

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAR 12 2014

OFFICE OF  
MANAGING DIRECTOR

John Wengert  
1302 Shenandoah Street  
Boulder City, NV 89005

Licensee/Applicant: **John Wengert**  
Waiver Request: Late Payment Penalty; 47C.F.R. §  
1.1164  
Disposition: Dismissed and Denied  
Station: K265D  
FRN: 0018668525  
Fee: Fiscal Year (FY) 2010 Regulatory Fee Late  
Payment Penalty  
Date Request Filed: Jun. 11, 2013  
Date Regulatory Fees Paid: Sep. 2, 2010  
Date Penalty Paid: Not Paid  
Fee Control No.: RROG-12-00015248  
Amount Due: **See Fee Filer**

Dear Mr. Wengert:

This responds to Licensee's *Request*<sup>1</sup> for waiver of the penalties for late payment of Fiscal Year (FY) 2010 regulatory fees. For the reasons stated herein, we dismiss and, in the alternative, deny the *Request*.

The Commission's records show that Licensee failed to pay the full amount of the Fiscal Year (FY) FY 2010 regulatory fee when due.<sup>2</sup> Rather, Licensee's payment was received on September 2, 2010, and Licensee failed to include the statutory 25% penalty.<sup>3</sup> Thus, Licensee made only a partial payment that did not resolve its delinquency and red light<sup>4</sup> status. Indeed, because a partial payment is first applied to the penalties and accrued charges, it left the regulatory fee account delinquent.<sup>5</sup> Accordingly, as required by 47 C.F.R. §§ 1.1164(e)<sup>6</sup> and 1.1910, we dismiss the *Request* and demand immediate payment, and under 31 U.S.C. § 3717

<sup>1</sup> Email from John Wengert (jgwingman@aol.com) to ARINQUIRIES (ARINQUIRIES@fcc.gov) (Jun. 8, 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> 47 U.S.C. §159(c)(1); 47 C.F.R. §§ 1.1157(c)(1), 1.1164.

<sup>4</sup> 47 C.F.R. § 1.1910.

<sup>5</sup> 47 C.F.R. §§ 1.1157(c)(1), 1.1164(c).

<sup>6</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.

and 47 C.F.R. § 1.1940, we continue to assess interest, penalties, and charges of collection. Moreover, because Licensee did not establish “extraordinary circumstances”<sup>7</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*.

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>8</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>9</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>10</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, as well as interest, penalties, and charges of collection required by 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940. For FY 2010, the deadline for paying regulatory fees was August 31, 2010.<sup>11</sup> We did not receive Licensee’s payment until September 2, 2010, thus Licensee failed to meet these obligations, and the penalty accrued.

Licensee “challenge[s]” the “late fee” by asserting “[it] thought bills were always considered on time if postmarked by the due date. After all, the IRS recognizes that practice, so why not the FCC?”<sup>12</sup> The Commission requires payment at the Commission’s lockbox bank on or before the due date, and it does not accept the postmark date as receipt.<sup>13</sup> We looked to Licensee’s assertions, but they are not legal grounds or clear mitigating circumstances to waive collection of the penalty.

When we evaluate such matters, we consider whether the *Request* petitioning for a waiver of the statutory penalty and accrued interest, penalty, and charges of collection establishes the existence of bank error or presents legal grounds or clear mitigating circumstances to waive collection of the penalty. Licensee’s *Request* does not.

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<sup>7</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>8</sup> 47 U.S.C. §159(a)(1); 47 C.F.R. § 1.1151.

<sup>9</sup> 47 U.S.C. §159(c)(1); 47 C.F.R. §§ 1.1157(c)(1), 1.1164.

<sup>10</sup> 47 C.F.R. § 1.1164.

<sup>11</sup> See FY 2010 Regulatory Fees Due No Later Than August 31, 2010, Eastern Time, *Public Notice*, DA 10-1451 (Aug. 9, 2010).

<sup>12</sup> *Request*.

<sup>13</sup> 47 C.F.R. § 1.1157(c)(1) Any late filed regulatory fee payment will be subject to the penalties set forth in section 1.1164.

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>14</sup> As we discuss below, the Commission does not send reminder notices by mail or email, so the absence of such 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>15</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>16</sup> On July 31, 2009, the Commission released its order adopting these proposals,<sup>17</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>18</sup> Thereafter, the Commission issued a public notice informing regulatees 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>19</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>20</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>21</sup> This notification was part of the Commission’s increased effort to notify licensees that hardcopy bills will no longer be mailed.<sup>22</sup>

Every licensee is obliged to make the fee payment by the deadline. 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 inadvertent failure to follow the Commission’s requirements or based on a particular passage of time after the deadline within which the regulatee satisfies its payment obligations.

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<sup>14</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>15</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>16</sup> *Id.* at 5973, ¶ 20.

<sup>17</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>18</sup> *Id.* at 10309, ¶ 26.

<sup>19</sup> *Fee Filer Mandatory for FY 2009 Regulatory Fees, Public Notice*, 24 FCC Rcd 10893 (Aug. 21, 2009).

<sup>20</sup> *Payment Methods and Procedures for Fiscal Year 2009 Regulatory Fees, Public Notice*, 24 FCC Rcd 11513, 11514 (2009) (emphasis in original).

<sup>21</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2010, Report and Order*, 25 FCC Rcd 9278, 9291, ¶ 37 (2010).

<sup>22</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 2010, Notice of Proposed Rulemaking*, 25 FCC Rcd 3918, 3923, ¶ 12 (2010).

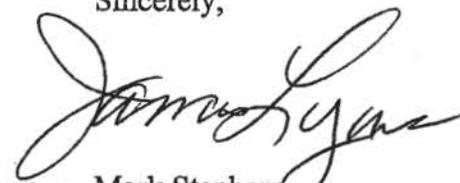
Indeed, the penalty for late payment applies even to situations where the deadline is missed by a short period.<sup>23</sup> Furthermore, the penalty required by 47 U.S.C. § 159(c)(1) and charges required by 31 U.S.C. § 3717 are not limited to situations where the failure to pay was knowing or willful. If the penalty it is to be waived, it is "only in the most extraordinary circumstances,"<sup>24</sup> which Licensee did not establish. Moreover, the Commission has "reject[ed] the contention that the size of the penalty was disproportionate to the lateness. Congress mandated that an additional charge of 25 percent would be assessed as a penalty for all late payments of fees required by Section 9."<sup>25</sup> Thus, we deny the *Request*.

Refer to the Commission's fee filer website to determine a payoff, and thereafter make full payment without delay. Because Licensee is delinquent in paying a non-tax debt, under 47 C.F.R. § 1.1910, Licensee is subject to the Commission's 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.<sup>26</sup>

Interest and penalties continue to accrue from the date of delinquency, and under the law,<sup>27</sup> we will apply debt collection procedures.<sup>28</sup> 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,



FOR: Mark Stephens  
Chief Financial Officer

<sup>23</sup> *See XO Communications, LLC* (OMD, Nov. 10, 2010).

<sup>24</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>25</sup> *In re NTT America, Inc.* 21 FCC Rcd 8088, 8090 (2006).

<sup>26</sup> 47 C.F.R. § 1.1912.

<sup>27</sup> *See* 47 C.F.R. § 1.1901, *et seq.*

<sup>28</sup> *See* 31 C.F.R. § 3717.