL NO LONGER BE MAILED BY THE FCC") (emphasis in original).

<sup>12</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2010*, *Report and Order*, 25 FCC Rcd 9278, 9291, ¶ 37 (2010).

<sup>13</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 2010*, *Notice of Proposed Rulemaking*, 25 FCC Rcd 3918, 3923, ¶ 12 (2010).

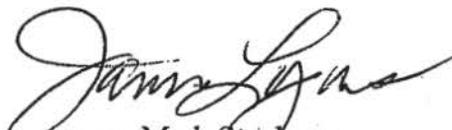
We are sympathetic to the personal events described in the *Request*; nonetheless, the Licensee was obligated to pay the fees when due.

Until Licensee makes full payment of the fees, late payment penalties,<sup>14</sup> and charges of collection under 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940,<sup>15</sup> we continue to assess those charges, and we will withhold action on and thereafter dismiss any pending application.<sup>16</sup> Additional charges accrue on debts referred to the Secretary of Treasury.<sup>17</sup> 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 lighted<sup>18</sup> until it pays the debts or makes other satisfactory arrangements.<sup>19</sup>

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

Sincerely,

  
/s/ Mark Stephens  
Chief Financial Officer

<sup>14</sup> 47 U.S.C. § 159(c).

<sup>15</sup> 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.").

<sup>16</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>17</sup> 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 ...."

<sup>18</sup> 47 C.F.R. 1.1910(a).

<sup>19</sup> 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.").